

Chap 3
No. 3HEADQUARTERS
DEPARTMENT OF THE ARMY
Washington, D.C.

Legal Services

MILITARY JUSTICE

AR 27-10, 26 November 1968 is changed as follows:

1. A new table of contents and new chapters 1, 2, 5, 9, and 12 are attached. These chapters become effective 1 August 1969 and are marked accordingly. Use the present chapters 1, 2, 5, 9 and 12 until 1 August 1969.
2. A new chapter 13 is attached. It is currently effective.
3. In chapters 3, 4, 6, 7, 8, 10 and 11 make pen and ink changes so that all references to the Manual for Courts-Martial are to MCM, 1969 (Rev.).
4. In chapter 3 delete paragraph 3-8g(6). U.S. Army Personnel Support Center no longer requires a copy of article 15 orders.
5. File this change sheet in the front of the publication for reference purposes.

The proponent of this regulation is the Office of The Judge Advocate General. Users are invited to send comments and suggested improvements to The Judge Advocate General, ATTN: JAGJ, Department of the Army, Washington, D. C. 20310.

W. C. WESTMORELAND
General, United States Army
Chief of Staff

Change

No. 3

HEADQUARTERS
DEPARTMENT OF THE ARMY
Washington, D.C.

Legal Services

MILITARY JUSTICE

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ARMY REGULATION
No. 27-10HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, D.C., 26 November 1968LEGAL SERVICES
MILITARY JUSTICE
Effective 1 January 1969

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*This regulation supersedes AR 22-8, 14 October 1964; AR 22-12, 24 April 1958; AR 22-30, 10 December 1953; AR 22-160, 3 December 1964; AR 27-11, 5 March 1965; AR 27-12, 17 January 1968; AR 27-15, 12 April 1965; AR 27-16, 21 November 1967; and Section V and pages 354 through 357, AR 310-10, 20 May 1964.

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CHAPTER 1

GENERAL

1-1. Purpose. This regulation prescribes and implements the policies and procedures pertaining to the administration of military justice. It implements the procedures prescribed by the Manual for Courts-Martial, United States, 1969 (Revised edition), (hereinafter cited as MCM, 1969 (Rev.)) which require implementation by regulations of the Secretary of the Army.

1-2. Scope. Chapters 3, 4, 6, 7, 9, 10, 11, and 12, which were formerly published as separate regulations have been incorporated, with appropriate changes, into this publication. Chapter 2 implements certain paragraphs of the MCM, 1969 (Rev.), which require implementation by the Secretary of the Army, and provides additional procedural guidelines for courts-martial. Chapter 5 has been added due to the significant changes in the oath procedures at courts-martial, occasioned by the enactment of the "Military Justice Act of 1968." Chapter 8, is a central reference for the restrictions on service by certain personnel on courts-martial. Chapter 8 is informational only and is not regulatory. Appendix A cross-references manual provisions with corresponding provisions of related regulations. Appendix B cross-references the Uniform Code of Military Justice with applicable Army regulations. Appendix C lists many of the Army regulations dealing with military justice.

1-3. Additional Instructions. The issuance of additional instructions to implement this regulation is authorized. Supplements will be published in accordance with the procedures prescribed in Section III of AR 310-1.

CHAPTER 2

PROCEDURES FOR COURTS-MARTIAL

2-1. Purpose. This chapter implements certain paragraphs of the Manual for Courts-Martial, United States, 1969 (Revised edition), which require implementation by the Secretary of the Army and provides other procedures for courts-martial.

2-2. Preparation of charge sheet. a. Paragraph 29d, MCM, 1969 (Rev.), states: "d. Preparation of charge sheet. Charges will be prepared as prescribed by regulations of the Secretary of a Department."

b. See Chapter VI and Appendix 6a, MCM, 1969 (Rev.) and DD Form 458 for instructions in the preparation of charges and specifications. Available data as to service, witnesses, social security account number, and similar items required to complete the first page of the charge sheet will be included. An original and four copies of the charge sheet will be forwarded and all copies will be signed. If several accused are charged on one charge sheet with the commission of a joint offense (para 26d and app 6a(8), MCM 1969 (Rev.)), the complete personal data for each accused will be set forth on the first page of the charge sheet or upon an attached copy of that page. One additional signed copy of the charge sheet will be prepared for each accused in excess of one.

