

**10 GCA HEALTH AND SAFETY
CH. 63 GUAM NATIONAL GUARD**

**CHAPTER 63
GUAM NATIONAL GUARD**

NOTE: Public Law 16-18, enacted June 5, 1981, R/R prior law allowing the newly-authorized National Guard to be implemented. The old Guam Militia, therefore, ceases to exist and Chapter IV of Title IX, Government Code, is null and void, according to P.L. 2-23:1, which reads:

Chapter IV of Title IX of the Government Code of Guam shall remain in full force and effect after the passage of this Act until such time as National Guard status for the territory of Guam shall be approved by the Congress of the United States, and a National Guard unit, or units, Army or Air, shall be established in Guam; further, the Guam Militia, as is currently established and operating, shall continue in its present status until replaced by a National Guard, Army or Air, of the territory of Guam; at such time that National Guard Army or Air status for the territory of Guam shall be granted and a National Guard unit, or units, Army or Air shall be established in Guam, the present Chapter IV of Title IX of the Government Code of Guam shall become null and void, and the Guam Militia, as such, shall cease to exist.

- Article 1. General Provisions.
- Article 2. Organization, Powers and Responsibilities.
- Article 3. Commissioned and Warrant Officers.
- Article 4. Enlisted Personnel.
- Article 5. Territorial Duty.
- Article 6. National Guard Facilities.
- Article 7. Military Justice.

**ARTICLE 1
GENERAL PROVISIONS**

- § 63100. Department of Military Affairs.
- § 63101. Definitions.
- § 63102. Management of the Guam National Guard.
- § 63103. Restriction to Guam.
- § 63104. Commercial Ventures and Political Activities.
- § 63105. Discrimination against Members: Penalty.
- § 63106. [Repealed.]

§ 63100. Department of Military Affairs.

There is within the government of Guam the Department of Military Affairs. The administrative and executive head of the Department shall be the Adjutant General. The government of Guam shall provide adequate office space for the Department of Military Affairs.

All civilian non-uniformed positions in the Department of Military Affairs with the exception of the Executive Secretary and the Executive Services Coordinator, shall be in the classified service of the government of Guam.

SOURCE: GC § 40000. Second paragraph added by P.L. 20-186:1. Amended by P.L. 24-298:3.

§ 63101. Definitions.

As used in this Division:

(a) *Enlisted person* means all members of the Guam Army or Air National Guard who are not officers.

(b) *Federal recognition* means enrollment in the Army National Guard of the United States and Reserve of the Army or Air National Guard of the United States and Reserve of the Air Force, in a particular grade, of members of the Guam National Guard, in accordance with Federal law and regulations.

(c) *Guam National Guard* means the Guam Army National Guard and the Guam Air National Guard.

(d) *Officer* means any commissioned officer or any warrant officer, of the Guam National Guard.

(e) *Order* means a general or special order, oral or written, given pursuant to either territorial or Federal authority.

(f) *Resident* means any person who is legally in Guam with the intent of making this his permanent home.

(g) *Territorial duty* means all duty performed by members of the Guam National Guard pursuant to orders of the Commander-in-Chief calling such members into the active service of the territory of Guam.

SOURCE: GC § 40001.

§ 63102. Management of the Guam National Guard.

The Department of Military Affairs shall be responsible for the management of all elements of the Guam National Guard not in active service of the United States.

SOURCE: GC § 40002. Amended by P.L. 24-298:4. Amended by P.L. 28-046:2.

§ 63103. Restriction to Guam.

Except when on active duty in the service of the United States, the Guam National Guard, or any part thereof, shall not leave Guam with arms or equipment without consent of the Governor.

SOURCE: GC § 40003.

§ 63104. Commercial Ventures and Political Activities.

No member of the Guam National Guard shall use his position in, or affiliation with the Guam National Guard to promote or endorse any commercial venture, product or service not connected with the Guam National Guard, or to sponsor or support a political candidate, political party or public issue not connected with the Guam National Guard. The wearing of the Guam National Guard, in conjunction with such activities, shall be deemed a promotion or endorsement thereof.

SOURCE: GC § 40004.

§ 63105. Discrimination Against Members: Penalty.

Any person who deprives a member of the National Guard of Guam of his employment, or attempts to prevent his being employed by himself or another, because said member of the Guam National Guard is such a member, or dissuades any person from enlisting in, or joining the Guam National Guard by threat of any sort, shall be deemed guilty of a violation and upon conviction thereof, shall be fined a sum not to exceed One Thousand Dollars (\$1,000).

SOURCE: GC § 40005.

§ 63106. Leaves of Absence.

[Repealed.]

SOURCE: GC § 40006; Amended by P.L. 21-146:2. Repealed by P.L. 23-41:3 (9/29/95).

CROSS-REFERENCES: See 4 GCA § 4119, also amended by P.L. 23-41. The purpose of the repeal here was to have only one law on the subject of military leaves

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and, since it covers more than just the National Guard, the Legislature placed the amended provision in Title 4.

**ARTICLE 2
ORGANIZATION, POWERS AND RESPONSIBILITIES**

- § 63200. Commander-in-Chief.
- § 63201. The Adjutant General.
- § 63202. Assistant Adjutant General for Army.
- § 63203. Assistant Adjutant General for Air.
- § 63204. Headquarters Staff.
- § 63205. National Guard Personnel.
- § 63206. Uniforms and Insignia.

§ 63200. Commander-in-Chief.

The Governor is ex-officio Commander-in-Chief and shall have command of the Guam National Guard when not in active Federal service. During the absence of the Governor, or a vacancy in the Governor's Office, the person legally acting as Governor shall also be Acting Commander-in-Chief of the Guam National Guard with all the powers and authority of the Commander-in-Chief.

SOURCE: GC § 40100.

§ 63201. The Adjutant General.

The Adjutant General *shall* be appointed by *I Maga'lahaen Guåhan*, subject to the advice and consent of *I Liheslaturan Guåhan*, and *shall* have such rank and qualifications as *I Maga'lahaen Guåhan* may prescribe, and he *shall*:

(a) be, or have been, a Federally recognized commissioned officer in the Army or Air Force or their Reserve components in the grade of *at least* Lieutenant Colonel (O-5, Promotable) pursuant to Army or Air Force promotion regulations and policies at the time of appointment;

(b) be promoted in the Guam Army or Air National Guard, as appropriate, at the discretion of the Commander-in-Chief, to a grade *not to exceed* Lieutenant General (O-9);

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(c) serve until such time as his replacement is appointed by *I Maga'lāhen Guåhan* or until he resigns;

(d) issue and promulgate regulations in furtherance of the provisions of this Title (The regulations shall take effect by Executive Order of *I Maga'lāhen Guåhan*. The provisions of the Administrative Adjudication Law shall *not* apply to the issuance and promulgation of regulations of the Department of Military Affairs.);

(e) be the senior commander, under the Commander-in-Chief of the Guam National Guard, and be responsible for the training of all members and units of the Guam National Guard for both Federal and Guam missions;

(f) be the paymaster general and be charged with all disbursements of pay and allowances for the service of the troops when in the service of Guam;

(g) give his entire time to the management of the Department of Military Affairs;

(h) have such military and civilian assistants and clerks as may be required to properly conduct the operation of his department;

(i) issue and transmit and keep a record of all orders and regulations of the Commander-in-Chief and the Department of Military Affairs pertaining to the Guam National Guard;

(j) keep a record of all appointments, commissions and warrants of officers and appointments of non-commissioned officers and shall have general charge of recruiting and records of enlistments and discharges;

(k) keep the military history of the Guam National Guard and personnel records of each individual member thereof;

(l) have charge of all correspondence and records pertaining to the Department of Military Affairs, and file for record all reports and records of all active service performed by members of the Guam National Guard in the service of Guam or of the United States; and

(m) direct and have charge of all purchase of military supplies and stores, subject to the purchasing procedure of the government of Guam.

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SOURCE: GC § 40101. Subsection (h) amended by P.L. 20-186:2; subsections (a), (b) & (c) and preamble amended by P.L. 21-103:1 to make provision for the Governor's appointment of Adjutant General rather than appointment by the President of the United States. This action was permitted by federal law. Amended by P.L. 24-298:5. Subsection (b) amended by P.L. 30-114:2 (Mar. 13, 2010). Subsections (a), (b) and (c) amended by P.L. 31-119:2 (Sept. 30, 2011).

§ 63202. Assistant Adjutant General for Army.

The Assistant Adjutant General for Army shall be recommended by the Adjutant General to *I Maga'lahaen Guåhan*, and he shall:

- (a) be a citizen of the United States and a resident of Guam;
- (b) hold the rank of Colonel, which is Federally recognized;
- (c) be promoted to a rank *not* to exceed Brigadier General at the discretion of *I Maga'lahaen Guåhan* as Commander-in-Chief of the Guam National Guard; *and*
- (d) perform such military duties as the Commander of the Guam Army National Guard, under the direction of the Adjutant General and shall perform such other military duties as may be required of him by the Adjutant General.

The Assistant Adjutant General for Army shall be under the supervision and control of the Adjutant General. When so designated by *I Maga'lahaen Guåhan*, the Assistant Adjutant General shall be the acting Adjutant General during the Adjutant General's absence from Guam or during the unavailability of the Adjutant General due to illness or incapacitation.

SOURCE: GC § 40102; subsection (b) amended by P.L. 21-103:2 for same purpose as in § 63202, above. Repealed/reenacted by P.L. 25-19:2.

§ 63203. Assistant Adjutant General for Air.

The Assistant Adjutant General for Air shall be appointed by the Adjutant General and he shall:

- (a) Be a citizen of the United States and a resident of Guam;
- (b) Be qualified for immediate federal recognition as a colonel;
and
- (c) Be promoted to a rank *not* to exceed Brigadier General at the discretion of *I Maga'lahaen Guåhan* as Commander-in-Chief of the Guam National Guard, and perform such military duties as the

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Commander of the Guam Air National Guard, under the direction of the Adjutant General, and *shall* perform all such military duties as may be required of him by the Adjutant General.

