



Summary of Changes Made to Volume 16 (Military Justice) of MCO 5800.16 (LSAM)

Background

On 14 July 2021, the SJA to CMC published CH-6 to MCO 5800.16 (LSAM) which includes a complete revision to Volume 16 (Military Justice). This practice advisory summarizes the substantive changes to Volume 16.

Chapter 1

0102: Makes Volume 16 applicable to the Marine Corps Total Force.

010303.B: Clarifies that informal professional responsibility complaints involving trial counsel will be resolved within the Trial Services Organization (TSO) and that formal professional responsibility complaints will be forwarded to JCA via the RTC and Chief Trial Counsel of the Marine Corps (CTC).

010305: Clarifies the JMJ Branch Head's role at JAD, following the establishment of the Marine Corps TSO.

010306: Establishes the Marine Corps Court-Reporting Chief.

Chapter 2

020202: Establishes the Marine Corps TSO to be led by the CTC.

020206: Requires the LSSS OIC to establish a tour completion date for each trial counsel assigned to the TSO.

020207: Clarifies that if curtailment of a trial counsel's tour becomes necessary, the LSSS OIC will coordinate with the CTC to establish a new mutually-agreeable tour completion date.

0203: Establishes the Office of the CTC and outlines its role and structure.

0204: Outlines the role of the CTC.

0205: Outlines the roles, structure, and reporting chain of the Regional Trial Office (RTO), formerly referred to as the Regional Trial Counsel Office. Establishes that for E-5s and above assigned to the TSO, the Reporting Senior (RS) and Reviewing Officer (RO) shall be officers within the TSO. Clarifies that for E-4s and below assigned to the TSO, the evaluation chain must comply with MCO 1616.1 (JEPES).

020601: Establishes that the RTC's RS is the CTC and the RTC's RO is the SJA to CMC.

020603.B: Requires the RTC to conduct annual training regarding services available to RTO personnel experiencing vicarious trauma as a result of their duties.

020603.S: Requires the RTC to coordinate with the LSSS/T OICs to provide TSO personnel for tasking to enable the LSSS/T OICs to fulfil courtroom security requirements outlined within Chapter 15 of Volume 16.

0207: Renames the Complex Trial Counsel as the Complex Litigation Counsel (CLC).

020801: Establishes that the Litigation Attorney Advisor's (LAA) higher level reviewer is now the CTC.

020802: Requires each region's LAA to conduct quarterly visits to each LSST.

020902: Requires the Trial Services Administration Officer (TAO) to coordinate with the LSSS/T LAOs to ensure the courtrooms are operational.

0213: Renames the LSST TSO as the Installation Trial Office (ITO).

0214: Clarifies the LSST OIC's military justice-related responsibilities and relationship with TSO, DSO, and VLCO personnel.

021501: Establishes that the Senior Trial Counsel's RS will be the RTC and the RO will be the CTC.

021603: Clarifies the eligibility of Student Judge Advocates (4401s) to serve as trial counsel.

022102: Clarifies that the TCAP Director falls within the TSO and reports to the CTC.

0222: Outlines new court-martial qualification requirements for trial counsel.

Chapter 3

0305: Updated to clarify the detailing authority of the CTC.

Chapter 4 (Victim and Witness Assistance Program). The Chapter, formerly titled "Victim Rights" underwent a complete re-write. MCO 5800.14 (VWAP) is cancelled and no longer in effect. The Marine Corps' VWAP Program is now incorporated within Chapter 4 of Volume 16. Various provision have been updated to account for the role of the VLC. Additional highlights are summarized below.

040402.A: Updates victim notification requirements for TSO personnel IAW section 538 of the FY21 NDAA and section 0142a of the JAGMAN. These notification requirements were previously outlined in JAD Practice Advisory 12-20 and have now been imported into this paragraph of the LSAM.

040403: Updates victim notification requirements for commanders IAW section 549 of the FY20 NDAA and section 0142b of the JAGMAN. These notification requirements were previously outlined in JAD Practice Advisory 12-20 and have now been imported into this paragraph of the LSAM.

040904: Establishes the position of VWAP Director. The VWAP Director is a permanent civilian position within Military Justice Branch answerable to the SJA to CMC for VWAP policy development, compliance with reporting requirements, training, and VWAP coordination across the Marine Corps.

0411: Creates Victim and Witness Assistance Coordinator (VWAC) positions within each LSST. The LSST VWACs will provide VWAP related legal support and services to victims and witnesses involved in cases assigned to their LSST, support SVIP trial counsel to ensure compliance with all VWAP notification requirements, and manage the VWAP section of the electronic case management system.