B.I. 2-3. Forwarding of charges. a. Paragraph 33*i*, MCM, 1969 (Rev.) states in part: "i. Forwarding of charges. When trial by a special or general courts-martial is deemed appropriate and he (an officer exercising summary court-martial jurisdiction) is not empowered to convene such a court for the trial of the case (5*a*, *b*), he will forward the charges and necessary allied papers, in accordance with regulations of the Secretary concerned, to an officer exercising the appropriate kind of court-martial jurisdiction.

* * * *

b. When trial by a special or general court-martial is deemed appropriate, and the officer exercising summary court-martial jurisdiction is not empowered to convene such a court for the trial of the case (para. 5*a* and *b*, MCM, 1969 (Rev.) he will forward the charges and necessary allied papers (ordinarily through the chain of command) to the officer exercising the appropriate kind of court-martial jurisdiction. The charges will be forwarded by indorsement or letter of transmittal, personally signed by the forwarding officer, and containing his recommendation for their disposition. If the charges are forwarded with a recommendation for trial by general court-martial, the forwarding officer will observe the three rules set out in paragraph 33*i*, MCM, 1969 (Rev.).

2-4. Referral of charges. a. Paragraph 33j, MCM, 1969 (Rev.) states in part: "charges are ordinarily referred to a court-martial for trial by means of the indorsement on the charge sheet."

b. The convening authority will personally determine whether to refer the charges for trial and the kind of court to which the charges shall be referred. This function may not be delegated. The indorsement or other directive referring the charges to a court-martial for trial will be signed personally by the convening authority or will be authenticated with his command line. Use of the command line indicates that the commander has personally acted.

B.F.

2-5. Procedure for summary courts-martial. a. Paragraph 79a, MCM, 1969 (Rev.) states in part: "a. Function. * * * * Unless otherwise stated herein or in regulations of the secretary of a Department, the procedure prescribed for a general court-martial, ^{will} when applicable, serve as a guide for a summary court-martial. See Appendix 8b in this connection. See also 137."

b. DA Pam 27-7 will serve as a guide for summary court-martial procedure.

2-6. Responsibility for preparation of records of general courts-martial. a: Paragraph 82a, MCM, 1969, (Rev.) states in part: "a. Responsibility for preparation. Each general court-martial shall keep a separate record of the proceedings of the trial for each case brought before it. * * * * If practicable, the trial counsel will retain or cause to be retained any stenographic or other notes or any mechanical or electronic recordings from which the record of trial was prepared for such a period as may be prescribed in appropriate regulations."

b. The trial counsel will retain or cause to be retained any notes (stenographic or otherwise) or any mechanical or voice recording devices from which the record of a general court-martial was prepared until completion of appellate review.

2-7. Special court-martial records not involving bad conduct discharges. a. Paragraph 83b, MCM, 1969 (Rev.) states: "b. Special court-martial records not involving bad-conduct discharge. When a bad conduct discharge is not adjudged, and the proceedings have not resulted in an acquittal of all charges and specifications and have not been terminated prior to findings with prejudice to the Government, a record of trial by special court-martial need contain only a summarized report of the testimony, objections and other proceedings (App. 10). In such a case, however, if a reporter was detailed and actually served in that capacity throughout the trial, the convening or higher authority may direct that the proceedings be reported verbatim as prescribed by 83a and appendices 8 and 9. Unless otherwise provided by regulations of the Secretary concerned, if the trial has resulted in an acquittal of all charges and specifications or if terminated prior to findings with prejudice to the Government, the record of trial need contain only sufficient information to establish lawful jurisdiction over the accused and the offenses. The notes or recordings of the original proceedings need not be

B.F. } retained after the record of trial has been authenticated, unless otherwise provided by regulations of the Secretary concerned. The form of the summarized record of trial and instructions as to its preparation, authentication, and disposition will be as prescribed by the Secretary of a Department."

b. When a bad-conduct discharge is not adjudged, and the proceedings have not resulted in an acquittal of all charges and specifications, and have not been terminated prior to findings with prejudice to the government, a record of trial by special court-martial need contain only a summarized report of the testimony, objections, and other proceedings as indicated in Appendix 10 of MCM, 1969 (Rev.). The record will contain an accurate summary of the advice to the accused concerning his rights to trial by military judge alone, counsel, enlisted members where applicable and the accused's personal responses reflecting his understanding. DD Form 491 (Summarized Record of Trial) will be used to prepare the summarized report. If a reporter was detailed and actually served in that capacity throughout the trial, the convening or higher authority may direct that the proceedings be reported verbatim as prescribed by 83a and as indicated in appendices 8 and 9 of MCM, 1969 (Rev.). A reporter shall not be detailed for a special court-martial unless the special court-martial is convened by a general court-martial convening authority (see Para. 2-14c of this regulation). Reporters shall not be detailed for summary courts-martial.