SOURCE: GC § 40103. Subsections (b) and (c) amended by P.L. 30-114:3 (Mar. 13, 2010).

§ 63204. Headquarters Staff.

The headquarters staff of the Department of Military Affairs shall consist of the Adjutant General, the Assistant Adjutants General for Army and Air, and such other offices as the Adjutant General, with the approval of *I Maga'lahan Guåhan*, shall establish.

SOURCE: GC § 40104. Amended by P.L. 24-298:6. Amended by P.L. 28-046:3.

§ 63205. National Guard Personnel.

The Guam National Guard shall consist of the Federally recognized commissioned officers, warrant officers and enlisted members, organized, armed and equipped as prescribed by the laws of the United States, and the regulations and tables of organization in conformity therewith, published from time to time by the President of the United States, the Secretary of Defense or the appropriate service secretary.

SOURCE: GC § 40105.

§ 63206. Uniforms and Insignia.

No member of the Guam National Guard shall wear any Army or Air Force uniform unless Federally recognized and no member shall wear the insignia other than that of his Federally recognized grade, nor other badges, emblems, decorations, awards or evidences of qualification unless authorized by appropriate Federal law or regulation. Members may wear awards, decorations or service ribbons conferred by the territory of Guam or other states, commonwealths or territories, provided written orders have been issued by the Adjutant General, territory of Guam, authorizing the wearing of such awards, decorations and service ribbons and provided the member is not in the active service of the United States. The restriction on the wearing of rank insignia is not applicable to the Adjutant General or the Adjutant General Appointee.

SOURCE: GC § 40106; amended by P.L. 21-136:6.

ARTICLE 3
COMMISSIONED AND WARRANT OFFICERS

- § 63300. Appointment.
- § 63301. Oath of Office.
- § 63302. Promotion.
- § 63303. Commissions and Warrants: How Vacated.

§ 63300. Appointment.

No person shall be appointed and commissioned or warranted as an officer of the Guam National Guard unless he shall be qualified for immediate Federal recognition in the grade to which he is to be appointed and approved by the Adjutant General. If a person so appointed shall fail to receive Federal recognition when first recommended, his appointment and commission or warrant shall be terminated promptly. Subject to Federal regulations, and at the discretion of the Adjutant General, such person may be reappointed and commissioned or warranted and submitted for Federal recognition one (1) additional time after the passage of one (1) year from the date Federal recognition was denied.

SOURCE: GC § 40200.

§ 63301. Oath of Office.

Every officer in the Guam National Guard shall at the time of accepting his commission, and before entering upon the duties of his office, take and subscribe to the following oath of office:

“I _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Organic Act of the territory of Guam against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the Governor of Guam, that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of _____ in the National Guard of the territory of Guam upon which I am about to enter, so help me God.”

The oath of office may be taken before any officer of the Guam National Guard, an officer of the active military services or any other person authorized to administer the oath.

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SOURCE: GC § 40201.

§ 63302. Promotion.

Officers of the Guam National Guard shall be promoted only when eligible for Federal recognition in the grade to which promoted, upon recommendation of their commander and approval of the Adjutant General.

SOURCE: GC § 40202.

§ 63303. Commissions and Warrants: How Vacated.

Commissions of officers of the Guam National Guard may be vacated:

- (a) By resignation if accepted by the Commander-in-Chief;
- (b) Be qualified for immediate Federal recognition as a colonel or lieutenant colonel; and
- (c) Pursuant to the sentence of a General Court-Martial;
- (d) Upon recommendation of a board of examiners pursuant to regulations of the Departments of the Army or Air Force; and
- (e) By transfer to another component of the military services of the United States, with the approval of the Adjutant General.

SOURCE: GC § 40203; subsection (b) amended by P.L. 21-103:3.

**ARTICLE 4
ENLISTED PERSONNEL**

- § 63400. Enlistment Eligibility.
- § 63401. Oath of Enlistment.
- § 63402. Promotion.
- § 63403. Enlistments: How Terminated.

§ 63400. Enlistment Eligibility.

Any able-bodied person of good character who is capable of immediate Federal recognition shall be eligible for enlistment in the Guam National Guard, provided in a position is available for which he is qualified.

SOURCE: GC § 40300.

§ 63401. Oath of Enlistment.

Each person enlisting in the Guam National Guard shall take and subscribe to the following oath:

“I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Organic Act of the territory of Guam against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of Guam and the orders of the officers appointed over me, according to law and regulations, so help me God.”

The oath of enlistment may be taken before any officer of the Guam National Guard, an officer of the active military services or any other person authorized to administer the oath.

SOURCE: GC § 40301.

§ 63402. Promotion.

Enlisted persons of the Guam National Guard shall be promoted only when eligible for Federal recognition in the grade to which promoted, upon recommendation of their commander and approval of the Adjutant General.

SOURCE: GC § 40302.

§ 63403. Enlistments: How Terminated.

Terms of enlistment of enlisted persons of the Guam National Guard may be terminated by:

- (a) Expiration of enlistment;
- (b) Withdrawal of Federal recognition in accordance with Federal law or regulations;
- (c) Pursuant to the sentence of a General or Special Court-Martial;
- (d) Upon recommendation of a board of examiners pursuant to regulations of the Departments of the Army or Air Force;
- (e) Transfer to another component of the military services of the United States, with the approval of the Adjutant General; and

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(f) Upon permanent relocation of residence outside the territory of Guam.

SOURCE: GC § 40303.

**ARTICLE 5
TERRITORIAL DUTY**

- § 63500. Active Service: Authority of Governor to Order.
- § 63501. Labor Organizations and Strikes: Use of National Guard Limited.
- § 63502. Pay and Allowances.
- § 63503. Transportation, Lodging and Subsistence.
- § 63504. Worker's Compensation Law Applicable to Service.
- § 63505. Same: Computation of Claims.
- § 63506. Physicians: Compensation.

§ 63500. Active Service: Authority of Governor to Order.

(a) The Commander-in-Chief may in time of war, insurrection, rebellion, riot or imminent danger thereof, or in time of any state emergency, order the Guam National Guard, or any part thereof, into active military service of the Territory of Guam, except when such members of the Guam National Guard are already in the service of the United States.

(b) The Governor may also order the Guam National Guard, or any part thereof, to Territorial Active Duty to assist the government of Guam in affairs of state, state ceremonies, or other territorial activities or duties as determined by the Governor.

(c) Any person who is a member of the Guam National Guard, called to duty under the provisions of this Chapter, who, in order to perform duties or receive training with the armed forces of the United States or of the Territory of Guam, leaves a position in the employ of an employer, and who shall give evidence of the satisfactory completion of such duty or training, and who is still qualified to perform the duties of such position, shall be entitled to be restored to his previous or a similar position, in the same status, pay, and seniority, and such period of absence for military duty or training shall be construed as an absence with leave, but may be without pay. Such leave shall not be annual or regular leave, but in addition to that

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allowed the employee as part of the employment benefits. No employer shall require any employee to take annual or regular leave to participate in any training or duty under this Chapter.

(d) All members of the Guam National Guard shall receive pay as set out in § 63502 of this Chapter, but in no case shall the total pay and allowances received be less, unless waived by the guard member or unless the guard member's employer authorizes leave, other than annual leave, with pay, than that earned at the guard member's civilian employment for a normal eight (8) hour day for each day or fraction served on Territorial Active Duty under the provisions of this Chapter unless such pay exceeds the current government of Guam per diem allowance as set out in § 23104(A)(1), Title 5, Guam Code Annotated, in which event, members of the Guam National Guard who are ordered or called into service of the territory will not receive more than the per diem allowance existing at the time of such territorial duty. If the per diem allowance is less than military pay and allowances, the guard member shall receive military pay and allowances. It shall be the responsibility of the guard member to furnish his or her unit commander documentation of his or her civilian salary for a normal eight (8) hour day. The unit commander shall certify days or fractions thereof served on territorial active duty and documentation of the normal eight (8) hour day civilian salary, if any, and forward the same to the office of the Adjutant General or his designee for approval and calculation of territorial active duty pay. Calculations approved by the Adjutant General or his designee shall be forwarded to the Department of Administration for payment. The calculation shall determine the daily amount of military pay as set out in 63502 of this Chapter and the civilian pay a guard member would have earned in a normal eight (8) hour day. If the civilian pay is greater the guard member, unless he or she declines the differential, shall receive the military pay plus the difference between the military pay and the civilian pay for each day or fraction thereof. Methods of determining normal eight (8) hour daily pay calculations for various civilian business, to include but not be limited to sole proprietorships, partnerships, and corporations, or employments and methods of pay, including government and private sector civilian jobs, shall established by the Adjutant General.

(e) In the event the person referred to in the foregoing paragraphs are not reinstated as therein required, upon application by such a person to the Attorney General of Guam, the Attorney General shall act as the attorney for such person and shall institute such action as may be necessary to

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enforce compliance with the provisions contained in this Chapter, and no fees or court costs shall be taxed against the person applying for benefits hereunder. Failure to reinstate employees as required shall be deemed an act of discrimination and in violation of § 63501 of this Chapter.

(f) In proceedings to establish re-employment rights under this Chapter, the court may award reasonable litigation expenses, including, but not limited to, attorney's fees, upon good cause being shown, which may include the failure, refusal, or inability, of the Attorney General to act as the service member's attorney pursuant to this Chapter.

SOURCE: GC § 40400; amended by P.L. 21-103:7; subsection (d) further amended by P.L. 21-146:3. Eff. date of last amendment was retroactive to apply to persons called to territorial active duty between Aug. 29, 1992 and Oct. 31, 1992 (Typhoon emergencies).

§ 63501. Labor Organizations and Strikes: Use of National Guard Limited.