Chapter 5 (Special Victim Cases and Processing of Sex-Related Offenses)

050101: Updated to include Article 120c, UCMJ as an SVIP offense.

050201: Clarifies the complete list of offenses which require disposition by an SA-IDA.

050205: Clarifies the definition of “sex-related offenses” for purposes of obtaining the victim’s preference for jurisdiction IAW JAGMAN section 0128(a).

050206.F: Updates the requirement to notify civilian authorities concerning victim’s preference for jurisdiction to be consistent with R.C.M. 306(e).

050206: Clarifies that a SADR is required for all cases which require disposition by an SA-IDA.

050207.A: Clarifies the definition of “sex-related offenses” for purposes of elevated review.

050207.F: Updated to include guidance regarding how to forward a charge requiring elevated review IAW JAGMAN section 0128(h)(5).

050207.G: Updated to reflect the victim notification requirement when a charge is forwarded for elevated review IAW JAGMAN section 0128(h)(6).

050209: Incorporates the timely disposition requirement for “non-prosecutable” sex-related offenses IAW section 540C of the FY20 NDAA and section 0128(i) of the JAGMAN. This requirement was previously outlined in JAD Practice Advisory 12-20 and has now been imported into this paragraph of the LSAM.

050303: Clarifies that a CAM is required for all SVIP cases as defined in paragraph 050501.

050304.A: Clarifies that the abbreviated CAM format should be used when possible.

Chapter 6 (Miscellaneous Pretrial Matters)

060202: Clarifies that case-related expenses include travel expenses for LAAs and supervisory counsel to assist with complex case preparation.

0604: Clarifies that charge sheets may be electronically signed.

060505: Clarifies that in the case of an IMA reservist who is attached to active component command, the accused’s active component GCMCA possesses the authority to recall the accused to active duty.

Chapter 7 (Initial Review of Pretrial Confinement)

No changes.

Chapter 8 (Military Magistrates)

No changes.

Chapter 9 (Investigative Subpoenas, Warrants, Orders, Article 30a Proceedings, and Search Authorizations)

090101.A: Clarifies the requirement that the RTC detail an SVIP-qualified TC to an SVIP case within 48 hours after notification of an SVIP investigation.

0908: Provides updated guidance for the execution of command authorizations for search and seizure (CASS), including the best practice when considering who may execute the CASS.

090802: Provides guidance regarding the execution of a CASS involving the search of office spaces likely to contain privileged information.

Chapter 10 (Preliminary Hearings)

No changes.

Chapter 11 (Discovery)

No changes.

Chapter 12 (Military Justice Hearing and Court Reporting Procedures)

121103: Clarifies the sources of authority for the requirement to redact PII from all dockets, filings, pleadings, court records, and exhibits.

121104: Implements the requirement that counsel not append enclosures or attachments to exhibits and instead be introduced as separate exhibits IAW JAGINST 5813.2.

Chapter 13 (Military Justice Data Collection)

130202: Provides specific guidance for the TSO concerning how to collect and record demographic data for the accused and the victim in the electronic case management system.

1304: Establishes the TSO's supervisory role to ensure that the data within the electronic case management system is updated and maintained.

130501: Incorporates each GCMCA's requirement to submit the Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report (QCAR)—including demographic data—IAW JAGINST 5800.9E.

Chapter 14 (Criminal Justice Information Reporting)

1405: Updated to identify the requirement that LEAs must submit relevant entries to the National Instant Criminal Background Check System (NICS) within three business days of a final judicial proceeding IAW Section 544 of the FY21 NDAA. Directs trial counsel to immediately forward relevant materials to the servicing LEA in order to support rapid entry to the NICS.

Chapter 15 (Courtroom Security)

No changes.

Chapter 16 (Pretrial Agreements and Plea Agreements)

160401: Updated to require that, prior to consenting to a conditional plea, in addition to consulting with the SJA, the trial counsel obtain the approval of the RTC or CTC.

Chapter 17 (Post-Trial Matters)

1703: Updated to account for the record of trial public availability requirement IAW Article 140a and JAGINST 5813.2.

Chapter 18 (Transcription)

No changes.

Chapter 19 (Miscellaneous)

No changes.

Points of Contact

Direct any questions about this Practice Advisory to the JMJ Branch Head, Lieutenant Colonel Keaton Harrell, at (703) 693-9005, the JMJ Deputy Branch Head, Major Gable Hackman, at (703) 693-9299, or the Chief Trial Counsel of the Marine Corps, Lieutenant Colonel Nicholas Gannon, at (703) 693-6755.