c. The notes or devices by which the original proceedings were recorded need not be retained after the record of trial has been authenticated. A record

may be kept or written by the trial counsel or by one of his assistants, a clerk, or a stenographer acting under his direction. Unless otherwise directed by the convening authority, the trial counsel will prepare or cause to be prepared an original of each record and of all exhibits received in evidence and one copy of the record and all exhibits, for each accused tried.

d. If the trial has resulted in an acquittal of all charges and specifications or if terminated prior to findings with prejudice to the government, the record of trial will contain sufficient information to establish lawful jurisdiction over the accused and the offenses. This information will include a summary of the trial proceedings up to pleas and the disposition of the case. All documentary exhibits received in evidence and all allied papers will be made a part of the original record of trial. DD Form 491 may be modified and used as a binder for such a record of trial.

e. The record of trial in each case tried by special court-martial not involving a bad-conduct discharge shall be authenticated in the manner prescribed in Appendix 9b, MCM, 1969 (Rev.).

2-8. Disposition of review. a. Paragraph 85d, MCM, 1969 (Rev.) states:

"d. Disposition of review. The original of the review of the staff judge advocate or legal officer will be attached to the original record of trial, and other copies of such review will be prepared in such number and distributed as prescribed in regulations of the Secretary of a Department."

b. Two signed copies of the review of the staff judge advocate will be attached to the original record of trial if the record is forwarded to The Judge Advocate General.

2-9. Records of trial by summary courts-martial. a. Paragraph 91c, MCM, 1969 (Rev.) states in part: "c. Summary court-martial. Unless otherwise prescribed by regulations of the Secretary of a Department, a record of trial by summary court-martial will be disposed of as indicated herein (91c). * * * *

b. In addition to the disposition of records of trial by summary court-martial required by paragraph 91c, MCM, 1969 (Rev.) each person who has been tried and convicted or acquitted will be furnished a copy of the charge sheet completed, in the case of conviction, to and including the action of the convening authority or in the case of acquittal, to and including the signature of the summary court officer. This copy will be furnished to the accused as soon as possible after the convening authority receives the record from the summary court officer, and, in the case of conviction, has taken his action in the case.

2-10. Filing of records. a. Paragraph 94b, MCM, 1969 (Rev.) states in part: "b. Filing of records. After review as prescribed by 94a(2), records of trial by summary court-martial and records of trial by special court-martial which do not involve approved sentences to bad conduct discharge shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation. * * * *"

b. After review as prescribed by 94a(2), MCM, 1969 (Rev.) records of trial by summary court-martial and records of trial by special court-martial which do not involve approved sentences to bad conduct discharge shall be disposed of in accordance with the procedures outlined in AR 345-210 at file numbers 401-36 and 401-37. In this regard see also paragraph 2-25 of this regulation.

2-11 Warrant of attachment. a. Paragraph 115d(3), MCM,

1969 (Rev.) states in part: "(3) Warrant of attachment. * *

* * When it becomes necessary to issue a warrant of attachment, the trial counsel will prepare it and, when practicable, effect execution through a civil officer of the United States."

b. The trial counsel will prepare the warrant of attachment by using DD Form 454 (Warrant of Attachment).

2-12. Qualified individual civilian counsel at courts-martial. When a civilian counsel is to represent an accused at any court-martial the Staff Judge Advocate may require such counsel to furnish evidence that he is a member in good standing of the bar of which he states he is a member.