In no case shall the Guam National Guard, or any part thereof, be used against any labor organization, or for the purpose of strike breaking within Guam except such as shall be necessary in an emergency proclaimed by the Governor to maintain law and order.

SOURCE: GC § 40401.

§ 63502. Pay and Allowances.

When in the actual service of Guam under orders of the Commander-in-Chief, officers of the Guam National Guard, except officers on permanent duty receiving regular pay, and enlisted personnel shall receive for each day's service, or fraction thereof, the same basic pay and allowances as provided by law for members of the United States Army or Air Force of like grades, including longevity pay.

SOURCE: GC § 40402.

§ 63503. Transportation, Lodging and Subsistence.

Transportation for all members of the Guam National Guard on duty and receiving pay under § 63502 of this Chapter shall be furnished by the territory of Guam either in-kind or by reimbursement. Lodging and subsistence will be furnished in-kind or by reimbursement when it is determined by the Adjutant General that lodging and subsistence at the member's usual place of residence is impractical during any part of the period of territorial duty.

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SOURCE: GC § 40403.

§ 63504. Worker's Compensation Law Applicable to Service.

The service of all officers and enlisted persons of the Guam National Guard, while on territorial duty and lawfully performing the same, shall be deemed to the *public employment* within the terms of § 37002(p) of Title XXXIII of the Government Code, the Worker's Compensation Law.

SOURCE: GC § 40404.

§ 63505. Same: Computation of Claims.

Whenever a claim is to be computed under the Worker's Compensation Law, as provided in § 63504 of this Article, because of injury or death of any officer or enlisted person of the Guam National Guard as such, it shall be computed on the basis of the active duty pay of such person as if such person were on permanent active duty with the Guam National Guard.

SOURCE: GC § 40405.

§ 63506. Physicians: Compensation.

Physicians attending cases of injury or illness incurred by a member of the Guam National Guard in the line of duty under § 63500 of this Article shall receive reasonable compensation for each case as the circumstances may warrant and as approved by the Adjutant General.

SOURCE: GC § 40406.

6

NATIONAL GUARD FACILITIES

- § 63600. Facilities to be Maintained.
- § 63601. Control of Facilities.
- § 63602. Use of Facilities for Civilian Activities.

§ 63600. Facilities to be Maintained.

The government of Guam shall maintain adequate armories, shops, ranges and sites suitable for training, assembly, maintenance, storage and other purposes as may be required for each unit of the Guam National Guard; such buildings and sites may be leased, constructed or financed out of territorial appropriation by cooperative arrangements between the government of Guam and the Federal government.

SOURCE: GC § 40500.

§ 63601. Control of Facilities.

Each facility shall be subject to the order of the Adjutant General and under direct charge of the commanding officer of the unit occupying the same; such facility may house all property, arms or equipment issued to the unit occupying the same.

SOURCE: GC § 40501.

§ 63602. Use of Facilities for Civilian Activities.

Subject to such regulations as are promulgated by the Adjutant General, the individual facilities may be used for reasonable and legitimate civilian activities so long as such activities do not interfere with their military purposes. Proceeds, if any, received from the civilian use of such facilities shall be deposited in the General Fund.

SOURCE: GC § 40502.

ARTICLE 7

GUAM NATIONAL GUARD CODE OF MILITARY JUSTICE

SOURCE: This Article was repealed and reenacted by P.L. 23-12:1 (4/38/95).

SUBARTICLE 1

GENERAL PROVISIONS

§ 63700. Name.

This Article shall be known and may be cited as the *Guam National Guard Code of Military Justice*.

§ 63701. Definitions.

As used in this Code:

(1) *Accuser* means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(2) *Active territorial duty* means full-time duty in the active military service of the territory, under an order of the Governor issued pursuant to authority vested in him by law, and while going to and from such duty.

(3) *Cadet* as used in this code shall include Senior Reserve Officer Training Corps students who also are participating in the simultaneous membership program (SMP) with the Guam National Guard and Guam Military Academy Officer Candidate Participants.

(4) *Code* means the Guam National Guard Code of Military Justice.

(5) *Commanding Officer* includes commissioned officer and command position in accordance with applicable regulations.

(6) *Concerning authority* includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

(7) *Duty status* means on duty pursuant to orders such as inactive duty training, annual training, active duty special work, full time national guard duty, special training, active guard reserve, or other authorized duty as set out in Title 32, United States Code and appropriate regulations of the Department of Defense, Army, Air Force, and National Guard Bureau as well as the laws and regulations of Guam. It does not include duty, the performance of which, subjects a person to the Uniform Code of Military Justice.

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(8) *Enlisted member* means a person enlisted in, or Enlisted member inducted, called, or conscripted into, the territorial military forces in an enlisted grade.

(9) *Federal Service* means on duty, governed by the Federal Service provisions of Title 10, United States Code, particularly the Uniform Code of Military Justice.

(10) *Grade* means a step or degree, in a graduated scale Grade of office or military rank, that is established and designated as a grade by law or regulation.

(11) *He, him or any other masculine pronoun*, where used, means, and shall be interpreted to include, the masculine and/or feminine gender, as the case may be.

(12) *Includes* means “includes but not limited to”.

(13) *Judge advocate* means any commissioned officer who is federally recognized as judge advocate by the National Guard Bureau and has been certified by the Territorial Judge Advocate General or in certain cases, as appropriate, a judge advocate of an United States Armed Forces, active or reserve, meeting the qualifications of Article 27, Uniform Code of Military Justice, and being so certified and designated as required by said Armed Force.

(14) *Legal officer* means any commissioned officer of the territorial military forces or non-military person who:

(a) volunteers to prosecute or defend an accused in a court-martial or administrative matter;

(b) graduated from a law school accredited by the American Bar Association (ABA);

(c) is a member of the bar of a Federal court or of the highest court of a State, Territory, Commonwealth of the United States or the District of Columbia; and

(d) has been certified as competent to perform such duties by the Territorial Judge Advocate.

(15) *May* is used in a permissive sense. The words “no person may...” means that no person is required, authorized, or permitted to do the act proscribed.

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(16) *Military* refers to any or all of the territorial military forces.

(17) *Military Court* means a court-martial, a court of inquiry, a military commission, or a provost court.

(18) *Military Judge* means an official of a court-martial detailed in accordance with this Code.

(19) *National Guard* means the Army National Guard and/or the Air National Guard.

(20) *Officer* means commissioned officer and warrant officer.

(21) *Pay* includes basic pay, special pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(22) *Rank* means the order of precedence among members of the territorial military forces.

(23) *Record*, when used in connection with the proceedings of a military court means:

(a) an official written transcript, written summary, or other writing relating to the proceedings; or

(b) an official audio tape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(24) *Scheduled unit training assembly* means that training assembly scheduled as a part of the comprehensive plan for a unit on a yearly basis.

(25) *Shall* is used in an imperative sense.

(26) *Spouse* means husband or wife, as the case may be.

(27) *Superior Commissioned Officer* means a commissioned officer superior in rank or command.

(28) *Territory* means the Territory of Guam.

(29) *Territorial Judge Advocate General* means the Judge Advocate General of the territorial military forces, commissioned therein, and responsible for supervising the administration of military justice in the territorial military forces, and performing such other legal duties as may be required by the Adjutant General.

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(30) *Territorial military forces* means the National Guard of this Territory, as defined in Section 101(3), (4) and (6) of Title 32, United States Code, and any other militia or military forces organized under the laws of the territory, when not in a status subjecting them to the jurisdiction of the Uniform Code of Military Justice under Chapter 37 of Title 10, United States Code.

SOURCE: Uniform Code of Military Justice, 10 USCS §§ 801 et seq. (hereafter - "UCMJ") ARTICLE 1. The references to the UCMJ were before the Legislature during its deliberations.

§ 63702. Persons Subject to This Code.

(a) This Code applies to each member of the territorial military forces on duty status who is not in federal service. It also applies during the period of time in which he was under lawful order to be in a duty status.

(b) It also applies to any person who has the capacity to understand the significance of enlisting or accepting a commission in the territorial military forces and so voluntarily enlists or accepts such commission.

(c) A person who is serving with the territorial military who accepts pay or allowances and performs in military duty forces who submitted voluntarily to the military authority, meets the mental competence and minimum age qualifications of Title 10 of the United States Code Annotated, receives military pay or allowances, and performs military duties is subject to this Code until such person's service has been terminated in accordance with law or appropriate regulations.

(d) A person not on a duty status who committed an offense may be ordered to duty status for military justice matters against this Code arising while on duty status and may be ordered to active duty involuntarily for the purpose of investigation under § 63719.2, trial by court-martial or nonjudicial punishment under § 63715.

SOURCE: UCMJ ARTICLE 2.

§ 63703. Personnel Jurisdiction.

(a) Each person discharged from the territorial military forces who is later charged with having fraudulently obtained his discharge is, subject to § 63720.9 of this Code, subject to trial by court-martial on that charge and is, after apprehension, subject to this Code while in custody of the military for that trial. Upon conviction of that charge he is subject to trial by court-

martial for all offenses under this Code committed before the fraudulent discharge.

(b) No person who has deserted from the territorial military forces may be relieved from amenability to the jurisdiction of this Code by virtue of a separation from any later period of service.

(c) A person subject to this Code is not, by virtue of the termination of a period of active duty or inactive duty training, relieved from amenability to jurisdiction of this Code for an offense against this Code committed during such period of active duty or inactive-duty training.

SOURCE: UCMJ ARTICLE 3.

§ 63704. Reserved.

§ 63705. Territorial Applicability of the Code.

(a) This Code applies in all places. It also applies to all persons otherwise subject to this Code while they are serving outside the Territory of Guam, and while they are going to and returning from such service outside the Territory of Guam, in the same manner and to the same extent as if they were serving inside the Territory of Guam.

