

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 (*Defense Only*)**
- 7. Complaints and Inquiries (*Defense Only*)**
- 8. Nonjudicial Punishment (*Defense Only*)**
- 9. ADSEPS (*Defense Only*)**
- 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. Plea Agreements**
- 18. Stipulations**
- 19. Trial Preparation: Evidence and Witnesses**

20. Contested Trial with Members

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 1717 (Analysis of Punitive Articles) of the Manual for Courts-Martial (MCM)	
Navy Marine Corps Court of Criminal Appeals (NMCCA) Website	
Court of Appeals for the Armed Forces (CAAF) Website (Digest in particular)	
<u>Military Judges' Electronic Benchbook</u>	
Army Criminal Law Deskbook	
Local Court Rules	
Navy-Marine Corps Trial (NMCTJ) 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	
CNLSCINST 5800.1[series], NLSC Manual, Chapters 11, 12, 14, and 15	
DC Only: DCAP Deskbooks and Standard Forms	
National Defense Authorization Act (NDAA) 2022 and 2023; Code 20 SIDEBAR, September 2023, Military Justice Reform: fall 2023 Training Rollout	

Initial and Date:

1. _____ ACCESS: Lexis.com user account name and password from your command POC.
2. _____ ACCESS/REVIEW: Defense Counsel Assistance Program (DCAP) or Trial Counsel Assistance Program (TCAP) SharePoint site and establish access using the instructions provided by your Trial Department Head (TDH) or Senior Defense Counsel

(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.secnav.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.
7. _____ DISCUSS: The purpose and role of the Office of Special Trial Counsel (OSTC).
8. _____ DESCRIBE: The exclusive authorities of a Special Trial Counsel (STC).
9. _____ IDENTIFY: Covered, known, and related offenses as they pertain to STC authority.
10. _____ IDENTIFY: The effective date of implementation of STC related changes.

Trial Counsel (TC) Only:

1. _____ REVIEW: TCAP Trial Counsel Manual and motions bank, located on TCAP SharePoint site.
2. _____ OBTAIN/ACCESS: Naval Court Martial Reporting System (NCORS) account access. Discuss NCORS operation and office policies with TDH or designee.

Defense Counsel (DC) Only:

1. _____ LEARN: How requests for counsel are sent to the Defense Service Office (DSO) and how cases are detailed by your DSO.
2. _____ OBTAIN/ACCESS: NCORS, with the help of your local administrator. Review the NCORS Business Rules.
3. _____ REVIEW: Defense Counsel Deskbook, Senior Officer Representation Deskbook, PERSREP Deskbook, ADSEP Deskbook, Motions Template Bank, Discussion Board, and Navy Defender Newsletter located on the DCAP SharePoint site.

RECOMMENDED _____
(Branch/OIC/Department Head)

DATE _____

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: An arraignment.
3. _____ OBSERVE: A motions hearing.
4. _____ OBSERVE: A guilty plea with a Plea Agreement.
5. _____ OBSERVE: A contested court-martial with members.
6. _____ OBSERVE: Voir dire.
7. _____ OBSERVE: An expert witness testifying.
8. _____ OBSERVE: A victim testifying.
9. _____ OBSERVE: A remote witness testifying via video-teleconferencing (VTC) or telephone.
10. _____ OBSERVE: An R.C.M. 802 conference.
11. _____ OBSERVE: An Initial Review Officer (IRO) hearing.
12. _____ OBSERVE: A 39a proceeding.
13. _____ OBSERVE: A request for a pre-referral subpoena or warrant.

RECOMMENDED _____ DATE _____
(Branch/OIC/Department Head)

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	
NMCTJ Uniform Rules of Practice & Circuit Rules	
Your state bar 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 TC and government counsel;
 - h. Conflicts associated with representing clients;
 - i. Duty of competence;
 - j. Duty to communicate; and
 - k. Duty of diligence;
 - l. Conflicts with State Rules and ABA Rules aligned
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 TDH 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. _____ DISCUSS: The formation of attorney-client relationships and the relevant rules of professional responsibility.

