



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
200 STOVALL STREET
ALEXANDRIA, VA 22332-2400

CH-1
INCORPORATED
IN REPLY REFER TO

JAG/COMNAVLEGSVCCOMINST 5814.1
20

02 DEC 1992

JAG/COMNAVLEGSVCCOMINST 5814.1

Subj: POST-TRIAL CHECKLISTS

Ref: (a) R.C.M. 1106, M.C.M. 1984

Encl: (1) GCM Post-trial Checklist
(2) SPCM (BCD) Post-Trial Checklist
(3) SPCM (non-BCD) Post-Trial Checklist
(4) SJA/Legal Officer Recommendation Checklist
(5) CA's Action Checklist
(6) Promulgating Order Checklist

1. Purpose. To issue post-trial checklists for Naval Legal Service Offices, staff judge advocates, and legal officers to use during the court-martial review process.

2. Scope. The provisions of this instruction apply to all judge advocates and legal officers performing post-trial review functions for convening authorities and to all Naval Legal Service Offices, their detachments and branch offices.

3. Discussion. Post trial processing of courts-martial has been the subject of a significant amount of appellate litigation. The implementation of these checklists should improve the quality of this function and reduce post-trial processing times.

4. Action.

a. Each Naval Legal Service Office, detachment and branch office shall use enclosure (1), (2) or (3), as appropriate, in the preparation of each record of trial prepared by that organization and shall attach said list to the original record of trial prior to forwarding the record to the convening authority for further review. One copy each of enclosures (4) through (6) shall be attached to the original record of trial for use by the reviewing SJA/legal officer.

b. Judge advocates serving in billets designated as "staff judge advocate" or otherwise performing duties as required by reference (a), and non-judge advocate legal officers shall use enclosures (4) through (6) to assist in the preparation of the staff judge advocate's recommendation, convening authority's action and promulgation order.


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5. Responsibilities.

a. The Deputy Assistant Judge Advocate General for Criminal Law shall be responsible for keeping the subject checklists current and in accord with applicable statutes, regulations and case law. A review of the subject lists shall be conducted every six months and Commander, Naval Legal Service Command shall be advised of the results thereof by letter.

b. If amendments to the subject checklists are required, said changes shall be made and promulgated by the Deputy Assistant Judge Advocate General for Criminal Law (Code 20).

6. Failure to Comply. Failure to comply with this directive shall not constitute grounds for assignment of error on appellate review.


W. L. SCHACHTE, JR.
Acting

Distribution:

JAG Special List 40 (one copy each)

GENERAL COURT-MARTIAL POST-TRIAL CHECKLIST
ICO _____

- ___ Prepare report of results of trial form, if required; attach to ROT. JAGMAN 0149, A-1-j. Post-trial checklist not required if court-martial results in an acquittal.
- ___ Art. 32 appointing order inserted in ROT. RCM 1103(b)(3).
 - ___ Report of investigation (DD Form 457).
 - ___ Art. 34 advice.
 - ___ Waiver of Art. 32.
- ___ Convening order inserted in ROT. RCM 1103(b)(2)(D).
 - ___ Modifications inserted, if any.
- ___ Charge sheet inserted in ROT. RCM 1103(b)(2)(D).
- ___ ROT examined by TC. RCM 1103(i)(1)(A).
- ___ ROT examined by DC, when unreasonable delay will not result. RCM 1103(i)(1)(B).
- ___ ROT authenticated by each military judge participating in proceedings or substitute authentication. RCM 1104(a)(2).
- ___ Original verbatim ROT and 4 copies prepared or original summarized ROT and 1 copy if verbatim not required. RCM 1103(b)(2), (3), (g).