(b) A court-martial, court of inquiry, a military commission, or a provost court may be convened and held in units of the territorial military forces while those units are serving outside the boundaries of Guam, with the same jurisdiction and power as to persons subject to this code as if the proceedings were held inside the boundaries of Guam, and offenses committed outside the territory may be tried and punished either inside or outside the Territory of Guam.

SOURCE: UCMJ ARTICLE 5.

§ 63706. Judge Advocates/Legal Officers.

(a) Appointment.

(1) The Adjutant General shall appoint an officer of the territorial military forces as Territorial Judge Advocate General. To be eligible for appointment, an officer must have graduated from an ABA accredited law school, be a member in good standing of a bar of a Federal Court or the highest court of a State, Territory, Commonwealth of the United States or the District of Columbia, be federally recognized by the National Guard Bureau as a judge advocate for at

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least five (5) years or have been appointed a judge advocate by an United States Armed Force pursuant to Article 27 of the Uniform Code of Military Justice for a minimum of five (5) years or a combination of National Guard Bureau or Armed Forces recognition for the minimum five (5) years and have completed The Judge Advocate General's School Advance Course of the Army or Air Force.

(2) The Adjutant General shall appoint judge advocates upon the recommendation of the Territorial Judge Advocate General. To be eligible for appointment, an officer must be a member of the bar of a Federal Court or of the highest court of a State, Territory, Commonwealth of the United States, or the District of Columbia. The Territorial Judge Advocate General shall not recommend an officer for final appointment approval to the Adjutant General until said officer has been federally recognized as a judge advocate by the National Guard Bureau.

(3) The Territorial Judge Advocate General shall appoint or designate a legal officer. For an individual to be eligible to be designated or appointed as legal officer he must be a member of the bar of a Federal Court or of the highest court of a State, Territory, Commonwealth of the United States or the District of Columbia.

(4) The Territorial Judge Advocate General or his assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(5) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officers of any command are entitled to communicate directly with the staff judge advocate or legal officers of a superior or subordinate command, or with the Territorial Judge Advocate General.

(6) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense in any case may later act as staff judge advocate or legal officer to any reviewing authority upon the same case.

(7) In the absence, or lack, of a qualifying Territorial Judge Advocate General, the most senior judge advocate within the territorial military forces may perform duties as such for a period not to exceed one hundred twenty (120) days unless continued as authorized herein, providing that he or she is so designated by the Adjutant General and the Acting Territorial Judge Advocate General so designated meets all the requirements set out in this Subarticle except that for the number of years as a judge advocate and completion of the Judge Advocate General's School Advance Course of an Armed Force of the United States. Nothing contained herein shall limit the Adjutant General's authority to redesignate a judge advocate as the Acting Territorial Judge Advocate provided no other judge advocate within the territorial military forces meet the qualifications for Territorial Judge Advocate as set out in this subarticle.

SOURCE: UCMJ ARTICLE 6.

SUBARTICLE 2 APPREHENSION AND RESTRAINT

§ 63707. Apprehension.

(a) Definition. Apprehension is the taking of a person into custody.

(b) Who may apprehend. Any person authorized by this Code, or by regulations issued under it, and/or any marshal of a court-martial appointed pursuant to the provisions of this Code, and any peace officer having authority to apprehend offenders under the laws of the United States, a State, Territory, Commonwealth of the United States, or the District of Columbia, may apprehend persons subject to this Code, upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Authority to quell quarrels, frays and disorders. Commissioned officers, warrant officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this Code and to apprehend persons subject to this Code who take part therein.

SOURCE: UCMJ ARTICLE 7.

§ 63708. Apprehension of deserters.

Any civil officer having authority to apprehend offenders under the laws of the United States or a State, Territory, Commonwealth of the United States or the District of Columbia may summarily apprehend a deserter from the territorial military forces and deliver him into the custody of territorial military forces.

SOURCE: UCMJ ARTICLE 8.

§ 63709. Imposition of Restraint.

(a) Definition of Arrest and Confinement.

(1) *Arrest* is the restraint of a person by an order, not imposed as punishment for an offense, directing him to remain within certain specified limits.

(2) *Confinement* is the physical restraint of a person.

(b) Restraint of enlisted member. An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this Code. A commanding officer may authorize a warrant officer or noncommissioned officer to order an enlisted man of his command or subject to his authority into arrest or confinement.

(c) Restraint of commissioned officer/warrant officer. A commissioned officer or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

(d) Apprehension or arrest requires probable cause. No person may be ordered apprehended or into arrest or confinement except for probable cause.

(e) No limits to authority of authorized persons. Nothing in this Article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

SOURCE: UCMJ ARTICLE 9.

§ 63710. Restraint of Persons Charged with Offenses.

Any person subject to this Code charged with an offense under this Code shall be ordered into arrest or confinement, as circumstances may

require; but when charged with an offense normally processed as nonjudicial punishment, such person shall not ordinarily be placed in confinement. When any person subject to this Code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him. Persons confined, other than in a guardhouse, whether before, during, or after trial by a military court, shall be confined in a civilian correctional facility, jail, lockup or any other facility used for the purpose of confinement of prisoners that is so designated by the Adjutant General.

SOURCE: UCMJ ARTICLE 10.

§ 63711. Reports and Receiving Prisoners.

(a) No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a territory jail, lockup or correctional facility designated under § 63710 of this Code, may refuse to receive or keep any prisoner committed to his charge, when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard, master at arms, warden, keeper, or officer of a territorial jail, lockup or correctional facility designated under § 63710 of this Code, to whose charge a prisoner is committed shall, within twenty-four (24) hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

SOURCE: UCMJ ARTICLE 11.

§ 63712. Reserved.

§ 63713. Punishment Prohibited Before Trial.

Subject to § 63720.19 of this Code, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to ensure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

SOURCE: UCMJ ARTICLE 13.

§ 63714. Delivery of Offenders to Civil Authorities.

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(a) Under such regulations as may be prescribed under this Code, a person subject to this Code who is on duty status who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender, after having answered to civil authorities for his offense, shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

SOURCE: UCMJ ARTICLE 14.

**SUBARTICLE 3
NON-JUDICIAL PUNISHMENT**

§ 63715. Commanding Officer's Non-Judicial Punishment.

(a) Limiting Regulations. Under disciplinary regulations as the Adjutant General may promulgate, limitations may be placed on the powers granted by this Article with respect to the kind and the amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, and the kinds of court-martial to which the case may be referred upon such a demand. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder.

(b) Right to refuse non-judicial punishment. Punishment may not be imposed on any member of the territorial military forces under this Article if the member has, before imposition of such punishment, demanded trial by court-martial in lieu of such punishment.

(c) Punishments authorized. Subject to subsections (a) and (b) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) If imposed by a general court-martial convening authority as defined in § 63717 of this code upon officers of his command:

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- (i) arrest in quarters for not more than fifteen (15) days;
- (ii) forfeiture of not more than fifteen (15) days' pay or a fine of Three Hundred Dollars (\$300);
- (iii) restriction to certain specified limits with or without suspension from duty, for not more than thirty (30) days;

(2) If imposed by a field grade officer or above, upon personnel other than personnel covered by § 63715(c)(1) above:

- (i) forfeiture of not more than ten (10) days' pay or a fine of not more than Two Hundred Dollars (\$200);
- (ii) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but no enlisted member in a pay grade above E-4 may be reduced more than two (2) pay grades;
- (iii) extra duties including fatigue or other duties, for not more than fifteen (15) days, which need not be consecutive, and for not more than two (2) hours per day, holidays included;

(iv) restriction to certain specified limits, with or without suspension for duty for not more than thirty (30) days;

(3) If imposed by a company grade officer upon personnel other than personnel covered by § 63715(c)(1) above:

- (i) forfeiture of not more than seven (7) days' pay or a fine of not more than One Hundred Dollars (\$100);
- (ii) reduction to next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;
- (iii) extra duties including fatigue or other duties, for not more than ten (10) days, which need not be consecutive, and for not more than two (2) hours per day, holidays included;
- (iv) restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) days;

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(4) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge, any of the punishments authorized under subsection (c)(3)(i)-(iv) of this § 63715 as the Adjutant General may authorize by regulations.

(5) The Governor may only impose punishment under this Subarticle upon officers of general rank and may impose any of the punishments authorized under (c)(1)(i)-(iii) of this § 63715.

(d) Summarized proceedings:

(1) A commander, after a preliminary inquiry into an alleged offense by an enlisted member, may use summarized proceedings if it is determined that should punishment be found to be appropriate, it should not exceed:

- (i) extra duties for fourteen (14) days;
- (ii) restriction for fourteen (14) days;
- (iii) oral reprimand or admonition; or
- (iv) any combination of (i), (ii) or (iii).

(2) The summarized proceedings hearing shall consist of:

- (i) consideration of evidence, written or oral, against the member;
- (ii) examination of available evidence by the member;
- (iii) presentation by the member of testimony of available witnesses or other matters, in defense, extenuation, and/or mitigation;
- (iv) determination of guilt or innocence by imposing commander;
- (v) imposition of punishment or termination of the proceedings; and
- (vi) explanation of right to appeal.

(e) When formal proceedings required. In all cases except summarized proceedings set out in subsection (d) above, commanders should use formal proceedings conducted in accordance with regulations and/or guidance as set out by the disciplinary regulations.

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(f) Suspension, mitigation or remission of punishment. The officer who imposes the punishment authorized in subsection (c), or his successor in command, may, at any time, suspend probationally any part of a reduction in grade or fine or forfeiture imposed under subsection (c), whether or not executed. In addition, he may, at any time, except as may be limited by regulations of the territorial military forces, remit or mitigate any part or amount of the unexecuted punishment imposed, and may set aside in whole or in part the punishment, whether executed or unexecuted; and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to a fine or forfeiture of pay. When mitigating arrest in quarters to restriction or extra duties to restriction the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating reduction in grade to a fine or forfeiture of pay, the amount of the fine or forfeiture shall not be greater than the amount that could have been imposed initially under this Subarticle by the officer who imposed the punishment mitigated.