2-14. Obtainability of Counsel at Special Courts-Martial.

a. Para. 6c, MCM, 1969 (Rev.), states in part: "In all special courts martial the accused must, prior to an Article 39(a) session or assembly of the court, be afforded the opportunity to be represented by counsel qualified under Article 27(b) unless such counsel cannot be obtained because of physical conditions or military exigencies (Art. 27(c)) * * * physical conditions or military exigencies, as the terms are here used, may exist under rare circumstances, such as on an isolated ship on the high seas or in a unit in an inaccessible area, provided compelling reasons exist why trial must be held at that time and at that place."

b. Mere inconvenience does not constitute a physical condition or military exigency and does not excuse a failure to extend to an accused the right to qualified counsel. In addition, such physical condition or military exigency should exist only under rare circumstances and even then, compelling reasons must be given why trial must be held without qualified counsel at that time and at that place.

c. If a special court-martial convening authority is unable to obtain qualified defense counsel for a special court-martial, he will request the staff judge advocate of the supervisory general court-martial jurisdiction to furnish such counsel. If qualified counsel cannot be obtained through this process, the staff judge advocate of the supervisory general court-martial jurisdiction will request qualified counsel from the staff judge advocate of the following designated commands in whose geographic area of responsibility the case is to be tried.

9-17

United States Army, Pacific (less Vietnam and Korea)

United States Army, Europe and Seventh Army

United States Army, Alaska

United States Army Forces Southern Command

United States Army, Vietnam

First United States Army

Third United States Army

Fourth United States Army

Fifth United States Army

Sixth United States Army

Eighth United States Army

If a convening authority is not located in the geographic area of any of the designated commands, he will request counsel from the staff judge advocate of the nearest designated command. (Geographic areas of responsibility are outlined in AR 10-5, companion regulations and implementing directives). In the interest of economy, counsel should be supplied from the nearest source even if this source is located in a geographic area different from the convening authority making the request. Staff judge advocates, acting for the commanders of the designated commands, are responsible for the effective and efficient use of qualified counsel within their geographic area and for reducing temporary transfers of qualified counsel to a minimum.

(CONUS does not include Alaska and Hawaii)

d. No special court-martial within CONUS / will assemble

without qualified defense counsel if the accused has properly requested such counsel. No convening authority outside of CONUS may make a written statement explaining why qualified counsel could not be obtained without prior concurrence from the staff judge advocate, acting for the commander, of the designated commands in whose geographic area of responsibility the convening authority is located. If the convening authority is not located in such an area, he will obtain prior concurrence from the nearest designated command.

unless otherwise directed by regulations or directive,

e. When a command requests qualified counsel on a temporary basis, / the requesting command will be responsible for funding all costs of per diem travel allowances ~~unless appropriate regulations or directives exempt a command from such requirements.~~ In addition, the command will furnish or arrange for logistical support while the counsel is serving in a temporary capacity.

f. When a command requests qualified counsel on a temporary basis, it should keep a record of the time the request was made and all further developments concerning the request in order to insure an accurate chronological record of attempts by the government to process the case speedily and without periods of inactivity or lack of diligence.

g. Staff judge advocates may enter into local arrangements with staff judge advocates of local Air Force or Navy installations to exchange the use of certified, qualified counsel.

h. Qualified counsel will be detailed to all trials by special court-martial of persons protected by the Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949 (GPW).

2-15. Detailing a Military Judge and Providing Facilities

- a. Paragraph 4e, MCM, 1969 (Rev.), states in part: "The authority convening a general court-martial shall, and, subject to regulations of the secretary concerned, the authority convening a special court-martial may, detail a military judge thereto (Art. 26(a))."
- b. Military judges will be detailed to special courts-martial which are not to be recorded verbatim whenever possible with first priority to cases involving complex issues of law or fact. Convening authorities will detail the military judge designated by the supervising general court-martial convening authority acting through his staff judge advocate. Additional procedures for obtaining a military judge are outlined at paragraph 9-8b.
- c. The convening authority will provide an appropriate location and facilities for all courts-martial which he convenes.
- d. Military judges should be detailed to all special courts-martial for persons protected by the Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949 (GPW).

2-16. Special Courts-Martial involving Bad Conduct Discharges.

a. Paragraph 15b, MCM, 1969 (Rev.), states in part: "A bad conduct discharge may not be adjudged by a special court-martial unless (1) a military judge was detailed to the trial, except in any case in which a military judge could not be detailed because of physical conditions or military exigencies; (2) counsel qualified under Article 27(b) was detailed to represent the accused; and (3) a complete and verbatim record of the proceedings and testimony was made."

b. In addition to the requirements quoted above, a bad conduct discharge will not be adjudged by a special court-martial unless the court has been convened by a general court-martial convening authority. The statutory exception which permits the imposition of a bad conduct discharge when a military judge could not be detailed because of "physical conditions or military exigencies" will not be used.

c. Reporters shall not be detailed for special courts-martial unless the special courts-martial are convened by a general court-martial convening authority.

d. There is no requirement for a written pretrial advice prior to the ^{discharge} referral of a case to a special court-martial in which a bad conduct/can be adjudged. (For pretrial advice at general courts-martial see Art. 34(a) and Para. 35b, MCM, 1969 (Rev.))

e. A record of trial by special court-martial in which a bad conduct discharge is adjudged will be prepared, authenticated, and processed as prescribed in Paragraph 83a, MCM, 1969 (Rev.).