All exhibits included:

 - ___ Prosecution.
 - ___ Defense.
 - ___ Appellate.
 - ___ Pretrial agreement.
 - ___ Motions.
 - ___ MJ alone request, if any.
 - ___ Written continuance requests with ruling.
 - ___ Written special findings by military judge.
 - ___ Enlisted members request.
 - ___ Members questionnaires.
 - ___ Voir dire questions submitted.
 - ___ Members' questions.
 - ___ Appellate rights statement.
 - ___ Special power of attorney.
 - ___ Waiver of appellate review.
 - ___ Other _____.
- ___ Page check: sequential; # of pages: _____.
- ___ Index sheet.

Enclosure (1)

- ___ Copy of ROT served on accused; attach receipt in ROT (or explanation in lieu of). RCM 1104(b).
- ___ ROT and copies delivered to staff judge advocate/legal officer.

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[NOTE: Items above this point are normally completed by the NLSO]
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- ___ Staff judge advocate's/legal officer's recommendation prepared; inserted in ROT. RCM 1103(b)(3)(G), RCM 1106, JAGMAN 0151c.
 - ___ SJA's/LO's recommendation checklist complied with.
- ___ Staff judge advocate's/legal officer's recommendation served on DC and accused; receipt in ROT (or explanation in lieu of). RCM 1106(f). Date to accused _____; counsel _____.
- ___ Accused response to staff judge advocate's/legal officer's recommendation inserted in ROT, if provided. RCM 1106.
- ___ Forward all responses and recommendations (including supplementary responses and recommendations) to CA for review. RCM 1107.
 - ___ Allegations of legal error raised by accused in response addressed in an addendum to the recommendation. RCM 1106(d)(4). [SJA only].
 - ___ All other RCM 1105, 1106, or other clemency matters addressed.
 - ___ All supplementary recommendations raising new matter served on DC or accused; receipt in ROT (or explanation in lieu of). RCM 1106(f)(7).
- ___ Attach other matters submitted by accused or DC, and any action on same, to ROT. RCM 1105, RCM 1106(f)(4), RCM 1110; JAGMAN 0161.
 - ___ Deferment requests.
 - ___ All clemency requests.
 - ___ Other matters.
- ___ Prepare CA's action using CA's input. RCM 1107.
 - ___ CA's action checklist complied with.
- ___ Attach CA's action or statement as to why he/she cannot take action; include letter of reprimand, if any. RCM 1107.
- ___ Prepare promulgating order and appropriate copies for distribution. JAGMAN 0153, 0155; RCM 1114(c)(3).

- ___ Promulgating order checklist complied with.
- ___ Complete time sheet and the back of the cover of the ROT.
- ___ Forward ROT to appropriate authority. JAGMAN 0153, 0154; RCM 1111, RCM 1112. [NOTE: If case assigned an NMCM number, it must always be forwarded to Navy and Marine Corps Appellate Review Activity, Code 40.31.]
- ___ Waiver of appellate review in writing.
 - ___ Forward ROT to a judge advocate for review, this may be the SJA for CA. JAGMAN 0153, 0154; RCM 1111. [NOTE: Appellate review with sentence to death may not be waived.]
 - ___ Judge advocate's review inserted in original ROT and all copies. RCM 1103(b)(3)(G), RCM 1112.
 - ___ Copy of review to accused.
 - ___ Forward ROT and copies to the Navy and Marine Corps Appellate Review Activity, Code 40.31.
 - ___ Forward one copy of the ROT to the President, Naval Clemency and Parole Board, if sentence includes an unsuspended punitive discharge or confinement for 8 months or more.
- ___ No waiver of appellate review.
 - ___ Forward ROT and two copies to the Navy and Marine Corps Appellate Review Activity, Code 40.31.
 - ___ Forward one copy of the ROT to the President, Naval Clemency and Parole Board, if sentence includes an unsuspended punitive discharge or confinement for 8 months or more.
- ___ Prepare appropriate service record entries (usually pages 4, 7, 9, and 13).
- ___ Optional: retain copy of ROT, CA's action, and promulgating order.
- ___ Conditions on suspension, proof of service on probationer, and any records of procedures in connection with vacation of suspension. RCM 1108, RCM 1109.
- ___ Confinement order and medical officer's certificate for members sentenced to confinement on bread and water and diminished rations.
- ___ Appellate court directives (i.e. orders to conduct a rehearing, supplemental orders, etc.).