(g) Combined punishment limitation. No two (2) or more of the punishments of arrest in quarters, extra duties, and restrictions may be combined to run consecutively in the maximum amount possible for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment.

(h) Right to appeal. A person punished under this Subarticle who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority, except that no appeal may be taken above the level of the Adjutant General or from punishment imposed by the Adjutant General pursuant to § 63715 (c)(1)(2) and the Governor imposed pursuant to § 63715(c)(5). The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged, except the superior authority should suspend punishments of arrest in quarters, extra duties and restrictions until after the appeal. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on any appeal the authority who is to act on the appeal shall refer the case to a judge advocate for advice on appropriateness of the punishment and whether the proceedings were conducted under the law and regulations. The judge advocate is not limited to an examination of written

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matters of record of proceedings and may make any inquiries that are necessary.

(i) Not bar to subsequent prosecution. The imposition and enforcement of disciplinary punishment under this Subarticle for any act or omission is not a bar to trial by court-martial or appropriate civilian court for a serious crime or offense growing out of the same act or omission, and not properly punishable under this Subarticle, but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(j) Record of proceedings. The Adjutant General may, by regulation, prescribe the form of records to be kept of proceedings under this Subarticle, and may also prescribe that certain categories of those proceedings shall be in writing.

(k) Punishment and limitations. Each form of punishment authorized under this Subarticle are described and limited as follows:

(1) Admonition and Reprimand. Admonition and reprimand are two forms of censure intended to express adverse reflection or criticism of a person's conduct. A reprimand is a more severe form of censure than an admonition.

Limitation: Although either reprimand or admonition may generally be imposed in the form of verbal or written censure, where imposed on a commissioned or warrant officer as nonjudicial punishment, it must be in written form.

(2) Arrest in quarters. Arrest in quarters is the limiting of a person's liberty by an order requiring that he remain in his quarters. The limit is created through moral (duty to obey order) rather than physical restraint. A person undergoing this punishment may be required to perform those duties prescribed by superior authority, but must remain within the limits of his quarters unless the limits of arrest are otherwise extended by appropriate authority.

Limitation: This punishment may be imposed only upon officers and will not be performed beyond a date one hundred eighty (180) days from the date the punishment is ordered executed.

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(3) Extra duties. Extra duties involve the performance of duties in addition to those normally assigned to the person being punished. The extra duty may be any type of military duty, including fatigue duties, and may extend for two (2) hours on each of the days the punishment is to be performed.

Limitation: No extra duty may be imposed which constitutes a known safety or health hazard to the member or which constitutes cruel or unusual punishment or which is not sanctioned by customs of the service concerned. Extra duties assigned as punishment of noncommissioned officers, or any other enlisted persons of equivalent grades or positions, should not be of a kind that demeans or degrades their positions. This punishment will not be performed beyond a date one hundred twenty (120) days from the date the punishment is ordered executed.

(4) Fine. A fine is a pecuniary sanction requiring the immediate payment of the dollar penalty assessed.

(5) Forfeiture of pay. Forfeiture means a permanent loss of entitlement to the pay forfeited.

Limitation: If the punishment includes both reduction, whether or not suspended, and forfeiture of pay, the forfeiture must be based on the grade to which reduced.

(6) Reduction in grade. Reduction in grade means the reduction of an enlisted member to a lower pay grade.

Limitation: The reduction may not be by more than two pay grades and may only be taken when the nonjudicial punishment authority, or any subordinate of his, has the authority to promote to the grade held by the member prior to his reduction.

(7) Restriction. Restriction is the least severe form of deprivation of liberty. Like arrest in quarters, restriction involves moral rather than physical restraint. It requires the subject of the punishment to restrict himself to a prescribed geographical area and may also limit his activities. A person undergoing restriction may be required to report to a designated place at specified times to ensure that the punishment is being properly executed. Unless otherwise specified by the authority imposing punishment, a person in restriction may be required to perform any military duty.

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Limitation: This punishment will not be performed beyond a date one hundred twenty (120) days from the date the punishment is ordered executed.

(l) Calculation and execution of punishment. Each form of punishment imposed under this Subarticle, which has a defined duration or dollar amount, will be calculated and executed as follows:

(1) Arrest in quarters, restriction or extra duties. Periods of arrest in quarters, restriction or extra duties will always be imposed in terms of days, never in months or fractions thereof. A period of such punishment need not be in consecutive days. Such punishment will be served, rather, on each following “duty” day performed by the member until the punishment has been completed. However, in the case of extra duty punishment, the punishment may be served on non-consecutive duty days at the discretion of the imposing authority. For purposes of this section a “duty” day is a calendar day on which the member is on a duty status (as defined by § 63701(7) of this Code) for eight(8) hours or more.

(2) Fine or forfeiture. Fines or forfeitures will be expressed in whole dollar amounts at the time of imposition. In determining maximum forfeiture, a day’s pay will be the amount of pay that would be received were the member on active duty for one day (i.e. each four hour drill training unit will count as a day for purposes of an IDT’s pay). The definition of “pay” will be that defined by § 63701(21) of this Code. A fine will be due for payment on the date of the punishment’s execution, although the imposing authority may permit (for cause shown) an extension. In the event of a forfeiture, the subject member’s pay will be forfeited from the date of execution until the total dollar amount imposed has been reached.

SOURCE: UCMJ ARTICLE 15.

**SUBARTICLE 4
COURTS-MARTIAL**

§ 63716. Court-Martial Classified.

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(a) The three kinds of courts-martial in each of the territorial military forces are:

(1) General Court-Martial, which shall consist of:

(i) a military judge and not less than five (5) members; or

(ii) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;

(2) Special Court-Martial, which shall consist of:

(i) not less than three (3) members; or

(ii) a military judge and not less than three (3) members; or

(iii) only a military judge, if one has been detailed to the court and the accused under the conditions that is prescribed in § 63716(a)(1)(ii) so requests; and

(3) Summary Court-Martial, which shall consist of one (1) officer, who shall be a military judge or an attorney who is a member of the bar of a federal court, or the highest court of a State, Territory, Commonwealth of the United States or the District of Columbia and certified to be competent to perform such duties by the Territorial Judge Advocate General, or if such military judge or attorney is not reasonably available, then a senior officer of the United States Armed Forces, either active, reserve or national guard, certified as competent to perform such duties by the Territorial Judge Advocate General.

SOURCE: UCMJ ARTICLE 16.

§ 63716.1. Jurisdiction of Courts-Martial in General.

Each Armed Force of the territory has court-martial jurisdiction over all persons subject to this Code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations of the territorial military forces. All persons subject or who become subject to the provisions of this Code may be tried for offenses committed within or without the boundaries of Guam.

SOURCE: UCMJ ARTICLE 17.

§ 63716.2. Jurisdiction of General Courts-Martial.

(a) Subject to § 63716.1 of this Code, general courts-martial have jurisdiction to try persons subject to this Code for any offense made punishable by this Code and may, under such limitations as the regulations of the territorial military forces may prescribe, adjudge any of the following punishments:

(1) A fine of not more than Two Hundred Dollars (\$200) or confinement of not more than two hundred (200) days. However, in no case, may the total of such fine and jail time exceed a combined total of two hundred (200) days;

(2) Forfeiture of pay and allowances;

(3) A reprimand;

(4) Dismissal, dishonorable discharge or bad conduct discharge;

(5) Reduction of rank and grade;

(6) Any combination of these punishments; or

(7) If the offense being tried is under § 63723.60 of this Code and the offense alleged is a violation of Title 9, Guam Code Annotated, then the range of punishment may be equal to, but shall not exceed, the punishment authorized under said Title 9 for such offense.

(b) A dismissal, dishonorable discharge or bad conduct discharge may not be adjudged unless a complete record (verbatim or, if authorized by regulations of the territorial military forces, videotape or similar records) of the proceedings and testimony has been made, counsel having the qualifications prescribed under § 63718.1(b) of this Code was detailed to represent the accused, and a military judge was detailed to the trial.

SOURCE: UCMJ ARTICLE 18.

§ 63716.3. Jurisdiction of Special Courts-Martial.

(a) Subject to § 63716.1 of this Code, special courts-martial have jurisdiction to try persons subject to this Code, except commissioned officers, for any offense for which they may be punished under this Code. A special court-martial has the same powers of punishment as a general court-martial, except that a fine or confinement imposed by a special court-martial may not be more than a One Hundred Dollars (\$100) fine or confinement of not more than one hundred (100) days for each single offense and in no case

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may the total of such fine and jail time exceed One Hundred Dollars (\$100) or one hundred (100) days or a combined total of Two Hundred Dollars (\$200) and two hundred (200) days and a dismissal or dishonorable discharge may not be adjudged but, in its stead, a bad-conduct discharge may be adjudged.

(b) A bad-conduct discharge may not be adjudged unless a complete record of the proceedings and testimony was made, counsel having the qualifications prescribed under § 63718.1(b) of this Code was detailed to represent the accused, and a military judge was detailed to the trial. In all special courts-martial cases, except for a special court-martial authorized to adjudge a bad-conduct discharge, in which a military judge was not detailed to be held but the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

SOURCE: UCMJ ARTICLE 19.

§ 63716.4. Jurisdiction of Summary Courts-Martial.

(a) Subject to § 63716.1 of this Code, summary courts-martial have the jurisdiction to try persons subject to this Code, except officers, for any offense made punishable by this Code.

(b) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial, as may be appropriate.

(c) A summary court-martial may sentence to a fine of not more than Twenty-Five Dollars (\$25) or confinement of not more than twenty-five (25) days for each single offense, grant forfeiture of pay and allowances, and order a reduction to the ranks, including a noncommissioned officer. However, in no case may the total fine of Fifty Dollars (\$50) and confinement of fifty (50) days or a combined total of One Hundred Dollars (\$100) and one hundred (100) days be exceeded.