B.F.

2-17. Contents of General Court-Martial Record. a. Paragraph 82b, MCM, 1969 (Rev.), states in part: "UNLESS OTHERWISE PRESCRIBED BY REGULATIONS OF THE SECRETARY CONCERNED, TRANSCRIPTS NEED NOT BE VERBATIM IN THE FOLLOWING CASES: IF THE PROCEEDINGS HAVE RESULTED IN AN ACQUITTAL OF ALL CHARGES AND SPECIFICATIONS OR IF TERMINATED PRIOR TO FINDINGS WITH PREJUDICE TO THE GOVERNMENT, THE RECORD NEED ONLY CONTAIN SUFFICIENT INFORMATION TO ESTABLISH LAWFUL JURISDICTION OVER THE ACCUSED AND THE OFFENSES; IF THE COURT HAS ADJUDGED A SENTENCE NOT INCLUDING DISCHARGE, AND NOT IN EXCESS OF THAT WHICH CAN OTHERWISE BE ADJUDGED BY A SPECIAL COURT-MARTIAL, and IF NOT AFFECTING A GENERAL OR FLAG OFFICER, THE RECORD SHALL CONTAIN THE SAME MATTER AS PRESCRIBED BY 83b IN SPECIAL COURT-MARTIAL CASES."

b. If the proceedings of a general court-martial have resulted in an acquittal of all charges and specifications or if terminated prior to findings with prejudice to the government, the record of trial will contain sufficient information to establish lawful jurisdiction over the accused and the offenses. This information will include a summary of the trial proceedings up to pleas and contain the disposition of the case. All documentary exhibits received in evidence and all allied papers will be made a part of the original

record of trial. DD Form 491 may be modified and used as a binder for such a record of trial.

c. If the proceedings of a general court-martial have resulted in a sentence which does not include a discharge and is not in excess of that which can otherwise be adjudged by a special court-martial, and if it does not affect a general or flag officer, the record shall contain the same matter as prescribed by paragraph 2-7b of this regulation.

2-18. Arraignment and Pleas. a. Paragraphs 65a and 39b(2), MCM, 1969 (Rev.), state in part: " * * * * If an Article 39(a) session is conducted by the military judge prior to assembly, the arraignment may be held and the plea of the accused accepted at that time if permitted by the regulations of the secretary concerned."

" * * * * He may also, if permitted by regulations of the secretary concerned, * * * enter findings of guilty upon an accepted plea of guilty."

b. When an Article 39a session is conducted by the military judge prior to assembly, the arraignment may be held and the plea of the accused may be accepted at that time by the military judge. In addition, the military judge may enter at that time findings of guilty upon an accepted plea of guilty.

2-19. Entry of Findings of Guilty Pursuant to Plea. a. Paragraph 70b, MCM, 1969 (Rev.) states in part: " * * * * In a trial by a court-martial with members, a finding of guilty of the charge or specification may, if permitted by regulations of the secretary concerned, be entered immediately without vote after a plea of guilty has been accepted by the military judge or president of a special court-martial without a military judge.

b. In a trial by a court-martial with members, a finding of guilty of the charge and specification may be entered immediately without vote after a plea of guilty has been accepted by the military judge or president of a special court-martial without a military judge.

c. No such entry should be made as to any plea of guilty to a lesser included offense.

d. The military judge or president of a special court-martial without a military judge shall put the findings of guilty in proper form following the forms indicated in Appendices 8b and 8f of MCM, 1969 (Rev.) and the instructions contained in 74b and c of MCM, 1969 (Rev.). He should announce to the members that the accused has been found guilty on his plea of guilty and no vote by the members is necessary.

2-21 Reporters. a. Appointment. Reporters shall not be detailed for summary courts-martial. Reporters shall not be detailed for special courts-martial unless the special court-martial is convened by a general court-martial convening authority.

b. Clerical assistance. A convening authority may furnish clerical personnel to assist summary and special courts-martial in maintaining and preparing a record of the proceedings in any case.

