

Sample Action Language for Cases Referred on/after 1 Jan 19

NO ACTION TAKEN

I take no action on the findings or sentence in this case.

ACTION ON FINDINGS

Set Aside Findings

The findings for (all charges and specifications) (Specification ___of Charge___) are set aside and (dismissed) (a rehearing is ordered in accordance with R.C.M. 810).

Change a Finding of Guilty to a Lesser Included Offense

The finding of guilty for (Specification___ of Charge ___) is modified to a finding of guilty for the lesser included offense of (name the lesser included offense, UCMJ Article).

ACTION ON SENTENCE

I. Confinement

Deferred Confinement. R.C.M. 1103:

The adjudged confinement was deferred on _____ until _____ (Entry of Judgment). [Offenses After 1 Jan 19]

OR

The adjudged confinement is approved but was deferred on _____ until _____ (Entry of Judgment). [Offenses Before 1 Jan 19]

Disapproved Confinement (Unitary Sentencing):

The adjudged confinement is disapproved (and a rehearing is ordered).

Disapproved Confinement (Segmented Sentencing):

The ___ (days) (months) (years) period of confinement for (Specification X, Charge Y) is disapproved.

Suspended Confinement (Unitary Sentencing):

(Pursuant to a [Plea Agreement][recommendation by the Military Judge][recommendation by the Trial Counsel]), the ([confinement] [confinement in excess of _____]) is suspended for ___(months) (years) from the entry of judgment, at which time, unless the suspension is sooner vacated, the suspended confinement will be remitted without further action. [Offenses After 1 Jan 19]

OR

(Pursuant to a [Pre-Trial Agreement][recommendation by the Trial Counsel]), the adjudged confinement is approved, but ([confinement] [confinement in excess of _____]) is suspended for ____ (months) (years) from ([the entry of judgment][the release from confinement]), at which time, unless the suspension is sooner vacated, the suspended confinement will be remitted without further action. [Offenses Before 1 Jan 19]

Suspended Confinement (Segmented Sentencing):

(Pursuant to a [Plea Agreement][recommendation by the Military Judge][recommendation by the Trial Counsel]), the period of ([confinement] [confinement in excess of _____]) for (Specification X, Charge Y) is suspended for ____ (months) (years) from the entry of judgment, at which time, unless the suspension is sooner vacated, the suspended confinement will be remitted without further action. [Offenses After 1 Jan 19]

Reduced Confinement (Unitary Sentencing):

The confinement is reduced from ____ (days) (months) (years) to ____ (days) (months) (years), [pursuant to a recommendation by the Trial Counsel based on the substantial assistance of the accused].

Reduced Confinement (Segmented Sentencing):

The period of confinement for (Specification X, Charge Y) is reduced from ____ (days) (months) (years) to ____ (days) (months) (years) [pursuant to a recommendation by the Trial Counsel based on the substantial assistance of the accused].

Commutated Confinement (Unitary Sentencing):

The confinement is commuted to (name the lesser substituted punishment).

Commutated Confinement (Segmented Sentencing):

The period of confinement for (Specification X, Charge Y) is commuted to (name the lesser substituted punishment).

II. Forfeitures

Disapproving Adjudged Forfeitures:

The adjudged forfeiture of (total pay and allowances) ([\$ ____] pay per month for ____ [month(s)] [year(s)]) is disapproved.

Commuting Adjudged Forfeitures:

The adjudged forfeiture of (total pay and allowances) ([\$ ____] pay per month for ____ [month(s)] [year(s)]) is changed to (a reprimand) (hard labor without confinement) (restriction).

Reducing Adjudged Forfeitures:

The adjudged forfeiture of (total pay and allowances) ([\$ ____] pay per month for ____ [month(s)] [year(s)]) is reduced to ([\$ ____] pay per month for ____ [month(s)] [year(s)]).

Suspension of Entire Period of Adjudged Forfeitures:

The adjudged forfeiture of (total pay and allowances) ([\$ ____] pay per month for ____

[month(s)] [year(s)] is suspended for ___ ([month(s)] [year(s)]) from the entry of judgment, at which time, unless the suspension is sooner vacated, the suspended forfeitures will be remitted without further action.

Deferral of Adjudged and Automatic Forfeitures:

On (date_____) I (the convening authority) deferred (all) (\$____pay per month) of the adjudged and automatic forfeitures from ([14 days from the date the sentence was adjudged] [insert other date]) until ([the date of this action] [the date the entry of judgment is signed by the military judge] [specify an earlier date]).

Note: Deferral of adjudged and automatic forfeitures may not extend beyond the entry of judgment.

Deferral of Adjudged Forfeitures Only:

On (date_____) I (the convening authority) deferred (all) (\$____pay per month) of the adjudged forfeitures from ([14 days from the date the sentence was adjudged] [insert other date]) until ([date of this action] [the date the entry of judgment is signed by the military judge] [specify an earlier date]).

Note: Deferral of adjudged forfeitures may not extend beyond the entry of judgment.