SOURCE: UCMJ ARTICLE 20.

§ 63716.5. Jurisdiction of Courts-Martial.

The provisions of this Code conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military

tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.

SOURCE: UCMJ ARTICLE 21.

**SUBARTICLE 5
COMPOSITION OF COURTS-MARTIAL**

§ 63717. Who May Convene General Courts-Martial.

In the territorial military forces a general courts-martial may be convened by:

(1) the Governor of the Territory of Guam; or

(2) the Adjutant General or any other General Officer in the territorial military forces under disciplinary regulations of such military forces.

SOURCE: UCMJ ARTICLE 22.

§ 63717.1. Who May Convene Special Courts-Martial.

In the territorial military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a division, brigade, regiment, wing, group, detached battalion, detached squadron, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court may be convened by superior competent authority if considered advisable by him.

SOURCE: UCMJ ARTICLE 23.

§ 63717.2. Who May Convene Summary Courts-Martial.

In the territorial military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a division, brigade, regiment, wing, group, detached battalion, detached squadron, separate squadron, detached company, or other detachment, may convene a summary court-martial.

SOURCE: UCMJ ARTICLE 24.

§ 63717.3. Who May Serve on Courts-Martial.

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(a) Any territorial commissioned officer in duty status is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer in duty status is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c) (1) Any enlisted member of the territorial military forces in a territorial duty status who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of the territorial military forces who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under § 63720.3(a) of this Code prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this Subarticle, the word “unit” means any regularly organized body, but in no case may it be a body larger than a company, squadron or body corresponding to one of them.

(d) (1) When it can be avoided, no member of the territorial military forces may be tried by a court-martial which consists of any member junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the territorial military forces as, in his opinion are the best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the territorial military forces is eligible to serve as a member of a general or special court-martial when he is the

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accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(e) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Adjutant General may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

SOURCE: UCMJ ARTICLE 25.

§ 63718. Military Judge of General, Special or Summary Court-Martial.

(a) A military judge shall be detailed to each general court-martial. A military judge shall, if not prevented by physical conditions or military exigencies, be detailed to each special and summary court-martial. Regulations shall provide for the manner in which the military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over open sessions of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer or a civilian who is a member of the bar of a federal court or a member of the bar of the highest court of a State, Territory, Commonwealth of the United States or the District of Columbia and who is certified to be qualified for duty as a military judge by the Territorial Judge Advocate General. If an individual has been certified as a military judge by the Judge Advocate General of the Armed Force of which such military judge is a member or by a sister Commonwealths of the United States or the District of Columbia, he may be so certified by the Territorial Judge Advocate General. A qualified judge of the Superior Court of Guam shall be, without certification, qualified to preside over any military court of the military forces of the Territory of Guam. Civilians, serving as a military judge, shall have the same powers and authority as a military officer detailed as a military judge.

(c) The military judge of a general court-martial or a special court-martial authorized to adjudge a bad-conduct discharge should be, if practical, a qualified member as set out in § 63718(b) of another National Guard or active or reserve Armed Force of the United States or a qualified civilian.

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(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

SOURCE: UCMJ ARTICLE 26.

§ 63718.1. Detail of Trial Counsel and Defense Counsel.

(a) For each general, special, and summary court-martial the authority convening the court shall detail trial counsel and defense counsel and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or unless expressly requested by accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel and defense counsel detailed for a general court-martial:

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a federal court or of the highest court of a State, Territory, Commonwealth of the United States or the District of Columbia; and

(2) must be certified as competent to perform such duties by the Territorial Judge Advocate General; or

(3) If counsel having such qualifications as set out in § 63718.1(b)(1) and (2) cannot be obtained on account of physical conditions or military exigencies, then the Territorial Judge Advocate General may temporarily certify a judge advocate officer certified by a sister National Guard of the various States, Territories, Commonwealths of the United States, or the District of Columbia (Air or Army), or any active or reserve judge advocate officer of the United States Armed Forces certified under Article 27 of the Uniform Code of Military Justice of the United States or a non-judge advocate officer or civilian who is a graduate of an accredited law school, member of the bar of a federal court, or of the highest court of a State, Territory,

Commonwealth, or the District of Columbia, as competent to perform such duties.

(c) In the case of a special or summary court-martial:

(1) The accused shall be afforded the opportunity to be represented at the trial by counsel having qualifications prescribed in § 63718.1(b) of this Code unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(2) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) If the trial counsel is a judge advocate, or a member of the bar of a federal court or the highest court of a State, Territory, Commonwealth of the United States or the District of Columbia, the defense counsel detailed by the convening authority must be one of the foregoing.

SOURCE: UCMJ ARTICLE 27.

§ 63718.2. Detail or Employment of Reporters.

Under such regulations as the Adjutant General may prescribe, the convening authority of a general or special court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority may detail or employ interpreters who shall interpret for the court or commission.

SOURCE: UCMJ ARTICLE 28.

§ 63718.3. Absent and Additional Members.

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

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(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five (5) members the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five (5) members. The trial may proceed with the new members present after the recorded evidence previously introduced has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three (3) members the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three (3) members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or stipulation thereof is read in court in the presence of the military judge, if any, the accused, and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of § 63716(a)(1)(ii) or § 63716(a)(2)(iii) of this Code, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

SOURCE: UCMJ ARTICLE 29.

**SUBARTICLE 6
PRE-TRIAL PROCEDURE**

§ 63719. Charges and Specifications.

(a) Charges and specifications shall be signed by a person subject to this Code under oath before a commissioned officer of the territorial military forces authorized to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) That they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

SOURCE: UCMJ ARTICLE 30.

§ 63719.1. Compulsory Self-Incrimination Prohibited.

(a) No person subject to this Code may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this Code may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this Code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of the Article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

SOURCE: UCMJ ARTICLE 31.

§ 63719.2. Investigation.

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request, he shall be represented by civilian counsel if provided by him, or

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military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b) of this section, no further investigation of that charge is necessary under this Subarticle unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this section are binding on all persons administering this Code but failure to follow them does not constitute jurisdictional error.

SOURCE: UCMJ ARTICLE 32.

§ 63719.3. Forwarding of Charges.

When a person is held for trial by general court-martial the commanding officer shall, within eight (8) days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to the officer the reasons for the delay.

SOURCE: UCMJ ARTICLE 33.

§ 63719.4. Advice of Staff Judge Advocate.

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority may not refer a charge to

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a general court-martial for trial unless he has been advised in writing by the staff judge advocate that:

(1) the specification alleges an offense under the Code;

(2) the specification is warranted by the evidence indicated in the report of investigation under § 63719.2 of this Code, if there is such a report; and

(3) a court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the staff judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate:

(1) expressing his conclusions with respect to each matter set forth in subsection (a); and

(2) recommending action that the convening authority take regarding the specification. If the specification is referred for trial, the recommendation of the Staff Judge Advocate shall accompany the specification.

(c) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

SOURCE: UCMJ ARTICLE 34.

§ 63719.5. Service of Charges.

The trial counsel to whom general or special court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. The summary court-martial convening authority shall, in the referral of a summary court-martial, cause to be served upon the accused a copy of the charges upon which the trial is to be had. Actual service of charges upon the accused in any court-martial authorized by this Code may be effectuated by any person authorized by the Territorial Judge Advocate General. In time of peace no person may, against his objections, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under § 63720.3(a) of this Code in a general court-martial case within a period of

five (5) days after service of charges upon him, or in a special court-martial case within a period of three (3) days after the service of charges upon him, or in a summary court-martial case within a period of twenty-four hours after the service of charges upon him.

SOURCE: UCMJ ARTICLE 35.

SUBARTICLE 7 TRIAL PROCEDURE

§ 63720. Disciplinary Regulations.

(a) Pretrial, trial, and post trial procedures, including burdens of proof, for cases arising under this Code triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, may be prescribed by disciplinary regulations which shall, so far as practical, apply the principles of law generally recognized in the trial of courts-martial in the United States Armed Forces. However, such principles shall not be contrary to or inconsistent with this Code. The rules of evidence applicable under this Code shall be the rules of evidence as promulgated by the President in the United States Manual for Courts-Martial (Part III). If a member of the territorial military forces is tried in a territorial court for a violation of Title 9, Guam Code Annotated, under § 63723.60 of this Code, then, in that event, the principals of law and the rules of evidence applicable shall be that recognized in the trial of criminal cases in the courts of the territory.

(b) The Adjutant General shall issue and promulgate regulations, including those regulations referred to herein as disciplinary regulations, in furtherance of the provisions of this Code. The regulations shall take effect by Executive Order of the Governor.

(c) The provisions of the Administrative Adjudication Law shall not apply to the issuance and promulgation of regulations pursuant to this Code.

SOURCE: UCMJ ARTICLE 36.

§ 63720.1. Unlawfully Influencing Action of Court.

(a) No authority convening a general, special or summary court-martial, nor any other commanding officer, or officer serving on the staff

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thereof, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this Code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of this subsection shall not apply with respect to general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of 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 territorial military forces is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the territorial military forces or in determining whether a member should be retained in the territorial military forces, no person subject to this Code may, in preparing any such report

(1) consider or evaluate the performance of duty of any such member of a court-martial, or

(2) give a less favorable rating or evaluation of any member of the territorial military forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

SOURCE: UCMJ ARTICLE 37.

§ 63720.2. Duties of Trial Counsel and Defense Counsel.

(a) The trial counsel of a general, special, or summary court-martial shall prosecute in the name of the Territory of Guam, and shall, under the direction of the court, prepare the record of the proceedings.

(b) (1) The accused has the right to be represented in his defense before a general, special, or summary court-martial or at an investigation under § 63719.2 as provided in this subsection.

(2) The accused may be represented by civilian counsel if provided by him.