2-21

2-23. Accused's copy of charge sheet and record of trial.

a. Charge sheet.

(1) Summary courts-martial. At the opening session of the trial prior to arraignment the summary court officer will furnish a copy of the charge sheet, as received and corrected by him, to the accused.

(2) Special courts-martial. Immediately upon receipt of charges referred to him for trial, the trial counsel of a special court-martial will ~~cause to be~~ served a copy of the charge sheet, as received and corrected by him, on the accused and will inform the defense counsel of the court that this copy has been served. See paragraph 44h, MCM, 1969 (Rev.).

b. Record of trial.

(1) Summary courts-martial. See Para. 2-9b of this regulation.

(2) Special courts-martial. A copy of the record of the proceedings of each special court-martial shall be given to the accused as soon as it is authenticated (Art. 54(c) UCMJ).

2-24. Supervisory review of records of trial.

a. General. The officer immediately exercising general court-martial jurisdiction over a command has supervisory powers over special and summary courts-martial in that command. See paragraph 94a(1), MCM, 1969 (Rev.).

b. Review of records of trial.

(1) When the convening authority does not exercise general court-martial jurisdiction, the record of trial by summary court-martial will, after appropriate action by the convening authority including that set forth in paragraph 2-9b and after publication of the promulgating order, be forwarded directly for review, ordinarily without letter of transmittal, to the supervisory authority, ATTN: Staff Judge Advocate. The last blank line on page 4 of DD Form 458 (Charge sheet) need not be completed. A copy of the promulgating order will be furnished to the accused.

(2) When the convening authority does not exercise general court-martial jurisdiction, the record of trial by special court-martial

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will, after publication of the promulgating order, be forwarded for review to the supervisory authority, ATTN: Staff Judge Advocate. See paragraph 91b(1), MCM, 1959 (Rev.). A copy of the promulgating order will be furnished to the accused.

(3) Each record of trial by special court-martial in which the sentence as approved by the convening authority includes a bad conduct discharge, whether suspended or not, will be reviewed and acted upon in the same manner as a record of trial by general court-martial.

(4) Records of trial by summary courts-martial and records of trial by special courts-martial not including approved sentences to bad conduct discharge will be reviewed by a judge advocate, normally under the supervision of the staff judge advocate of the command of the supervisory authority. Upon completion of the review and any corrective action, the judge advocate will note upon the copies of the summary or special court-martial order promulgated by the convening authority received by him the designation of the command in which the review was accomplished, the date, the result of the review, and his signature.

2-25 Disposition of records of trial and related orders.

Upon completion of review and any corrective action on records of trial by summary court-martial and records of trial by special court-martial which do not involve approved bad conduct discharges, the record of trial and two copies of the initial promulgating order and any corrective orders in the case will be filed in the office of the staff judge advocate of the command of the supervisory authority. One copy of each order will be furnished to the convening authority who will cause it to be transmitted to the custodian of the personnel records of the accused for filing in the individual's Military Personnel Records Jacket, U.S. Army (DA Form 201) as a semipermanent document. On receipt of any court-martial order or other communications made by the supervisory reviewing authority after the initial order in the case, which affirms the approved court-martial findings and sentence, the custodian of the personnel records will enter the order number, source, and date in item 53(a), DA Form 20B, (Insert sheet to DA Form 20, Record of Court-Martial Convictions), and complete the signature block of item 54(a), DA Form 20B. If

the affirmed findings or sentence are later changed (i.e., remitted, suspended, set aside, or otherwise altered) the custodian will fill out items 53(b) and 54(b) of DA Form 20B. In addition, on receipt of any court-martial order or other communications made by the supervisory reviewing authority or The Judge Advocate General after the initial orders in the case, which changes (i.e., remit, suspend, set aside, or otherwise alter) any part of the approved court-martial findings or sentence, the custodian of the personnel records will make pen-and-ink changes in the current entry in DA Form 20B to make it conform to the change in the findings and sentence of the court. The custodian will then enter the order number, source, and date in item 53(b), DA Form 20B, and complete the signature block of item 54(b), DA Form 20B. If all the findings and sentence are set aside during appellate review or as a result of an application for relief under Article 69, all entries pertaining to that trial will be deleted. One copy of an order in which any supplementary action was taken will be transmitted to the accused. One copy of each order pertaining to an enlisted accused will be forwarded to the U.S. Army Personnel Services Support Center, ATTN: AGPE, Fort Benjamin Harrison, Ind. 46249. One copy of each order pertaining to an officer tried by special court-martial will be forwarded to The Adjutant General, ATTN: AGPF-F, Department of the Army, Washington, D. C. 20310.

