**DEPARTMENT OF THE NAVY**
COMMANDER NAVY REGION SOUTHWEST
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SAN DIEGO, CA 92132-0058

IN REPLY REFER TO:
COMNAVREGSWINST 5814.1F
N05HD

2 MAY 2006

COMNAVREGSW INSTRUCTION 5814.1F

From: Commander, Navy Region Southwest

Subj: ARTICLE 64, UNIFORM CODE OF MILITARY JUSTICE, REVIEW OF SUMMARY COURTS-MARTIAL AND NON-BAD CONDUCT DISCHARGE SPECIAL COURTS-MARTIAL RECORDS OF TRIAL

Ref: (a) Article 64, UCMJ
(b) R.C.M. 1112, MCM
(c) R.C.M. 1306, MCM
(d) Section 0153, JAGINST 5800.7D (JAGMAN)
(e) R.C.M. 1305, MCM

Encl: (1) CNRSW letters designating judge advocates of Special Courts-Martial Convening Authorities as Post-Trial Judge Advocate Review Authorities
(2) Sample Summary of Proceedings (Guilty Pleas Case)
(3) Sample Summary of Proceedings (Not-Guilty Pleas Case)

1. Purpose. To establish procedures within Navy Region Southwest (NRSW) for review of records of trial of Summary Courts-Martial (SCM) and Special Courts-Martial (SPCM) not involving a bad conduct discharge (BCD) and to ensure submission of complete and properly prepared records of SCMs for judge advocate review.

2. Cancellation. COMNAVREGSWINST 5814.1E.

3. Background. References (a), (b) and (c) require a judge advocate to perform a post-trial review of records of trial of SCM and SPCM not involving a BCD in which there have been approved guilty findings. Reference (d) directs that such records be forwarded for review to the Staff Judge Advocate (SJA) of the officer exercising General Courts-Martial Jurisdiction (OEGCMJ). In accordance with reference (d), the SJA of the OEGCMJ may review such records pursuant to reference (b) or may task another judge advocate to perform such review.

4. Action. For a Special Courts-Martial Convening Authority (SPCMCA) without a designated judge advocate to perform review of SCM and non-BCD records of trial, such records shall be

forwarded to the Commander, Navy Region Southwest (CNRSW) SJA for the required review. Pursuant to reference (d), certain judge advocates have been designated to conduct the required post-trial review of SCM and non-BCD SPCM records of trial under references (a) and (b) (see enclosure (1)). In the event a designated judge advocate has previously acted in a case in a manner disqualifying such judge advocate from providing post-trial review under reference (b), the matter shall be referred to the CNRSW SJA for action which may include tasking a qualified judge advocate to perform such review. Reference (e) describes the minimum contents for SCM records of trial and authorizes prescription of additional requirements by the convening or higher authority. Reports of SCM submitted for review should contain the original of the following:

a. Charge Sheet and Appointing Order.

b. Record of Trial by Summary Courts-Martial (DD Form 2329), a sample of which is found in Appendix 15 of the Manual for Courts-Martial (MCM) and can be downloaded at this website: http://www.dtic.mil/whs/directives/infomgt/forms/forminfo/forminfopage1471.html. The convening authority's action shall include approval or disapproval of findings; order of execution or suspension of sentence; and designation of the place of confinement and limits of restriction, when applicable. The convening authority's action must identify the CNRSW SJA as the authority to conduct review under Article 64(a), UCMJ.

c. Summary of Proceedings. The summary shall include the following:

(1) In cases of guilty pleas, the providency inquiry (i.e., facts constituting the accused's affirmation of each element of the offense) (see enclosure (2)).

(2) In cases of not-guilty pleas, a brief summary of the testimony of each witness on the merits of the case. The record shall state which documents were admitted into evidence. Copies of all documents offered shall be attached to the record of trial (see enclosure (3)).

(3) In cases of guilty findings, a brief summary of testimony in aggravation and extenuation and mitigation. Copies of all documents offered in aggravation and extenuation and mitigation shall be attached to the record.

d. Certificate demonstrating the accused's receipt of a copy of the Record of Trial.

e. Clemency requests or other post-trial matters submitted by the accused, if any.

f. Records should be brief, in keeping with the purpose and expedited nature of SCM. Records of trial, however, must provide sufficient recitation of the facts to permit a legally sufficient and effective review by the SJA or his designee. A command point of contact with phone/fax number and e-mail address should be included on the forwarding letter.

M. R. ALLEN
Chief of Staff

Distribution:
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http://www.cnrsw.navy.mil/Admin/index.htm

5800
Ser N00H/

From: Commander, Navy Region Southwest
To: Commanding Officer, Naval Base San Diego

Subj: R.C.M. 1112 JUDGE ADVOCATE REVIEW DESIGNATION

Ref: (a) JAGMAN 0153.a(1)
(b) R.C.M. 1112
(c) R.C.M. 103(17)
(d) UCMJ Article 64

1. Pursuant to references (a) through (c), I hereby appoint the judge advocate who is assigned as the principal legal advisor to your command as the designated judge advocate for all post-trial reviews required under references (b) and (d) for cases you convene. If the judge advocate so designated is disqualified from performing the post-trial review of a case under reference (b), the Staff Judge Advocate for Commander, Navy Region Southwest, may perform the review or cause another qualified judge advocate to perform such review.