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(3) The accused may be represented:

(i) by military counsel detailed under § 63718; or

(ii) by civilian attorney provided under § 63718; or

(iii) by military counsel of his own selection if that counsel is reasonably available as determined by the Territorial Judge Advocate General.

(4) If the accused is represented by civilian counsel, other than provided by § 63718 and § 63720.2(b)(3)(ii) military counsel detailed or selected under item (3) shall act as associate counsel unless excused at the request of the accused. If military counsel cannot be detailed and a civilian counsel is provided under § 63718, such counsel shall be excused if accused retains his own civilian counsel.

(5) Except as otherwise provided under § 63720.2(b)(3) if the accused is represented by military counsel of his own selection under subitem (iii) of § 63720.2(b)(3), any military counsel detailed under subitem (i) of this § 63720.2(b)(3) shall be excused.

(6) The accused is not entitled to be represented by more than one counsel provided by the territory. However, the person authorized under regulations prescribed under § 63718 of this Code to detail counsel in his sole discretion:

(i) may detail additional military counsel as assistant defense counsel; and

(ii) if the accused is represented by military counsel of his own selection under subitem (iii) of § 63720.2(b)(3) may approve a request from the accused that military counsel detailed under subitem (i) of § 63720.2(b)(3) act as associate defense counsel.

(7) The Territorial Judge Advocate General shall define “reasonably available” for the purpose of subitem (iii) of § 63720.2(b)(3) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel:

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(1) may forward for attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate; and

(2) may assist the accused in the submission of any matter under § 63722.1.

(d) An assistant trial counsel of a general, special or summary court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by § 63718 of this Code, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court.

(e) An assistant defense counsel of a general, special or summary court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by § 63718 of this Code, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

SOURCE: UCMJ ARTICLE 38.

§ 63720.3. Sessions.

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to § 63719.5, call the court into session without the presence of the members for the purpose of:

(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this Code, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) if permitted by disciplinary regulations, holding the arraignment and receiving the pleas of the accused; and

(4) performing any other procedural function which may be performed by the military judge under this Code or under rules prescribed pursuant to § 63720 of this Code and which does not require the presence of the members of the court. These proceedings

shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge.

SOURCE: UCMJ ARTICLE 39.

§ 63720.6. Continuances.

The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

SOURCE: UCMJ ARTICLE 40.

§ 63720.7. Challenges.

(a) The military judge and members of a general and special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court, shall determine the relevance and validity of challenges for cause, and may not receive challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

SOURCE: UCMJ ARTICLE 41.

§ 63720.8. Oaths.

(a) Before performing their respective duties, military judges, members of general and special court-martial, trial counsel, assistant trial counsel, defense counsel and assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed by the Territorial Judge Advocate General. The Territorial Judge Advocate General may provide that an oath to perform faithfully duties as a military

judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by a judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate, or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined under oath.

SOURCE: UCMJ ARTICLE 42.

§ 63720.9. Statute of Limitations.

(a) A person charged with desertion or absence without leave in time of insurrection, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(b) Except as otherwise provided by this Subarticle, a person charged with desertion in time of peace or with the offenses punishable under §§63723.40, 63723.41, and 63723.42 of this Code is not liable to be tried by court-martial if the offense was committed more than three (3) years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this Subarticle, a person charged with any offense is not liable to be tried by court-martial or punished under § 63715 of this Code if the offense was committed more than two (2) years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command, or before the imposition of punishment under § 63715 of this Code.

(d) Periods in which the accused is absent from the territory in which Guam has authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed by this Subarticle.

SOURCE: UCMJ ARTICLE 43.

§ 63720.10. Former Jeopardy.

(a) No person tried by a court provided for by this code shall for the same offense be tried by another court of this territory.

(b) No proceedings in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this

Article until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.

SOURCE: UCMJ ARTICLE 44.

§ 63720.11. Pleas of the Accused.

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, or by a court-martial without a military judge, a finding of guilty of the charge and specification may, if permitted by regulations of the Adjutant General, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to the announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

SOURCE: UCMJ ARTICLE 45.

§ 63720.12. Opportunity to Obtain Witnesses.

(a) The trial counsel, the defense counsel, the accused, and the court-martial shall have equal opportunity to obtain witnesses and other evidence. Each shall have the right of compulsory process for obtaining witnesses.

(b) The presiding officer of a court-martial may:

(1) Issue a warrant for the arrest of any accused person who having been served with a warrant and a copy of the charges, disobeys an order of the convening authority to appear before the court;

(2) Issue subpoenas duces tecum and other subpoenas;

(3) Enforce by attachment the attendance of witnesses and the production of books and papers; and

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(4) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of Guam.

(c) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of Guam and shall be executed by civil officials or peace officers as prescribed by the laws of Guam.

SOURCE: UCMJ ARTICLE 46.

§ 63720.13. Refusal to Appear or Testify.

(a) Any person not subject to this Code who:

(1) has been duly subpoenaed to appear as a witness or to produce books, records or other evidence before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board; and

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses under § 63724.11 of this Code; and provided; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce, is guilty of an offense against the Territory of Guam and may be punished by fine not to exceed Five Hundred Dollars (\$500) or confinement not to exceed sixty (60) days in jail, or by both fine and confinement, and such witness shall be prosecuted in the Superior Court of Guam.

(b) Any prosecution under this section shall be by the Attorney General of Guam after submission of a complaint to him by the presiding officer of a military court, commission, court of inquiry or board.

SOURCE: UCMJ ARTICLE 47.

§ 63720.14. Contempt.

A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disrupts its proceedings by any riot or disorder. The punishment may not exceed confinement of thirty (30) days or a fine of One Hundred Dollars (\$100), or both.

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SOURCE: UCMJ ARTICLE 48.

§ 63720.15. Deposition.

(a) Oral or written deposition, may be taken by any party, at any time, after charges have been signed in accordance with § 63719 of this Code, unless prohibited by a military judge or a court-martial without a military judge hearing the case, or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges, if such prohibition is based on good cause.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of Guam or by the laws of the place where the deposition is taken to administer oaths.

(d) Any duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audio tape, videotape, or similar material, may be played in evidence before any military court or commission in any case, or in any proceeding before a court of inquiry or military board, if it appears:

(1) that the witness is beyond the boundaries of Guam or the State, Territory, Commonwealth of the United States, or District of Columbia in which the court, commission, or board is ordered to sit, or beyond one hundred (100) miles from the place of trial or hearing; or

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, non-amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

SOURCE: UCMJ ARTICLE 49.

§ 63720.16. Admissibility of Records of Courts of Inquiry.

(a) The sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be

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read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may also be read in evidence before a court of inquiry or a military board.

(c) In all courts of inquiry both enlisted men and officers shall have the right to counsel and the right to cross examination of all witnesses. Testimony obtained in violation of this subsection cannot be read in evidence before a court of inquiry or court-martial except by the accused or with the consent of accused.

SOURCE: UCMJ ARTICLE 50.

§ 63720.17. Voting and Rulings.

(a) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in § 63720.18, beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

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(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the Territory of Guam.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

SOURCE: UCMJ ARTICLE 51.

§ 63720.18. Number of Votes Required.

(a) No person shall be convicted, if charged under § 63723.60 of this Code of an offense which is a violation of the Guam penal laws and the punishment assessable is that which Guam Penal statutes authorizes, unless the court-martial is before an appropriate court of the territory following the rules and procedures concerning criminal trials of the Territory of Guam after arraignment.

(b) No person shall be convicted of an offense in any other case, except by concurrence of two-thirds (2/3) of the members present at the time the vote is taken.

(c) Except for sentences for convictions under subsection (a) which shall be determined by Guam penal statutes and criminal procedures, all sentences shall be determined by concurrence of two-thirds (2/3) of the members present at the time the vote is taken.

(d) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies a member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination in favor of the accused.

SOURCE: UCMJ ARTICLE 52.

§ 63720.19. Court to Announce Action.

A court-martial shall announce its findings and sentence to the parties as soon as determined.

SOURCE: UCMJ ARTICLE 53.

§ 63720.20. Record of Trial.

(a) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or if the trial counsel is unable to authenticate it by reason of his death, disability, or absence it shall be authenticated by a member. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection. Records of trials in the territorial courts as provided by this Code shall be authenticated as any other record before the territorial court.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or if the trial counsel is unable to authenticate it by reason of death, disability, or absence, it shall be authenticated by a member. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such duty on a member under this section.

(c) (1) A complete record (verbatim or, if allowed by the regulations of the territorial military forces, videotape or similar record) of the proceedings and testimony shall be prepared:

(i) in each general court-martial case in which the sentence adjudged includes a dismissal or discharge, or, if the sentence adjudged does not include a discharge, any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(ii) in each special court-martial case in which the sentence adjudged includes a bad-conduct discharge.

(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by disciplinary regulations.

(d) A copy of the record of the proceedings of each general, special, and summary court-martial shall be given to the accused as soon as it is authenticated.

SOURCE: UCMJ ARTICLE 54.

SUBARTICLE 8 SENTENCES

§ 63721. Cruel and Unusual Punishments Prohibited.

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a court-martial or inflicted upon any person subject to this Code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

SOURCE: UCMJ ARTICLE 55.

§ 63721.1. Maximum Sentence Limits.

The punishment which a court-martial may direct for an offense may not exceed such limits prescribed by Guam law and/or this Code nor limits prescribed by disciplinary regulations.

SOURCE: UCMJ ARTICLE 56.

§ 63721.2. Effective Day of Sentences.

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(a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay and allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(d) In territorial military forces not in federal service, no sentence of dismissal, dishonorable discharge, or bad-conduct discharge may be executed until it is approved by the Governor.

(e) All other sentences of court-martial are effective on the date ordered executed.

SOURCE: UCMJ ARTICLE 57.

§ 63721.3. Execution of Confinement.