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— Records of former trial of the same case if case was a rehearing or new or other trial of the same case. RCM 1103(b)(3)(A).

— Compliance with requirements for National Security and classified information. JAGMAN 0126, 0144, 0166; OPNAVINST 5510.1H; RCM 407(b), RCM 1104(b)(1)(D).

— Other _____.

BCD SPECIAL COURT-MARTIAL POST-TRIAL CHECKLIST
ICO _____

- ___ Prepare report of results of trial form, if required; attach to ROT. JAGMAN 0149, A-1-j. Post-trial checklist not required if court-martial results in an acquittal.
- ___ Convening order inserted in ROT. RCM 1103(b)(2)(D).
 - ___ Modifications inserted, if any.
- ___ Charge sheet inserted in ROT. RCM 1103(b)(2)(D).
- ___ ROT examined by TC. RCM 1103(i)(1)(A).
- ___ ROT examined by DC, when unreasonable delay will not result. RCM 1103(i)(1)(B).
- ___ ROT authenticated by each military judge participating in proceedings or substitute authentication. RCM 1104(a)(2).
- ___ Original verbatim ROT and 4 copies prepared. RCM 1103(b)(2), (3), and (g).
All exhibits included:
 - ___ Prosecution.
 - ___ Defense.
 - ___ Appellate.
 - ___ Pretrial agreement.
 - ___ Motions.
 - ___ MJ alone request, if any.
 - ___ Written continuance requests with ruling.
 - ___ Written special findings by military judge.
 - ___ Enlisted members request.
 - ___ Members questionnaires.
 - ___ Voir dire questions submitted.
 - ___ Members' questions.
 - ___ Appellate rights statement.
 - ___ Special power of attorney.
 - ___ Waiver of appellate review.
 - ___ Other _____.
- ___ Page check: sequential; # of pages: _____.
- ___ Index sheet.
- ___ Copy of ROT served on accused; attach receipt in ROT (or explanation in lieu of). RCM 1104(b).
- ___ ROT and copies delivered to staff judge advocate/legal officer.

Enclosure (2)

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[NOTE: Items above this point are normally completed by the NLSO]
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- ___ Staff judge advocate's/legal officer's recommendation prepared; inserted in ROT. RCM 1103(b)(3)(G)), RCM 1106, JAGMAN 0151c.
 - ___ SJA's/LO's recommendation checklist complied with.

- ___ Staff judge advocate's/legal officer's recommendation served on DC and accused; receipt in ROT (or explanation in lieu of). RCM 1106(f). Date to accused _____; counsel _____.

- ___ Accused response to staff judge advocate's/legal officer's recommendation inserted in ROT, if provided. RCM 1106.

- ___ Forward all responses and recommendations (including supplementary responses and recommendations) to CA for review. RCM 1107.
 - ___ Allegations of legal error raised by accused in response addressed in supplementary recommendation. RCM 1106(d)(4). [SJA only]
 - ___ All other 1105, 1106, or other clemency matters addressed.
 - ___ All supplementary recommendations raising new matter served on DC or accused; receipt in ROT (or explanation in lieu of). RCM 1106(f)(7).

- ___ Attach other matters submitted by accused or DC, and any action on same, to ROT. RCM 1105, RCM 1106(f)(4), RCM 1110; JAGMAN 0161.
 - ___ Deferment requests.
 - ___ Clemency requests.
 - ___ Other matters.

- ___ Prepare CA's action using CA's input. RCM 1107.
 - ___ CA's order checklist complied with.