2-26. Certification and Utilization of Lawyers. a. Commissioned officers who are not members of The Judge Advocate General's Corps who possess legal qualifications in the sense of Article 27b(1), UCMJ, may be certified for duty as counsel by The Judge Advocate General. Detail of such officers as counsel will be under the direction of the Staff Judge Advocate acting for the general court-martial convening authority to which they are assigned or attached subject to the concurrence of the certified officer's commander.

b. Staff Judge Advocates of general court-martial jurisdictions will submit resumes of legal qualifications including an affidavit or certificate attesting to admittance to practice (Article 27(b), UCMJ) and experience of officers recommended by them for certification to: Headquarters, Department of the Army, Office of The Judge Advocate General, ATTN: Career Management Division, for review.

2-27. Rating of Court Members, Counsel, Military Judges, and Appellate Military Judges. a. Court members and counsel. Article 37b, UCMJ, prohibits the consideration or evaluation of the performance of duty of a member of the armed forces as a member of a court-martial in the preparation of an effectiveness, fitness, or efficiency report on that member. Article 37b also prohibits giving a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel represented any accused before a court-martial. See paragraph 1-4g and h, AR 623-105 and paragraphs 5-25 and 5-35d of AR 600-200.

b. Military Judges. 1. Military judge of a general court-martial. Article 26c, UCMJ, provides that, unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge of a general court-martial which relates to his performance of duty as a military judge.

2. Military judges of special court-martial who are assigned to the U.S. Army Judiciary will be rated as

provided by the U.S. Army Judiciary.

3.. A military judge who is not assigned to the U.S. Army Judiciary will not be rated nor his report indorsed or reviewed with respect to his conduct as a military judge by the convening authority or any member of his staff. See paragraph 1-4i, AR 623-105. Paragraph 4-2a (8), AR 623-105 provides that the performance of duty as a military judge of a military judge not assigned to the U.S. Army Judiciary will be evaluated by such military judge as is designated by HQ., U.S. Army Judiciary.

c. Appellate Military Judges. Article 66g, UCMJ, provides that no member of a Court of Military Review shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Military Review, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty.

2-28. Request for and notice of Article 39(a) sessions. Article 39(a) sessions will be called on order of the military judge; however, either the trial counsel or defense counsel may make application to the military judge to have such a session called. (See 9-5a) When counsel requests an Article 39(a) session he should notify the military judge and opposing counsel of the matters he intends to raise. Counsel are encouraged, when deemed appropriate, to submit briefs to the military judge and opposing counsel prior to Article 39(a) sessions, outlining and citing authority for the positions they intend to take. In requesting an Article 39(a) session, counsel should give opposing counsel adequate opportunity to prepare. The foregoing does not preclude matters other than those contained in the counsel's notice from being raised and disposed of at the Article 39(a) session.

2-29. General instructional or informational courses in military justice.

The general instructional or informational courses in military justice excluded from the general prohibitions contained in Article 37(a), UCMJ, are the courses authorized by AR 350-212. No other instruction is authorized. This does not restrict, however, the preparation of court-martial personnel as outlined at paragraph 2-22 of this regulation. Court members, while detailed to a functioning court may not under any circumstances be oriented or instructed concerning their immediate responsibilities in court-martial proceedings except by the military judge or the president of a special court-martial without a military judge in open court.

CHAPTER 5

OATHS

5-1. Purpose and Scope. This chapter implements Article 42(a) of the Uniform Code of Military Justice and various paragraphs of the MCM, 1969 (Rev.). It prescribes the form of the oaths to be administered to personnel of courts-martial, the time and place of taking thereof, and other procedures related to oaths.

