

Judge Advocate Division
Interim Supplement to
APPENDIX 16 of the Manual for Courts-Martial¹
FORMS FOR ACTIONS

The forms in this appendix are guides for preparation of the convening authority's initial action. Guidance is also provided for actions under R.C.M. 1112(f). Appendix 17 contains forms for later actions. The forms are guidance only, and are not mandatory. They do not provide for all cases. It may be necessary to combine parts of different forms to prepare an action appropriate to a specific case. Extreme care should be exercised in using these forms and in preparing actions. *See* R.C.M. 1107(f) concerning contents of the convening authority's action.

In addition to the matters contained in the forms below, the action should show the headquarters and place, or the ship, of the convening authority taking the action, and the date of the action. The signature of the convening authority is followed by the grade and unit of the convening authority, and "commander" or "commanding" as appropriate.

Further, convening authorities must include written explanation for (1) actions on findings to dismiss or change any charge or specification of a qualifying offense, and (2) actions to disapprove, commute, or suspend the adjudged sentence for an other than qualifying offense. Written explanations are not required in cases involving at least one pre-24 June 2014 offense, even for action concerning offenses that would otherwise require written explanation.

When the sentence includes confinement, the place of confinement is designated in the action unless the Secretary concerned prescribes otherwise. If the place of confinement is designated in the action, service regulations should be consulted first. *See* R.C.M. 1113(d)(2)(C).

In actions on a summary court-martial, when the action is written on the record of trial (*see* Appendix 15) the words "In the case of _____" may be omitted.

Under Article 54(e), victims of certain sexual offenses have the right to receive prepared court-martial documents in accordance with R.C.M. 1103 as amended by EO 13669 and crime victims of an offense under the UCMJ for which the accused was found guilty may submit matters in the post-trial phase of a court-martial. *See* Article 54(e), UCMJ; R.C.M. 1103, 1105A, 1107. When a victim submits matters for consideration during clemency, the paragraph in the action that indicates the matters considered should indicate that the CA considered the matters. For example:

"Prior to taking this action, I carefully considered the result of trial, the Staff Judge Advocate's Recommendation, the addendum to the Staff Judge Advocate's Recommendation, the clemency matters submitted on (date) by detailed defense counsel in accordance with Rule for Courts-Martial 1105, MCM (2012 ed.), the victim's written matters submitted (by detailed victim's legal counsel) in accordance with Rule for Courts-Martial 1105A, and the entire Record of Trial."

A note on references: The Rules for Courts-Martial cited in the forms below have been invalidated for certain cases or offenses but remain valid for others. Always cross-reference the references with the new guidance in this appendix to ensure applicability to the case at hand. New Rules for Courts-Martial will be promulgated when approved by the President.

INITIAL ACTION ON COURT-MARTIAL SENTENCE—FINDINGS NOT AFFECTED

Forms 1–10 are appropriate when the adjudged sentence does not include death, dismissal, or a dishonorable or bad-conduct discharge. An adjudged sentence of confinement for more than six months may not be disapproved, commuted, or suspended absent (1) a pre-trial agreement providing for such action, (2) a trial

¹ This supplement has not been published in the Manual for Courts-Martial, but its use is required by the Staff Judge Advocate to the Commandant of the Marine Corps until an updated product is published by the Joint Service Committee for Military Justice.

counsel recommendation for clemency for substantial assistance by the accused in the investigation and/or prosecution of another case; or (3) conviction in the same case for at least one offense occurring prior to 23 June 2014.

Adjudged sentence approved and ordered executed without modification. See R.C.M. 1107(f)(4).

1. In the case of _____, the sentence is approved and will be executed. (_____ is designated as the place of confinement.)

Adjudged sentence modified. See R.C.M. 1107(d)(1), (f)(4).

Adjudged sentence approved in part and ordered executed.

2. In the case of _____, only so much of the sentence as provides for _____ is approved and will be executed. (_____ is designated as the place of confinement.)

Adjudged sentence approved; part of confinement changed to forfeiture of pay.

3. In the case of _____, so much of the sentence extending to _____ months of confinement is changed to forfeiture of \$ ____ pay per month for _____ months. The sentence as changed is approved and will be executed. (_____ is designated as the place of confinement.)

Credit for illegal pretrial confinement. See R.C.M. 305(k); 1107(f)(4)(F).