RECOMMENDED _____ DATE _____
(Branch/OIC/Department Head)

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 _____
(Branch/OIC/Department Head)

5. Sexual Offenses and Victim and Witness Assistance Program (VWAP) Training

Review, sign, and date:

Articles 120 and 125, Uniform Code of Military Justice (UCMJ) (all versions)	
JAGINST 5810.3[series] Navy Victim Legal Counsel Program Manual	
ALNAV 061/15 Requirement to Consider A Victim's Preference for Prosecution by Court Martial or Civilian Court	
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	
<i>United States v. Pease</i> , 75 M.J. 180 (C.A.A.F. 2016)	

Initial and Date:

1. _____ 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 allegations on or after 28 December 2023 are handled;
- g. How consent and mistake of fact as to consent applies to allegations under the various versions of Article 120;
- h. Discuss *United States v. Pease* and its effect on consent in alcohol related cases.

2. _____ 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. _____ 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 Sexual Assault Response Coordinator (SARC) and a Victim Advocate (VA).

4. _____ 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.
- c. *J.M. v. Payton-O'Brien*, 76 M.J. 782 (N-M. Ct. Crim. App. 2017)
- d. *United States v. Mellette*, 82 M.J. 374 (C.A.A.F. 2022) and its effect on what is protected by MRE 513, what is discoverable under RCM 701, and what can be produced under RCM 703.

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 “provers” 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 _____.

TC Only:

1. _____ LEARN: About TC's duties under VWAP, the role of the Victim & Witness Liaison Officer (VWLO), Victim & Witness Assistance Coordinator (VWAC), and associated requirements. *See* OPNAVINST 5800.7A and COMNAVLEGSVCCOMINST 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 _____
(Branch/OIC/Department Head)

DATE _____

6. Non-Punitive Measures (Administrative Remedies)

Review, sign, and date:

JAGINST 5800.7(series) (JAGMAN), §§ 0102 - 0105	
R.C.M. 306(c)(2)	
JAGMAN § 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. _____ UNDERSTAND: The limits on Extra Military Instruction (EMI).
2. _____ KNOW: Who may assign EMI.
3. _____ DISCUSS: The reporting requirements when a decision is made to impose nonjudicial punishment (NJP) on an officer and when NJP is complete.

DC Only:

1. _____ REVIEW: A Page 13 issued to one of your Defense 'Personal Representative' (PERSREP) clients.

2. _____ UNDERSTAND: An EMI Order as it pertains to compliance with Navy Regulations.
3. _____ UNDERSTAND: How to advise a PERSREP client regarding a Non-Punitive Letter of Caution (NPLOC). Discuss the implications of receiving one.
4. _____ UNDERSTAND: How to a PERSREP client regarding a Letter of Instruction (LOI). Discuss the implications of receiving one.
5. _____ ADVISE: A PERSREP client on responding to a Report of Misconduct or a Report of Substandard Performance.
6. _____ DISCUSS: Promotion withholds and delays.

RECOMMENDED _____ DATE _____
(Branch/OIC/Department Head)

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 inspector general (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 _____
(Branch/OIC/Department Head)

DATE _____

8. Nonjudicial 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	
Article 1137, U.S. Navy Regulations (1990); <i>United States v. Serianne</i> , 68 M.J.580 (N.M.Ct.Crim.App. 2009)	
<i>United States v. Booker</i> , 5 M.J. 238 (C.M.A. 1977)	

Initial and Date:

1. _____ DESCRIBE: Who has NJP authority and the limitations, if any, on their authority.
2. _____ 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.
6. _____ EXPLAIN: The Vessel exception, recent changes, and how it applies to NJP.

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 _____
(Branch/OIC/Department Head)

9. Enlisted Administrative Separations

Review, sign, and date:

MILPERSMAN 1910-100	
DoD Instruction 1332.14 (Enlisted Administrative Separations)	
MILPERSMAN 1910 Series	
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 (BCNR) procedures and the likelihood of getting his/her discharge upgraded.