General
5-2. a. Paragraph 112b, MCM, 1969 (Rev.) provides: "b. Persons required to be sworn. All court-martial personnel, which includes the military judge, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters, shall take an oath to perform their duties faithfully (Art. 42(a)). Additionally, an individual defense counsel, military or civilian, shall take a similar oath. * * * *"

b. Paragraph 112c of the MCM, 1969 (Rev.) provides: "c. Secretarial regulations. As to all court-martial personnel required to be sworn, Article 42(a) specifically provides that regulations of the Secretary concerned shall prescribe the following: the form of the oath; the time and place of the taking thereof; the manner of recording same; and whether the oath shall be taken for all cases in which these duties are to be performed, or for a particular case. Such secretarial regulations may also prescribe similar provisions as to the oath to be taken by individual counsel, military or civilian. In the case of certified legal personnel (Art. 26(b); Art. 27(b)), these secretarial regulations

may provide for the administration of an oath on a one-time basis (Art. 42(a)). Unless provided otherwise by regulations of the Secretary concerned, it is not required that the oaths to court-martial personnel be administered in the presence of the accused * * * *

c. It is not required that oaths to court-martial personnel be administered in the presence of the accused.

2-20 Optional matter presented when court-martial is constituted with military judge. a. Paragraph 75d, MCM, 1969 (Rev.), provides: " * * * * Under regulations of the Secretary concerned the trial counsel may, prior to sentencing, obtain and present to the military judge any personnel records of the accused or copies or summaries thereof. Summaries of such records will be prepared and authenticated by the custodian thereof as provided in Appendix 8g. Personnel records of the accused include all those records made or maintained in accordance with departmental regulations which reflect the past conduct and performance of the accused. If the accused objects to the data as being inaccurate or incomplete in a specified material particular, or as containing certain specified objectionable matter, the military judge shall determine the matter. Objections not asserted will be regarded as waived. The accused may submit in rebuttal any matter which reflects on his past conduct and performance. In cases where members determine sentence, the military judge may admit for their consideration any information from these records which reflects the past conduct and performance of the accused.

b. Prior to sentencing, trial counsel will obtain and present to the military judge, for use by the sentencing agency, (court members or military judge sitting alone) authenticated summaries or copies of the personnel records of the accused as prescribed in para. 75d, MCM, 1969 (Rev.). Only the following records may be used for this purpose:

- (1) DA Form 20 for enlisted members and DA Form 66 for officers.
- (2) Records of punishment under Article 15 required by regulations to be retained in the accused's field Military Personnel Records Jacket (DA Form 201).
- (3) For purposes of rebuttal, any record in an accused's field Military Personnel Records Jacket (DA Form 201). (This does not limit the right of the prosecution or defense to offer evidence in rebuttal under the provisions of para. 75e, MCM, 1969 (Rev.))

c. Original records may be presented in lieu of copies with permission to substitute copies in the record. For authentication of original copies or summaries see para. 143b(2), MCM, 1969 (Rev.).

be set for trial on the same or succeeding days during "terms of court" at specified locations.

b. Special Courts-Martial. Military judges of special courts-martial will preside over special courts-martial to which they are detailed. Prior to each trial by special court-martial to which it is desired to detail a military judge, and as early as practicable, the convening authority or his representative shall make a request for a military judge to the staff judge advocate of the general court-martial authority informing him of:

- (1) The nature of the charge;
- (2) The estimated duration of the trial;
- (3) The proposed date and place of trial; and
- (4) Any special factors bearing upon the request.

The staff judge advocate will notify the military judge who has primary responsibility to preside over general court-martial in that jurisdiction whether it is contemplated that the special court-martial will be convened under circumstances wherein a bad conduct discharge may lawfully be adjudged in the discretion of the court (See Para. 2-16). In such cases, the request will be acted upon as though it were a request for a military judge of a general court-martial, except that a military judge of a special court-martial assigned to the US Army Judiciary may be provided.

In all other cases, the military judge of the general court-martial jurisdiction will arrange the availability of a military judge over whom he exercises this administrative responsibility. If one is available, the staff judge advocate will be informed. The staff judge advocate will then follow the procedure outlined in paragraph 2-13b. If a military judge under the administrative control of the military judge of the general court-martial jurisdiction is not available, the Area Military Judge will be so notified, and upon notification will provide a military judge or inform the military judge of the general court-martial jurisdiction that none is available. The staff judge advocate will be notified accordingly. If a military judge assigned to the US Army Judiciary is not available, the staff judge advocate will provide a military judge not assigned to the US Army Judiciary, if one is available, and make any necessary arrangements for funding of costs and per diem travel allowances.

c. General. Upon his being detailed, the military judge will be furnished a copy of the convening order, a copy of the charges, and other related documents as required by him. Thereafter, pretrial, trial, and post trial arrangements will be made between the military judge and the convening authority's representatives or counsel, as appropriate.