4. In the case of _____, the sentence is approved and will be executed. The accused will be credited with _____ days of confinement against the sentence to confinement. (_____ is designated as the place of confinement.)

Suspension of sentence. See R.C.M. 1107(f)(4)(B); 1108(d).

Adjudged sentence approved and suspended.

5. In the case of _____, the sentence is approved. Execution of the sentence is suspended for (months) (years) at which time, unless the suspension is sooner vacated, the sentence will be remitted without further action.

Adjudged sentence approved; part of sentence suspended.

6. In the case of _____, the sentence is approved and will be executed but the execution of that part of the sentence extending to (confinement) (confinement in excess of months) (forfeiture of pay) (_____) is suspended for ____ (months) (years), at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. (_____ is designated as the place of confinement.)

Deferment of confinement and termination of deferment. See R.C.M. 1101(c); 1107(f)(4)(E).

Adjudged sentence approved; confinement deferred pending final review.

7. In the case of _____, the sentence is approved and, except for that portion extending to confinement, will be executed. Service of the sentence to confinement (is) (was) deferred effective (date), and will not begin until (the conviction is final) (date) (_____), unless sooner rescinded by competent authority.

Adjudged sentence approved; deferment of confinement terminated.

8. In the case of _____, the sentence is approved and will be executed. The service of the sentence to

confinement was deferred on (date). (_____ is designated as the place of confinement.)

Adjudged sentence approved; deferment of confinement terminated previously.

9. In the case of _____, the sentence is approved and will be executed. The service of the sentence to confinement was deferred on (date), and the deferment ended on (date). (_____ is designated as the place of confinement.)

Disapproval of sentence; rehearing on sentence only ordered. See R.C.M. 1107(e), (f)(4)(A).

10. In the case of _____, it appears that the following error was committed: (evidence of a previous conviction of the accused was erroneously admitted) (_____). This error was prejudicial as to the sentence. The sentence is disapproved. A rehearing is ordered before a (summary) (special) (general) court-martial to be designated.

When the adjudged sentence includes death, dismissal, or a dishonorable or a bad-conduct discharge, Forms 1-10 are generally appropriate, but several will require modification depending on the action to be taken. One reason for this is because Article 60 now limits the authority to modify an adjudged dismissal, dishonorable discharge, or bad-conduct discharge. Generally, an adjudged punitive discharge may not be disapproved, commuted, or suspended, absent (1) a pre-trial agreement providing for such action, (2) a trial counsel recommendation for clemency for substantial assistance by the accused in the investigation and/or prosecution of another case, or (3) conviction in the same case for at least one offense occurring prior to 23 June 2014. For certain sex offenses occurring on or after 24 June 2014, Article 56(b) imposes a mandatory dishonorable discharge or dismissal, even when at least one offense in the same case occurs prior to 23 June 2014. When acting, pursuant to a pre-trial agreement, on a punitive discharge required by Article 56(b), Article 56(b) limits such action to commutation of the dishonorable discharge to a bad conduct discharge. This action is not authorized for dismissals pursuant to Article 56(b).

A second reason that several of the forms require modification is that death, dismissal, or a dishonorable or bad-conduct discharge may not be ordered executed in the initial action. Therefore, unless an adjudged punishment of death, dismissal, or a dishonorable or bad-conduct discharge is disapproved, changed to another punishment, or (except in the case of death) suspended, the initial action must specifically except such punishments from the order of execution. This is done by adding the words “except for the part of the sentence extending to (death) (dismissal) (dishonorable discharge) (bad-conduct discharge),” after the words “is approved and” and before the words “will be executed” in the action. (A death sentence cannot be suspended. See R.C.M. 1108(b).)

Forms 11-14 provide examples of actions when the sentence includes death, dismissal, or a dishonorable or bad-conduct discharge.

Adjudged sentence approved and, except for death, dismissal, or discharge, ordered executed. See R.C.M. 1107(f)(4).

11. In the case of _____, the sentence is approved and, except for the part of the sentence extending to (death) (dismissal) (dishonorable discharge) (bad-conduct discharge), will be executed. (_____ is designated as the place of confinement.)

Adjudged sentence modified. See R.C.M. 1107(d)(1), (f)(4). If the part of the sentence providing for death, dismissal, or a dishonorable or a bad-conduct discharge is disapproved, see Form 2 above.