Deferral of Automatic Forfeitures Only:

On (date_____) I (the convening authority) deferred (all) (\$____pay per month) of the automatic forfeitures from ([14 days from the date the sentence was adjudged] [insert other date]) until ([date of this action] [the date the entry of judgment is signed by the military judge] [specify an earlier date]).

Note: Deferral of automatic forfeitures may not extend beyond the entry of judgment.

Suspension of Six Months of Adjudged Forfeitures for Six Months:

The first six months of the adjudged forfeiture of (total pay and allowances) ([\$___] pay per month for ___ [month(s)] [year(s)]) is suspended for six months from the entry of judgment, at which time, unless the suspension is sooner vacated, the suspended forfeitures will be remitted without further action. The collection of the remaining ___ ([month(s)] [year(s)]) of forfeiture of (total pay and allowances) ([two-thirds] [\$___] pay per month for ___ [month(s)] [year(s)]) will begin at the end of the period of suspension, or sooner if the suspension is vacated.

Note: This language is based on the discussion in *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002).

Waiver of Forfeitures

(All) (\$____pay per month) of the automatic forfeitures (are)(were) waived for a period of ___ months [**Note: no more than 6 months**] or ([release from confinement] [expiration of term of service]), whichever is sooner, with the waiver commencing on ([14 days after the sentence was adjudged] [the date of this action] [the date the entry of judgment is signed by the military judge] [specify an earlier date if the waiver is retroactive]). The (total pay and allowances) ([\$___] pay per month) is directed to be paid to ([_____, spouse of the accused, for the benefit of ([herself] [himself]) and the accused's ___ dependent children] [_____, legal guardian of

_____, for the benefit of the accused's dependent, _____]).

III. Reduction in Grade

Disapproving Adjudged Reduction:

The adjudged reduction in grade to (adjudged reduction) is disapproved.

Commuting Adjudged Reduction:

The adjudged reduction in grade to (adjudged reduction) is changed to (a reprimand) (hard labor without confinement) (restriction).

Reducing Adjudged Reduction:

The adjudged reduction in grade to (adjudged reduction) is reduced to (final paygrade).

Suspension of Adjudged Reduction:

The adjudged reduction in grade to (adjudged reduction) is suspended for ____ (months) from the entry of judgment, at which time, unless the suspension is sooner vacated, the suspended reduction in grade will be remitted without further action.

Deferral of Adjudged Reduction in Grade:

On (date _____) I (the convening authority) deferred the adjudged reduction in grade to (adjudged reduction) from [insert other date] until ([the date the entry of judgment is signed by the military judge] [specify an earlier date]).

Automatic Reductions in Grade [CURRENT LAW DOES NOT ALLOW FOR AUTOMATIC REDUCTIONS IF ALL OFFENSES OCCURRED ON OR AFTER 1 JAN 19.]

The automatic reduction in pay grade (below pay-grade _____) is suspended for _____ months from the date of the Entry of Judgment, at which time, unless sooner vacated, the part of the automatic reduction that was suspended will be remitted without further action. (Pre-MJA16 Offenses)

IV. Punitive Discharges

Disapproving the Adjudged Punitive Discharge

(Pursuant to a [Pre-Trial Agreement][recommendation by the Trial Counsel]), the adjudged ([Bad Conduct][Dishonorable]) Discharge is disapproved.

Commuting the Adjudged Punitive Discharge

In accordance with the Pre-Trial Agreement, the adjudged ([Bad Conduct][Dishonorable]) Discharge is changed to (a Bad Conduct Discharge) (a reprimand) (hard labor without confinement) (restriction).

Reducing the Adjudged Punitive Discharge

The adjudged Dishonorable Discharge is reduced to a Bad Conduct Discharge.

Suspension of the Adjudged Punitive Discharge

(Pursuant to a [Pre-Trial Agreement] [recommendation by the Military Judge] [recommendation by the Trial Counsel]), the adjudged [(bad conduct discharge)(dishonorable discharge)(dismissal)] is suspended for _____ (months) (years) from the entry of judgment, at which time, unless the suspension is sooner vacated, the suspended punitive discharge will be remitted without further action.

(Pursuant to a [Pre-Trial Agreement][recommendation by the Trial Counsel]), the mandatory adjudged [dishonorable discharge/dismissal] is suspended for _____ (months) (years) from the entry of judgment, at which time, unless the suspension is sooner vacated, the suspended punitive discharge will be remitted without further action.

V. General Provisions

Suspension

The adjudged (name portion of sentence, in whole or in part) is suspended (for _____ [months] [years]) from ([the entry of judgment] [state another date prior to the entry of judgment]) until ([state a future date] [state an anticipated future event]), at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. (I take this action based on a recommendation from the [military judge][trial counsel].)

Reduction

The adjudged (name portion of sentence, in whole or in part) is reduced to (name the lower punishment).

Commutation

The adjudged (name portion of sentence, in whole or in part) is commuted to (name the lesser substituted punishment).

Disapprove Sentence in Part

The adjudged (name portion of sentence, in whole or in part) is disapproved.

Disapprove Sentence in its Entirety

The sentence is disapproved.