- ___ Attach CA's action or statement as to why he/she cannot take action; include letter of reprimand, if any. RCM 1107.

- ___ Prepare promulgating order and appropriate copies for distribution. JAGMAN 0153, 0155; RCM 1114(c)(3).
 - ___ Promulgating order checklist complied with.

- ___ Complete time sheet and the back of the cover of the ROT.

- Forward ROT to appropriate authority. JAGMAN 0153, 0154; RCM 1111, RCM 1112. [NOTE: If case assigned an NMCM number, it must always be forwarded to Navy and Marine Corps Appellate Review Activity, Code 40.31.]
- Waiver of appellate review in writing.
 - Forward ROT to SJA of OEGCMA for review. RCM 1111; JAGMAN 0153, 0154. [NOTE: ROT may have to be forwarded to OEGCMA for action or the Judge Advocate General for action. RCM 1112, RCM 1201.]
 - Judge advocate's review inserted in original ROT and all copies. RCM 1103(b)(3)(G), RCM 1112.
 - Copy of review to accused.
 - Forward ROT to Office of the Judge Advocate General, Code 40.31.
 - Forward one copy of the ROT to the President, Naval Clemency and Parole Board if sentence includes an unsuspended punitive discharge.
- No waiver of appellate review.
 - Send ROT and two copies to the Navy and Marine Corps Appellate Review Activity, Code 40.31.
 - Forward one copy of the ROT to the President, Naval Clemency and Parole Board if sentence includes an unsuspended punitive discharge.
- Prepare appropriate service record entries (usually pages 4, 7, 9, and 13).
- Optional: retain copy of ROT, CA's action, and promulgating order.
- If initiated as Art. 32, appointing order inserted in ROT. RCM 1103(b)(3).
 - Report of investigation (DD Form 457).
 - Art. 34 advice.
 - Waiver of Art. 32.
- Conditions on suspension, proof of service on probationer, and any records of procedures in connection with vacation of suspension. RCM 1108, RCM 1109.
- Confinement order and medical officer's certificate for members sentenced to confinement on bread and water and diminished rations.
- Appellate court directives (i.e. orders to conduct a rehearing, supplemental orders, etc.).

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— Records of former trial of the same case if case was a rehearing or new or other trial of the same case.
RCM 1103(b)(3)(A).

— Compliance with requirements for National Security and classified information. JAGMAN 0126, 0144, 0166; OPNAVINST 5510.1H; RCM 407(b), RCM 1104(b)(1)(D).

— Other _____.

NON-BCD SPECIAL COURT-MARTIAL POST-TRIAL CHECKLIST
ICO _____

- ___ Prepare report of results of trial form, if required; attach to ROT. JAGMAN 0149, A-1-j. Post-trial checklist not required if court-martial results in an acquittal.
- ___ Convening order inserted in ROT. RCM 1103(b)(2)(D).
___ Modifications inserted, if any.
- ___ Charge sheet inserted in ROT. RCM 1103(b)(2)(D).
- ___ ROT examined by TC. RCM 1103(i)(1)(A).
- ___ ROT examined by DC, when unreasonable delay will not result. RCM 1103(i)(1)(B).
- ___ ROT authenticated by each military judge participating in proceedings or substitute authentication. JAGMAN 0150a; RCM 1104(a)(2).
- ___ Original summarized ROT and 1 copy prepared. RCM 1103(b)(2), (3), (g).
All exhibits included:
 - ___ Prosecution.
 - ___ Defense.
 - ___ Appellate.
 - ___ Pretrial agreement.
 - ___ Motions.
 - ___ MJ alone request, if any.
 - ___ Written continuance requests with ruling.
 - ___ Written special findings by military judge.
 - ___ Enlisted members request.
 - ___ Members questionnaires.
 - ___ Voir dire questions submitted.
 - ___ Members' questions.
 - ___ Appellate rights statement.
 - ___ Other _____.
- ___ Page check: sequential; # of pages: _____.
- ___ Index sheet.
- ___ Copy of ROT served on accused; attach receipt in ROT (or explanation in lieu of). RCM 1104(b).
- ___ ROT and copies delivered to staff judge advocate/legal officer.