L. R. HERING

**SAMPLE**

**REPORT OF SUMMARY COURTS-MARTIAL PROCEEDINGS (GUILTY PLEAS)**

Summary Courts-Martial case of Fireman Recruit John Doe, U.S. Navy, 000-00-0000.

PROVIDENCY FOR GUILTY PLEAS

Charge I: Article 86, Unauthorized Absence

The Summary Courts-Martial Officer inquired as to the identity and military status of the accused on the date of his departure from his unit. The court also verified that such departure was without proper authority, and that the accused was, indeed, an unauthorized absentee from 1245, May 1998 until 1200, 10 December 1998, when he surrendered to military authorities on board Navy-Marine Reserve Center, St. Louis, Missouri.

Charge II: Article 134, Breaking Restriction

The Summary Courts-Martial Officer determined that the accused was on active duty on 24 May 1998, was assigned to Transient Personnel Unit, Naval Station, San Diego, California, and was duly restricted by Commander Johnson, Commanding Officer, Transient Personnel Unit, Naval Station. The Summary Court Officer further determined that the accused knew of his restriction and the limits thereof, and that on 24 May 1998, he went beyond the limits of the restriction without authority.

AGGRAVATION

The Summary Courts-Martial Officer accepted Exhibit 1, a record of prior non-judicial punishment, into evidence.

EXTENUATION AND MITIGATION

The accused made a sworn statement as follows:

The day I went UA my father was very sick. My father was in the hospital with chest problems. He had a heart attack about six or seven days after I got there. He stayed in the hospital for three weeks. Two of the three weeks were in intensive care.

I have other brothers, but they were not at home. They were at school. I took on all the responsibilities. I returned from UA when my brother came home from school. The Summary Courts-Martial Officer accepted Exhibit 2, photos of family and dog, and Exhibit 3, a letter from Mrs. Crabtree, a third-grade teacher, into evidence.

**SAMPLE**

**REPORT OF SUMMARY COURTS-MARTIAL PROCEEDINGS (NOT GUILTY PLEAS)**

Summary Court-Marital case of Fireman Apprentice John Doe, U.S. Navy, 000-00-0000.

Merits

The Summary Courts-Martial Officer received Exhibit 1 into evidence.

Witness for the government, MA1 Jane M. Jones, U.S. Navy, was sworn and testified substantially as follows:

I am a military working dog handler. I remember doing a drug dog gate inspection on the morning of 19 April 1998, but I don't specifically remember FA Doe. My dog "Charlie" will sit when responding to a person in possession of drugs. I mainly look for the change of behavior in the dog. I've worked with my dog for two and a half years and I am very familiar with his responses. I received my dog handling training at Lackland Air Force Base.

Witness for the government, Petty Officer Smith, U.S. Navy, was sworn and testified substantially as follows:

I saw "Charlie" alert on FA Doe on 19 April 1998. Doe was brought in to give urine sample. After he refused to provide a sample, I informed Captain Johnson that he had been alerted upon in a military working dog gate inspection and had refused to give a consent urine sample. Captain Johnson then issued an order for Doe to provide a urine sample. When I returned, I notified Doe that Captain Johnson had ordered him to provide a urine sample. Doe again refused, and stated that he did not have the time, and had to go to work. I then called base police, and they took him away. Doe indicated on a form that he wound not consent to a urinalysis.

Witness for the accused, Fireman Witness, U.S. Navy, was sworn and testified as follows:

On the morning of 19 April 1998, Fireman Apprentice Doe and I went to chow. We took the bus to get back to the Naval Station. At the gate, everybody on the bus was ordered to get off so the dogs could go through the bus and inspect it. The first dog went by us and the second dog came by and sat on Doe's

foot. Doe was then searched. I was not present when Doe was ordered to provide a urine sample.

FA John Doe was sworn and testified substantially as follows:

I was searched and nothing was found on me. I refused to provide a urine sample. A phone call was then made to Captain Johnson. Captain Johnson gave me a direct order to provide a sample. I still refused to give a sample and was written up for disobeying a direct order. I did give a sample on 28 May 1998 that came up negative. I did not submit to a urinalysis on the morning of 19 April 1998 because I was getting fed up with giving samples. I had given two samples the prior month which both came up negative.

AGGRAVATION

The Summary Courts-Martial Officer received Exhibit 2, a page 13 counseling sheet, into evidence.

EXTENUATION AND MITIGATION

The accused made a sworn statement as follows:

The reason I believe the dog might have alerted on me that morning is that I was wearing a dirty pair of dungarees with cigarette smell. I had just gotten back from breakfast, and the dog could have been hungry. Another reason why I didn't submit to a urinalysis is because I felt threatened by the consent statement on the form. I have never used drugs in my life except for doctor prescribed drugs.

The Summary Courts-Martial Officer received Exhibit 3, Sailor of the Week certificate, into evidence. Exhibit 4, an unsigned letter of appreciation from National Marijuana Growers was not accepted into evidence.