12. In the case of _____, only so much of the sentence as provides for (death) (dismissal) (a dishonorable discharge) (a bad-conduct discharge) (and _____ [specify each approved punishment]) is approved and, except for the part of the sentence extending to (death) (dismissal) (dishonorable discharge) (bad-conduct discharge), will be executed. (_____ is designated as the place of confinement.)

Adjudged sentence approved; discharge changed to confinement.

13. In the case of _____, so much of the sentence extending to a (dishonorable discharge) (bad-conduct discharge) is changed to confinement for _____ months (thereby making the period of confinement total months). The sentence as changed is approved and will be executed. (_____ is designated as the place of confinement.)

Adjudged sentence approved; part of sentence, other than dismissal or dishonorable or bad-conduct discharge, suspended.

14. In the case of _____, the sentence is approved and, except for that part of the sentence extending to (dismissal) (a dishonorable discharge) (a bad-conduct discharge), will be executed, but the execution of that part of the sentence adjudging (confinement) (confinement in excess of _____) (forfeiture of pay) () is suspended for _____ (months) (years) at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. (_____ is designated as the place of confinement.)

INITIAL ACTION ON COURT-MARTIAL WHEN FINDINGS AFFECTED

Findings are addressed in the action only when any findings of guilty are disapproved, in whole or part. *See* R.C.M. 1107(c), (f)(3). The action must also indicate what action is being taken on the sentence. Appropriate parts of the foregoing forms for action on the sentence may be substituted in the following examples as necessary. **Under Article 60, CAs may only act to dismiss or change any charge or specification if such offenses are qualifying offenses, pre-24 June 2014 offenses, or heard in the same case as a pre-24 June 2014 offense.**

Some findings of guilty disapproved; adjudged sentence approved.

15. In the case of _____, the finding of guilty of Specification 2, Charge I is disapproved. Specification 2, Charge I is dismissed. The sentence is approved and (, except for that part of the sentence extending to ((dismissal) (a dishonorable discharge) (a bad-conduct discharge),) will be executed. (_____ is designated as the place of confinement.)

Finding of guilty of lesser included offense approved; adjudged sentence modified.

16. In the case of _____, the finding of guilty of Specification 1, Charge II is changed to a finding of guilty of (absence without authority from the (unit) (ship) (_____) alleged from (date) to (date) in violation of Article 86) (_____). Only so much of the sentence as provides for _____ is approved and (, except for the part of the sentence extending to ((dismissal) (dishonorable discharge) (bad-conduct discharge)), will be executed. (_____ is designated as the place of confinement.)

Some findings of guilty and sentence disapproved; combined rehearing ordered. See 1107(e). A rehearing may not be ordered if any sentence is approved. *See* R.C.M. 1107(c)(2)(B)(ii); (e)(1)(c)(i).

17. In the case of _____, it appears that the following error was committed: (Exhibit 1, a laboratory report, was not properly authenticated and was admitted over the objection of the defense) (_____). This error was prejudicial as to Specifications 1 and 2 of Charge II. The findings of guilty as to Specifications 1 and 2 of Charge II and the sentence are disapproved. A combined rehearing is ordered before a court-martial to be designated.

All findings of guilty and sentence disapproved; rehearing ordered. See R.C.M. 1107(c)(2)(B)(ii).

18. In the case of _____, it appears that the following error was committed: (evidence offered by the defense to establish duress was improperly excluded) (_____). This error was prejudicial to the rights

of the accused as to all findings of guilty. The findings of guilty and the sentence are disapproved. A rehearing is ordered before a court-martial to be designated.

All findings of guilty and sentence disapproved based on jurisdictional error; another trial ordered. See R.C.M. 1107(e)(2). This form may also be used when a specification fails to state an offense.

19. In the case of _____, it appears that (the members were not detailed to the court-martial by the convening authority) (_____). The proceedings, findings, and sentence are invalid. Another trial is ordered before a court-martial to be designated.

All findings of guilty and sentence disapproved; charges dismissed. See R.C.M. 1107(c)(2)(B)(ii).