RECOMMENDED _____ DATE _____
(Branch/OIC/Department Head)

10. Pre-Trial/Case Screening

Review, sign, and date:

JAGINST 5803.1 [series]	
Article 25, UCMJ	
Code 20 Member's Selection Primer (Available on SharePoint)	
<i>United States v. Jeter</i> , No. 22-0065 (C.A.A.F 2023)	
R.C.M. 304, 305	
U.S. Army JAG School Criminal Law Deskbook – Pleas	
MILPERSMAN 1910-208	
Trial Counsel Manual (TCM)	

Initial and Date:

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

TC Only:

1. _____ READ: The Trial Counsel Manual (TCM) and understand the import of this manual to TC practice.
2. _____ 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). _____
3. _____ 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. _____
4. _____ 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.
5. _____ IDENTIFY: The purpose of block 13, receipt by summary court-martial officer.
6. _____ IDENTIFY: The remedies available and the applicable deadlines for correction of pleading defects.
7. _____ SCREEN: A completed DD Form 458 Charge Sheet (all blocks) utilizing the checklist provided by your TDH.
8. _____ 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.
9. _____ 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.
10. _____ ADMINISTER: The oath to an accuser qualified to prefer charges.
11. _____ 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).
12. _____ UNDERSTAND: Your Trial Shop's process for drafting a Recommendation Against Prosecution (RAP) and how those recommendations are shared with convening authorities.

13. _____ DRAFT: A RAP

14. _____ PREPARE: A pre-referral investigative subpoena or warrant.

DC Only:

1. _____ 1 UNDERSTAND: An accused's EAOS and how it can impact case strategy.
2. _____ 2 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 _____ DATE _____
(Branch/OIC/Department Head)

11. Witness Interviews

Review, sign, and date

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

Initial and Date:

1. _____ REVIEW: Statement(s) of an alleged crime victim with a core counsel.
2. _____ PREPARE: An outline for a witness interview of an alleged victim(TC)/client(DC) in a case with TC/DC.
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/DC.

RECOMMENDED _____
(Branch/OIC/Department Head)

DATE _____

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 TDH/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 _____ DATE _____
 (Branch/OIC/Department Head)

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

R.C.M. 701 and 703	
<i>United States v. Stellato</i> , 74 M.J. 501 (A.C.C.A. 2014)	
<i>United States v. Vargas</i> , 83 M.J. 150 (C.A.A.F. 2023)	
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)	
Williams, 50 M.J. 436 (C.A.A.F. 1999)	
<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. _____ DISCUSS: Use of TCM in discovery process.
2. _____ DRAFT: A *Henthorn* request to an agency. Explain the differences between obtaining information from military law enforcement vice state law enforcement.
3. _____ 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.
4. _____ DRAFT: A pre-referral warrant.
5. _____ DRAFT: A pre-referral subpoena.
6. _____ 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 the limitations of each.

DC Only:

1. _____ DRAFT: A discovery request.
2. _____ DRAFT: A motion to compel discovery.

RECOMMENDED _____
(Branch/OIC/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	
JAGMAN § 0132	

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. _____ DISCUSS: Use of the TCM in preparation for an Article 32 hearing.
2. _____ PREPARE: Article 32 script.
3. _____ DRAFT: A Preliminary Hearing Officer (PHO) appointing letter.
4. _____ REVIEW: A PHO report and discuss with your TDH.
5. _____ ASSIST: The accused's command in drafting an endorsement to the GCMCA.
6. _____ DEMONSTRATE: A working knowledge of the court reporting equipment to record the Article 32 proceedings.

7. _____ DESCRIBE: Differences in Article 32 process on a case with covered offenses under the exclusive authority of the STC.

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 _____
(Branch/OIC/Department Head)

15. Arraignment and Notices

Review, sign, and date:

Joint Trial Guide	
M.R.E. 103, 104, 304, 404(b), and 807	
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 - Command Influence	
<i>Daubert v. Merrell Dow Pharmaceuticals</i> , 509 U.S. 579 (1993)	
Code 20 Command Influence Sidebar and Primer	

Initial and Date:

1. _____ EXPLAIN: 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 _____
(Branch/OIC/Department Head)

DATE _____

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	
<i>Batson v. Kentucky</i> , 476 U.S. 79 (1986)	
TCAP Interlocutory Appeals Checklist	

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 TDH/SDC; _____
 - b. Proposed findings of fact and conclusion of law for the motion for review by the TDH/SDC. _____
3. _____ LIST: The issues that *must* be raised by DC 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 TCAP checklist, and points of contact at Navy TCAP and Code 46.