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[NOTE: Items above this point are normally completed by the NLSO]
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- ___ Attach accused response to ROT, if provided. RCM 1105.
- ___ Attach other matters submitted by accused or DC, and any action on same, to ROT. RCM 1105.
 - ___ Deferment requests.
 - ___ Clemency requests.
 - ___ Other matters.
- ___ Comment to CA on all matters raised under RCM 1105 and any other clemency matter. [Only SJAs may respond to legal error.]
- ___ Forward all responses and recommendations to CA for review. RCM 1107.
- ___ Prepare CA's action using CA's input. RCM 1107.
 - ___ CA's action checklist complied with.
- ___ Attach CA's action or statement as to why he/she cannot take action; include letter of reprimand, if any. RCM 1107.
- ___ Prepare promulgating order and appropriate copies for distribution. JAGMAN 0153, 0155; RCM 1114(c)(3).
 - ___ Promulgating order checklist complied with.
- ___ Complete time sheet and the back of the cover of the ROT.
- ___ Forward ROT to SJA of OEGCMA for review. JAGMAN 0153, 0154; RCM 1111. [NOTE: ROT may have to be forwarded to OEGCMA for action or the Judge Advocate General for action. RCM 1112, RCM 1201.]
- ___ Judge advocate's review inserted in original ROT and all copies. RCM 1112.
- ___ Copy of review to accused. Date to accused _____.
- ___ Maintain and distribute ROT in accordance with JAGMAN 0154b(2) and (3).
 - ___ Shore activities: maintain 2 years after final action.
 - ___ Fleet activities: maintain 3 months after final action.

- ___ Prepare appropriate service record entries (usually pages 4, 7, 9, and 13).
- ___ If initiated as Art. 32, appointing order inserted in ROT.
RCM 1103(b)(3).
 - ___ Record of investigation (DD Form 457).
 - ___ Art. 34 advice.
 - ___ Waiver of Art. 32.
- ___ Conditions on suspension, proof of service on probationer, and any records of procedures in connection with vacation of suspension. RCM 1108, RCM 1109.
- ___ Confinement order and medical officer's certificate for members sentenced to confinement on bread and water and diminished rations.
- ___ Appellate court directives (i.e. orders to conduct a rehearing, supplemental orders, etc.).
- ___ Records of former trial of the same case if case was a rehearing or new or other trial of the same case. RCM 1103(b)(3)(A).
- ___ Compliance with requirements for National Security and classified information. JAGMAN 0126, 0144, and 0166; OPNAVINST 5510.1H; RCM 407(b), RCM 1104(b)(1)(D).
- ___ Other _____.

SJA'S/LEGAL OFFICER'S RECOMMENDATION CHECKLIST
RCM 1106, JAGMAN 0151c

SJA's/LO's Recommendation ICO

- ___ Offenses, pleas, findings, and adjudged sentence set out.
- ___ Clemency recommendations by any member, military judge, or any other person, if any.
- ___ Summary of accused's service record.
 - ___ Length of service.
 - ___ Character of service (average pros and cons, average evaluation traits).
 - ___ Decorations/awards.
 - ___ Records of prior nonjudicial punishments.
 - ___ Previous convictions.
 - ___ Other matters of significance.
- ___ Nature and duration of pretrial restraint, if any.
 - ___ Judicially ordered credit to be applied to confinement if any.
- ___ Current confinement status.
- ___ Existence of pretrial agreement noted, if any.
 - ___ Terms and obligations CA is obligated to take or reasons why CA is not obligated to take specific action under the agreement.
- ___ All RCM 1105 matters and other clemency submitted prior to recommendation with all matters submitted attached as enclosures.
- ___ All claims of legal error addressed and statement whether corrective action on the findings or sentence is appropriate when an allegation of error is raised under RCM 1105 or when deemed appropriate by the SJA. [NOTE: For SJAs only, legal officers do not address legal error.]
 - ___ All RCM 1105 or other clemency matters noted and statement that they were taken into consideration.
- ___ Specific recommendation concerning action to be taken by CA on adjudged sentence after considering any clemency matters, any claims of legal error, and any pretrial agreement.