20. In the case of _____, the findings of guilty and the sentence are disapproved. The charges are dismissed.

ACTION ON A REHEARING

The action on a rehearing is the same as an action on an original court-martial in most respects. It differs first in that, as to any sentence approved following the rehearing, the accused must be credited with those parts of a sentence previously executed or otherwise served. Second, in certain cases the convening authority must provide for the restoration of certain rights, privileges, and property. See R.C.M. 1107(f)(5)(A). **Under Article 60, CAs may only act to dismiss or change any charge or specification if such offenses are qualifying offenses, pre-24 June 2014 offenses, or heard in the same case as a pre-24 June 2014 offense.**

Action on rehearing; granting credit for previously executed or served punishment.

21. In the case of _____, the sentence is approved and (, except for the portion of the sentence extending to ((dismissal) (dishonorable discharge) (bad-conduct discharge)), will be executed. The accused will be credited with any portion of the punishment served from (date) to (date) under the sentence adjudged at the former trial of this case.

Action on rehearing; restoration of rights.

22. In the case of _____, the findings of guilty and the sentence are disapproved and the charges are dismissed. All rights, privileges, and property of which the accused has been deprived by virtue of the execution of the sentence adjudged at the former trial of this case on (date) will be restored.

23. In the case of _____, the accused was found not guilty of all the charges and specifications which were tried at the former hearing. All rights, privileges, and property of which the accused has been deprived by virtue of the execution of the sentence adjudged at the former trial of this case on (date) will be restored.

WITHDRAWAL OF PREVIOUS ACTION

Form 24 is appropriate for withdrawal of an earlier action. See R.C.M. 1107(f)(2) concerning modification of an earlier action. Form 24a is appropriate for withdrawal of previous action pursuant to instructions from reviewing authority pursuant to R.C.M. 1107(f)(2) or (g). When the action of a predecessor in command is withdrawn due to ambiguity, see *United States v. Lower*, 10 M.J. 263 (C.M.A. 1981).

24. In the case of _____, the action taken by (me) (my predecessor in command) on (date) is withdrawn and the following substituted therefor: _____.

24a. In the case of _____, in accordance with instructions from (The Judge Advocate General) (the Court of Criminal Appeals) pursuant to Rule for Courts-Martial [1107(f)(2)] [1107(g)], the action taken by (me) (my predecessor in command) is withdrawn. The following is substituted therefor:

FORMS FOR ACTIONS APPROVING AND SUSPENDING PUNISHMENTS MENTIONED IN ARTICLE 58a AND RETAINING ACCUSED IN PRESENT OR INTERMEDIATE GRADE.

Under the authority of Article 58a, the Secretary concerned may, by regulation, limit or specifically preclude the reduction in grade which would otherwise be effected under that Article upon the approval of certain court-martial sentences by the convening authority. The Secretary concerned may provide in regulations that if the convening or higher authority taking action on the case suspends those elements of the sentence that are specified in Article 58a the accused may be retained in the grade held by the accused at the time of the sentence or in any intermediate grade. Forms 25-27 may be used by the convening or higher authority in effecting actions authorized by the Secretary concerned in regulations pursuant to the authority of Article 58a.

If the convening authority or higher authority, when taking action on a case in which the sentence includes a punitive discharge, confinement, or hard labor without confinement, elects to approve the sentence and to retain the enlisted member in the grade held by that member at the time of sentence or in any intermediate grade, that authority may do so if permitted by regulations of the Secretary concerned whether or not the sentence also includes a reduction to the lowest enlisted grade, by using one of the following forms of action. The first action, Form 25, is appropriate when the sentence does not specifically provide for reduction. The second and third actions, Forms 26 and 27, are appropriate when the sentence specifically provides for reduction to the grade of E-1. The action set forth in Form 26 is intended for a case in which the accused is to be probationally retained in the grade held by that accused at the time of sentence. The action set forth in Form 27 is for a case in which the accused is to serve probationally in an intermediate grade.

Note that the following limitations on post-trial authority may affect the applicability of the Forms 25-27. An adjudged sentence of confinement for more than six months may not be disapproved, commuted, or suspended absent (1) a pre-trial agreement providing for such action, (2) a trial counsel recommendation for clemency for substantial assistance by the accused in the investigation and/or prosecution of another case; or (3) conviction in the same case for at least one offense occurring prior to 23 June 2014. For certain sex offenses occurring on or after 24 June 2014, Article 56(b) imposes a mandatory dishonorable discharge or dismissal, even when at least one offense in the same case occurs prior to 23 June 2014. When acting, pursuant to a pre-trial agreement, on a punitive discharge required by Article 56(b), Article 56(b) limits such action to commutation of the dishonorable discharge to a bad conduct discharge. This action is not authorized for dismissals pursuant to Article 56(b).

