



Changes to Military Justice in LSAM, Part II

Purpose

Part II of this Practice Advisory summarizes key changes in Chapter 3, MCO 5800.16, the Legal Services Administration Manual (LSAM), which will affect the administration of military justice in the Marine Corps not discussed in Part I. Notable changes in Chapter 3 include guidance on searching of privileged office spaces, discovery policy and process, and required additional documents to be uploaded into CMS.

The anticipated publication date of the LSAM is 1 May 2015. Until publication, the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) directs implementation of the guidance found in both Parts of this Practice Advisory. A copy of the pending LSAM may be found on the SJA to CMC's secured portal.

Military Justice Process

The following applies to both staff judge advocates and trial services personnel and covers issues that span the course of a military justice case.

- **Critical Information Requirements (CIRs):** There are two new CIRs that direct immediate reporting. The first CIR is a search of a privileged office space (as defined in paragraph 3116). The second CIR is any filed notice of appeal under RCM 908 and paragraph 0140 of JAGINST 5800.7F or requests for petition for extraordinary relief (Art. 62 Appeals and Ex Writs). The CIRs for national security cases and detailing of a commissioned officer who is not a judge advocate to an Article 32 have been removed. *LSAM, Para 3107*
- **Law Enforcement Advice:** The installation SJA supporting the Military Criminal Investigative Organization (MCIO), Criminal Investigative Division, or Provost Marshall's Office will serve as the primary servicing legal advisor to the law enforcement agency for probable cause determinations regarding fingerprints and DNA samples taken in accordance with DoDIs 5505.11 and 5505.14. *LSAM, Para 3111*
- **Privileged Office Search:** While searches of privileged office spaces are discouraged, there may be rare occasions when it may be necessary to search the offices of individuals who maintain materials that are privileged under the Military Rules of Evidence. This paragraph details the consultation process prior to initiating a search, precautions to protect privileged materials and the appointment of a privilege team to conduct the search. For searches of email accounts that may contain privileged information, contact TCAP - further guidance forthcoming. *LSAM, Para 3116*
- **Civilian Confinement Requirements:** The use of civilian confinement facilities to confine servicemembers is prohibited unless specifically approved and certified by CMC, Law Enforcement and Corrections (PSL). As currently written, if a female prisoner is to be confined in a civilian confinement facility, a second echelon commander must grant approval per SECNAVINST 1640.9C. All GCMCAs are Echelon II commanders for this approval requirement. JAD is working to have SECNAVINST 1640.9C revised to reflect gender neutral policies. *LSAM, Para 3117*

Mandatory CMS Uploads

The following documents will be uploaded into CMS:

- (1) Prosecution Merit Memorandum
- (2) Preferred Charge Sheet
- (3) Report of Result of Trial
- (4) Sexual Assault Disposition Report

Trial Services

- **Trial Counsel Qualifications:** All trial counsel must complete the Trial Counsel Orientation Course before being detailed to a special court-martial. To become GCM qualified, a trial counsel must complete the Naval Justice School's Article 32 Officer Course. *LSAM, Para 3206.*
- **Preliminary Hearing Officer:** Prior to conducting the hearing, the PHO must complete the Naval Justice School's Article 32 Officer Course as well as meeting other requirements listed in *LSAM, Para 3112.*

Discovery

This section identifies sources of discovery, explains evidence to review for discovery and the process for preparing discovery, and reminds practitioners of the trial counsel's role as the gatekeeper for discovery to provide timely and broad discovery while protecting the privacy interests of victims and witnesses. Key requirements are highlighted below. *LSAM, Para 3300.*

- **Witness Interviews:** Trial counsel should have a third party present during all witness interviews. All relevant new information learned should be turned over to the defense, even if it does not qualify as *Brady/Giglio* material.
- **Mental Health Records:** Trial counsel shall not seek to obtain victim or witness mental health records without permission from the patient or a court order pursuant to M.R.E. 513.
- **Discovery Inventory:** Trial Counsel must maintain a discovery inventory of the items reviewed, items disclosed, and the rationale for any items not disclosed. The electronic discovery file may serve as the discovery inventory for items that are disclosed.
- **Military Law Enforcement File:** The trial counsel must personally review military law enforcement files, create an inventory of the items, and determine what information must be disclosed and the manner of disclosure.
- **Personally Identifiable Information:** Any PII that is material to the preparation of the defense shall be disclosed to the defense under the Official Use exception within SECNAVINST 5211.5E. Trial counsel may provide the defense with a copy of discoverable materials with PII redacted as long as the trial counsel provides the defense access to an unredacted version of all PII that is material to the preparation of the defense.
- **Victim Legal Counsel Disclosure:** The LSAM establishes Marine Corps policy for all of the disclosure that trial counsel shall provide to victims' legal counsel and when it must be provided in accordance with Practice Advisory 4-14. *LSAM, Para 3306.*

Case Management System (CMS)

CMS-Military Justice has been updated to reflect changes to Chapter 3 to include: reporting of pre-RLS special victim cases, up-loading of required documents and documenting the victim's post-trial rights.

Points of Contact

Military justice questions may be directed to the Head, JMJ, LtCol Angela Wissman, at angela.wissman@usmc.mil or 703-693-9005; or the OIC, TCAP, Maj Mark Sameit, at mark.sameit@usmc.mil or 703-693-8955.