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- ___ Optional matters, if any.
 - ___ Accused notified and given opportunity to rebut adverse matters which are not part of the record and with knowledge of which the accused is not chargeable.
- ___ Recommendation signed by SJA or commissioned officer acting as legal officer.
- ___ Served on accused and counsel.
 - ___ Statement stating why accused not personally served.
 - ___ Date to accused: _____; counsel:_____.
- ___ If RCM 1105 or RCM 1106 matters or other matters are raised after original recommendation, addendum to recommendation noting these issues completed. [NOTE: Only SJA may respond to legal errors.]
 - ___ If addendum raises new matter, has accused and counsel been served and given opportunity to respond prior to CA taking action.

CONVENING AUTHORITY'S ACTION CHECKLIST
RCM 1107, JAGMAN 0151a and b

Convening Authority's Action ICO

- RCM 706 hearing ordered if accused lacks mental capacity.
- Action taken not earlier than 10 days after the later of service of the record of trial or staff judge advocate's/legal officer's recommendation.
 - waiver of right to submit matters, in writing, by accused.
 - Time period extended.
- Optional: offenses, pleas, findings, and adjudged sentence properly promulgated.
- Action states CA considered:
 - Result of trial.
 - SJA's/LO's recommendation.
 - Member's or military judge's clemency recommendation, if any.
 - Clemency matters submitted by anyone, if any.
 - Legal errors raised, if any.
 - Other matters raised under RCM 1105 and RCM 1106, if any.[NOTE: Indicate that no matters were received if that is the case, also indicate a failure of accused or counsel to respond to SJA's/LO's recommendation.]
- Optional additional matters considered, if any.
 - Record of trial.
 - Personnel records of accused.
 - Other matters deemed appropriate by CA.
 - Notification to accused and opportunity to rebut, if matters adverse to accused from outside record, with knowledge of which the accused is not chargeable are considered.
- Specific action with regard to findings, if applicable.
 - Rehearing on findings ordered.
 - If rehearing or new trial ordered, reasons for disapproval set forth.
 - If no rehearing ordered on disapproved charges and specifications, statement of dismissal.
 - If "other" trial ordered, reasons for declaring the proceedings invalid stated.

- ___ Specific action with regard to sentence adjudged.
 - ___ Sentence consistent with pretrial agreement, if any.
 - ___ CA executed portions of sentence not suspended, except for punitive discharge.
 - ___ If sentence mitigated, equivalencies under RCM 1003 complied with.
 - ___ Sentence limited if record of trial does not meet requirements of RCM 1103(b)(2)(B) or (c)(1).
 - ___ Rehearing on sentence ordered.

- ___ Automatic reduction addressed (Article 58a, UCMJ), if accused not reduced to E-1 as part of adjudged sentence.

- ___ If portion of sentence suspended, accused has been informed of conditions in writing.

- ___ Place of confinement noted, if approved by CA.

- ___ Deferment date noted, if granted.
 - ___ Deferment rescinded.

- ___ Credit for illegal pretrial confinement directed.

- ___ Any reprimand ordered executed included in action.

- ___ Companion cases noted, if any.

- ___ Signed by CA with authority to sign stated below.

- ___ If substitute CA, action notes CA is acting pursuant to a specific request.

- ___ If action on rehearing or new trial, limitations of RCM 810(d) complied with.

- ___ Served on accused and/or counsel.