RECOMMENDED _____ DATE _____
(Branch/OIC/Department Head)

17. Plea Agreements

Review, sign, and date:

Articles 58 and 76, UCMJ	
R.C.M. 811	
MILITARY EVIDENTIARY FOUNDATIONS §12-2	
JAGMAN § 0137	
R.C.M. 1109	
<i>United States v. Bertelson</i> , 3 M.J. 314 (C.M.A. 1977)	
Lautenberg Amendment, 18 U.S.C. § 921-22; anda 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. _____ OBSERVE: Plea Agreement negotiations with the assigned trial/defense counsel on a case on which you are assisting.
2. _____ 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. _____ OBSERVE: The use of a Stipulation of Fact at trial.
4. _____ 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 "*sub rosa*" agreements are and their pitfalls; _____
 - g. What conditional pleas are and 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 ____
 - j. The difference between a plea agreement and a pre-trial agreement (PTA); ____
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 a Reasonably Included Offense (RIO), including drafting language for the RIO charge; ____
 - m. A plea by exceptions and substitutions; ____
 - n. Withdraw or dismiss charges based on pleas to RIO; ____
 - 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 TDH/SDC or TC/DC conduct plea agreement negotiations.
9. ____ DISCUSS: A separation in lieu of trial (SILT) or resignation in lieu of trial (RILT), how they are drafted, and when they 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 _____
(Branch/OIC/Department Head)

DATE _____

18. Stipulations

Review, sign, and date:

R.C.M. 811	
M.R.E. 410	
<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. _____ 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.
4. _____ DRAFT: A stipulation of fact and a stipulation of expected testimony for a case with which you are assisting.

RECOMMENDED _____
(Branch/OIC/Department Head)

DATE _____

19. Trial Preparation: Evidence and Witnesses

Review, sign, and date:

M.R.E. 607, 608, 609, 612, and 613	
Military Evidentiary Foundations Guide	
R.C.M. 703(g)(3g3) (2024)	
R.C.M. 914A and 914B	

Initial and Date:

1. _____ PREPARE: The foundation to admit a document.
2. _____ 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. _____ EXPLAIN: How to conduct a presentation of documentary evidence with witness authentication.
4. _____ OBSERVE: Preparing a client (DC) or alleged victim (TC) to testify in a contested case, including preparation 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. _____ DISCUSS: TCM and its use in trial preparation.
2. _____ DRAFT: A preservation request for documentary evidence or electronic/content information, such as text message, email, and 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 _____ DATE _____
(Branch/OIC/Department Head)

20. Contested Trial with Members

Review, sign, and date:

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

Initial and Date:

1. _____ 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. _____ PREPARE: Group and individual voir dire of members.
4. _____ 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 TDH: 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 _____
(Branch/OIC/Department Head)

DATE _____

21. Sentencing Case

Review, sign, and date:

R.C.M. 1001, 1002, and 1003	
M.C.M. (2024), Appendices 12B – 12D and Sentencing Guidelines	
Military Judges' Benchbook Judge Alone Sentencing and Members Sentencing	
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)	
DC Only: DCAP Deskbook Chapter on Sentencing	

Initial and Date:

1. _____ EXPLAIN: What types of evidence can and cannot be used as evidence in aggravation.
2. _____ DISCUSS: The differences between extenuation and mitigation evidence.
3. _____ 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.
4. _____ OBSERVE: A presentencing phase of a court-martial and argument on sentence.
5. _____ KNOW: Local confinement facility requirements for an accused convicted at court-martial.
6. _____ ASSIST: Preparation of a pre-sentencing case.

7. _____ ASSIST: Preparation of a sentencing argument.
8. _____ KNOW: What constitutes an improper argument at sentencing.
1. _____ EXPLAIN: Changes to sentencing procedures as promulgated by NDAA 2022 and 2023, including new M.C.M. Appendices and Sentencing Guidelines.

DC Only:

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

RECOMMENDED _____ DATE _____
(Branch/ OIC/Department Head)

22. Post-Trial Duties and Administrative Actions

Review, sign, and date:

Articles 54, 57, 60,65, and 66, 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 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: Clemency request.
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 Statement of Trial Results for TDH 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 _____
(Branch/OIC/Department Head)

TRIAL OR DEFENSE COUNSEL

RECOMMENDED _____ DATE _____
(Branch/OIC/Department Head)

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

_____ DATE _____
Commanding Officer
[Command]

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

