



Prosecution Merits Memorandum

Background

In March 2015 the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) required the drafting of a Prosecution Merits Memorandum (PMM) for all sexual assault offenses. In February 2016, the Marine Corps Judge Advocate Board (MCJAB) recommended, and the SJA to CMC validated, the requirement for the PMM. This Practice Advisory outlines matters to be discussed in the PMM and introduces the PMM template. Use of the template will meet various reporting requirements and provides a standardized method to document prosecution analysis.

Discussion

In a PMM qualified trial counsel discuss the factual and procedural history of a case, analyze evidence and evaluate the strength and weaknesses of a case. PMMs will be written by a Special Victim Qualified Trial Counsel in consultation with the region's Highly Qualified Expert and approved by the Regional Trial Counsel. Before the cognizant staff judge advocate provides advice to the commander making the initial disposition decision concerning covered offenses, the staff judge advocate must receive a PMM.

Except where no military jurisdiction exists, PMMs must be written for cases involving the following offenses: rape, sexual assault, aggravated sexual contact and abusive sexual contact in violation of Article 120; rape of a child, sexual assault of a child, and sexual abuse of a child in violation of Article 120b; forcible sodomy in violation of Article 125; and attempts to commit those offenses in violation of Article 80. Additionally, per the MCJAB, PMMs must also be written in cases of aggravated domestic violence where grievous bodily harm occurs and in aggravated child abuse cases where grievous bodily harm occurs. The addition of these offenses aligns with cases discussed in Directive-Type Memorandum 14-003, DoD Implementation of Special Victim Capability Prosecution and Legal Support.

At a minimum, a PMM must include: a summary of the case; indicate the victim's preferred disposition, and reason for that preference if offered; an indication as to whether civilian authorities declined the case and reasons for the declination; an evaluation of the real, documentary, and testimonial evidence in the case; and, a discussion of any jurisdictional and statute of limitation concerns. Finally, the PMM may provide a recommendation as to disposition to the SJA; however this recommendation is not required.

PMMs may vary in length depending on the complexity of the evidence and legal issues to be analyzed. While a PMM is primarily an evaluation methodology for the current case, the PMM also serves as a lasting record of the prosecution's review. Therefore, the PMM should be thorough enough that someone unfamiliar with the case will understand the salient facts and applicable law behind the prosecution's evaluation. Sample PMMs from various jurisdictions may be found on the Trial Counsel Assistance Program SharePoint site.

PMM Template

Use of the PMM template is highly encouraged, but not required. However, if prosecutors opt for a more traditional letter format, the information required in the template must be included in the letter. As an alternative, prosecutors may use the PMM template as a cover page and then attach substantive analysis in a traditional letter format.

Additionally, nothing about the structure of the template should be construed as limiting the amount or type of information that a prosecutor may provide. The template simply provides a baseline for desired content.

Points of Contact: Questions may be directed to the JMJ Branch Head, LtCol Angela Wissman at angela.wissman@usmc.mil or (703)693-9005; JMJ Deputy Head, Maj Eldon Beck, at eldon.beck@usmc.mil or (703)693-8901; or the Trial Counsel Assistance Program OIC, Maj Jesse Schweig, at jesse.schweig@usmc.mil or (703)693-8955.

Enclosure: USMC PMM template