Automatic reduction suspended; sentence does not specifically include reduction.

25. In the case of _____, the sentence is approved and will be executed, but the execution of that part of the sentence extending to (a dishonorable discharge) (a bad-conduct discharge) (confinement) (hard labor without confinement) is suspended for (months) (years) at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The accused will (continue to) serve in the grade of (_____) unless the suspension of (the dishonorable discharge) (the bad-conduct discharge) (confinement) (hard labor without confinement) is vacated, in which event the accused will be reduced to the grade of E-1 at that time.

Automatic reduction and adjudged reduction to E-1 suspended; accused retained in grade previously held.

26. In the case of _____, the sentence is approved and will be executed, but the execution of that part of the sentence extending to (a dishonorable discharge) (a bad-conduct discharge) (confinement) (hard labor without confinement) (_____), and reduction to the grade of E-1, is suspended for _____ (months) (years), at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The accused will continue to serve in the grade of _____ unless the suspension of (the dishonorable discharge) (the bad-conduct discharge) (confinement) (hard labor without confinement), or reduction to the grade of E-1, is vacated, in which event the accused will be reduced to the grade of E-1 at that time.

Automatic reduction and adjudged reduction to E-1 suspended; accused retained in intermediate grade.

27. In the case of _____, the sentence is approved and will be executed but the execution of that part of the sentence extending to (a dishonorable discharge) (a bad-conduct discharge) (confinement) (hard labor without confinement), and that part of the reduction which is in excess of reduction to the grade of _____ is suspended for serve probationally in an intermediate grade. _____ (months) (years) at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The accused will serve in the grade of _____ unless the suspension of (the dishonorable discharge) (bad-conduct discharge) (confinement) (hard labor without confinement), or reduction to the grade of E-1, is vacated, in which event the accused will be reduced to the grade of E-1 at that time.

ACTION UNDER R.C.M. 1112(f). The forms for action for the officer taking action under R.C.M. 1112(f) are generally similar to the foregoing actions. The officer taking action under R.C.M. 1112 (f) may order executed all parts of the approved sentence, including a dishonorable or bad-conduct discharge, except those parts which have been suspended without later vacation unless the record must be forwarded under R.C.M. 1112(g)(1). See R.C.M. 1113(c)(1)(A). The following are additional forms which may be appropriate:

Sentence approved when convening authority suspended all or part of it.

28. In the case of _____, the sentence as approved and suspended by the convening authority is approved.

Sentence approved and, when confinement was deferred, ordered executed. See R.C.M. 1101(c)(6).

29. In the case of _____, the sentence is approved and the confinement will be executed. The service of the sentence to confinement was deferred on (date). (_____ is designated as the place of confinement.)

Sentence includes unsuspended dishonorable or bad-conduct discharge; order of execution. See R.C.M. 1113(c)(1) and (2).

30. In the case of _____, the sentence is approved. The (dishonorable discharge) (bad-conduct discharge) will be executed.

Findings and sentence disapproved; restoration as to parts ordered executed by convening authority. See R.C.M. 1208(b).

31. In the case of _____, the findings of guilty and the sentence are disapproved. The charges are dismissed. (The accused will be released from the confinement adjudged by the sentence in this case and all) (All) rights, privileges, and property of which the accused has been deprived by virtue of the findings and sentence disapproved will be restored.

Findings and sentence disapproved; rehearing authorized. See R.C.M. 1112(f).

32. In the case of _____, it appears that the following error was committed: (Exhibit 1, a statement of the accused, was not shown to have been preceded by Article 31 warnings as required and was admitted over the objection of the defense) (_____). This error was prejudicial to the rights of the accused as to the findings and the sentence. The case is returned to the convening authority who may order a rehearing or dismiss the charges.

Action taken is less favorable to the accused than that recommended by the judge advocate. See R.C.M. 1112(e), (f).

33. In the case of _____, the sentence is approved. As this action is less favorable to the accused than that recommended by the judge advocate, the record and this action shall be forwarded to the Judge Advocate

General for review under Article 69(b).

Action when approved sentence includes dismissal. See R.C.M. 1113(c)(2).

34. In the case of _____, the sentence is approved. The record shall be forwarded to the Secretary of the Navy.