(a) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of the territorial military forces or in penal or correctional institution under the control of the Territory of Guam, or which the Territory of Guam or any political subdivision thereof may control or be allowed to use. Persons so confined in penal or correctional institution not under the control of territorial military

forces are subject to the same discipline and treatment as persons confined or committed by the courts of Guam or in the place in which the institution is situated.

(b) The omission of the words “hard labor” from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(c) The keepers, officers, wardens and directors of correctional facilities, jails, penitentiaries, prisons or any institution utilized for the purpose of holding or housing prisoners for the Territory of Guam, or by such person as he may authorize to act under § 63710 of this Code, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to the law. No such keeper, officer, warden or director may require payment of any fee or charge for so receiving or confining a person.

SOURCE: UCMJ ARTICLE 58.

§ 63721.4. Sentences: Reduction in Enlisted Grade upon Approval.

(a) Unless otherwise provided in regulations to be prescribed by the Adjutant General, a court-martial sentence of a member, as approved by the convening authority, that includes a dishonorable or bad-conduct discharge reduces that member to pay grade E-1, effective on the date of that approval.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or disapproved, or, as finally approved, does not include punishment of reduction in rank, the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled for the period the reduction was in effect, had he not been so reduced.

SOURCE: UCMJ ARTICLE 58A.

SUBARTICLE 9 POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

§ 63722. Error of Law; Lesser Included Offense.

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(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

SOURCE: UCMJ ARTICLE 59.

§ 63722.1. Action by the Convening Authority.

(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Such submissions shall be made within thirty (30) days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of the staff judge advocate or legal officer under subsection (d) of this section. If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this article, for good cause, may extend the period:

(1) in the case of a general court-martial or special court-martial which has adjudged a bad-conduct discharge, for not more than an additional thirty (30) days;

(2) in the case of all other courts-martial, for not more than an additional twenty (20) days;

(3) (i) The time periods used in this subsection shall not apply to accused and his counsel, if said counsel is detailed military counsel, counsel and accused are or were on active duty during the trial and continuously thereafter in which case the time limitations of Article 60, Uniform Code of Military Justice, Chapter 47, Title 10 United States Code are applicable were the accused and his military counsel are or were on duty for the necessary period of time considering time requirements of said article.

(ii) If accused has retained civilian counsel the time limitations in which to make a submission under subsection (b)

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shall be governed by Article 60, Uniform Code of Military Justice, Chapter 47, Title 10 United States Code.

(iii) The accused may waive his right to make a submission to the convening authority. Such waiver must be in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c) (1) The authority under this article to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. Under disciplinary regulations, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this article in place of the convening authority.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this Subarticle. Subject to the disciplinary regulations, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) and, if applicable, under subsection (d), or after the time for submitting such matters expires, whichever is earlier. The convening authority or any other person taking such action, in his sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, such person, in his sole discretion, may:

(i) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(ii) change a finding of guilty to a charge or specification to a finding of guilty of an offense that is a lesser offense of the offense stated in the charge or specification.

(d) Before acting under this Subarticle on any general court-martial or special court-martial case that includes a bad-conduct discharge, the convening authority or other person taking action under this article shall obtain and consider the written recommendation of the staff judge advocate

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or legal officer. The convening authority or other person taking action under this article shall refer the record of trial to his staff judge advocate or legal officer, and the staff judge advocate or legal officer shall use such record in the preparation of his recommendation. The recommendation of the staff judge advocate or legal officer shall include such matters as may be prescribed by regulation and shall be served on the accused, who shall have a reasonable time from the date of receipt in which to submit any matter in response. In no case shall such period of time be less than periods set out in § 63722.1(c). Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(e) (1) The convening authority or other person taking action under this article, in his sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision:

(i) reconsider a finding of not guilty of any specification or ruling which amounts to a finding of not guilty;

(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some Sub article of this Code; or

(iii) increase the severity of some part of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this section if he disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the

sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

SOURCE: UCMJ ARTICLE 60.

§ 63722.2. Reserved.

§ 63722.3. Reserved.

§ 63722.4. Rehearings.

Each rehearing under the Code shall take place before a court-martial composed of members of the first court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

SOURCE: UCMJ ARTICLE 63.

§ 63722.5. Review by a Judge Advocate.

(a) Each case in which there has been a finding of guilty shall be reviewed by a judge advocate or legal officer. A judge advocate or legal officer may not review a case under this subsection if he has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate's or legal officer's review shall be in writing and shall contain the following:

(1) Conclusions as to whether:

- (i) the court had jurisdiction over the accused and the offense;
- (ii) the charge and specification stated an offense; and

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(iii) the sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened, or to that of the person's successor in command, if:

(1) the judge advocate or legal officer who reviewed the case recommends corrective action;

(2) the sentence approved under § 63722.1 of this Code extends to dismissal, a bad-conduct discharge or dishonorable discharge, or confinement of more than six (6) months; or

(3) such action is otherwise required by regulations.

(c) (1) The person to whom the record of trial and related documents are sent under subsection (b) may:

(i) disapprove or approve the findings or sentence, in whole or in part;

(ii) remit, commute, or suspend the sentence in whole or in part;

(iii) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

(iv) dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

(3) If the opinion of the judge advocate or the legal officer in the judge advocate's or legal officer's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is

at least as favorable to the accused as that recommended by the judge advocate or legal officer, the record of trial and action thereon shall be sent to the Territorial Judge Advocate General for review and/or action under § 63722.11 of this Code.

(d) If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the judge advocate or legal officer is limited to questions of jurisdiction.

SOURCE: UCMJ ARTICLE 64.

§ 63722.6. Disposition of Records.

(a) In a case subject to review by § 63722.11 of this Code in which the right to such review is not waived, the record of trial and action thereon shall be transmitted to the Territorial Judge Advocate General for appropriate action.

(b) Except as otherwise required by the Code, all other records of trial and related documents shall be transmitted to the Territorial Judge Advocate General and disposed of as he sees fit or as the Adjutant General may prescribe by regulation.

SOURCE: UCMJ ARTICLE 65.

§ 63722.7. Reserved.

§ 63722.8. Reserved.

§ 63722.9. Judicial Review by Territorial Appellate Court.

(a) An accused, who was tried by a court-martial and who still deems himself aggrieved after he has exhausted all of his rights of military review under this Code, may, if provided for by disciplinary regulations, appeal the judgment or sentence of the court-martial, as may have been modified on review under this Code prior to judicial review under this article to appellate courts as may be available to cases appealed from the Superior Court of Guam.

(b) The filing of an appeal pursuant to subsection (a) shall not of itself stay the execution of the judgment or sentence appealed from, but the appellate court may stay the same upon motion upon such conditions as it may deem proper, notwithstanding any conflicting or contrary provision of this Code or disciplinary regulations relating to the effective date or execution of sentences or any other contrary provision of law.

(c) Counsel on appeal shall be at the expense of the accused unless the accused, upon written request to the Territorial Judge Advocate General, requests representation on appeal and furnishes documentation of his or her financial inability to retain counsel, and the Territorial Judge Advocate certifies the accused's financial inability to the Adjutant General, then in that case the Adjutant General may authorize the Territorial Judge Advocate General to provide representation for the accused on said appeal and said counsel must be certified competent as provided by this Code. The Territory of Guam shall be responsible for any compensation owed counsel appointed by this article and said counsel shall be paid as any other attorney in criminal court appointment matters.

§ 63722.10. Reserved.

§ 63722.11. Review in the Office of the Territorial Judge Advocate General.

(a) The record of trial in each general court-martial that was not reviewed by the Territorial Judge Advocate General in the § 63722.5 judge advocate or legal officer review of this Code shall be examined by the Territorial Judge Advocate General if there is a finding of guilty and the accused does not waive or withdraw his right to review. If any part of the findings or sentence is found to be unsupported in law or, if reassessment of the sentence is appropriate, the Territorial Judge Advocate General may modify or set aside the findings or sentence or both.

(b) The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) may be modified or set aside, in whole or in part, by the Territorial Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such case is considered upon application of the accused, the application must be filed in the office of the Territorial Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under § 63722.1 of this Code, unless the accused established good cause for failure to file within that time.

(c) If the Territorial Judge Advocate General sets aside the findings or sentence, he may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he

shall order that the charges be dismissed. If the Territorial Judge Advocate General orders a rehearing but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.

SOURCE: UCMJ ARTICLE 69.

§ 63722.12. Reserved.

§ 63722.13. Execution of Sentence of Dismissal, Bad-Conduct Discharge or Dishonorable Discharge; Suspension of Sentence.

(a) When a sentence extends to dismissal or a dishonorable or bad-conduct discharge, that part of the sentence providing for dismissal, or dishonorable or bad-conduct discharge may not be executed until approved by the Governor. The Governor may commute, remit, or suspend the sentence, or any part of the sentence, as he sees fit.

(b) All other court-martial sentences, unless suspended or deferred, may be ordered executed by the convening authority when approved by him. The military judge, summary court officer, or the convening authority may suspend the execution of any sentence.

SOURCE: UCMJ ARTICLE 71.

§ 63722.14. Vacation of Suspension.

(a) Before the vacation of the suspension of any court-martial sentence which includes dismissal, dishonorable or bad-conduct discharge, the officer having general court-martial jurisdiction over officer or enlisted probationer or special court-martial jurisdiction over enlisted probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented by counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, any unexecuted part of the sentence, except a dismissal, dishonorable or bad-conduct discharge, shall be executed. The vacation of the suspension of a dismissal, dishonorable or bad-conduct discharge is not effective until approved by the Governor.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

SOURCE: UCMJ ARTICLE 72.

§ 63722.15. Petition for New Trial.

At any time within two (2) years after approval by the convening authority and/or the Governor of a court-martial sentence, the accused may petition the Territorial Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court.

SOURCE: UCMJ ARTICLE 73.

§ 63722.16. Remission and Suspension.

(a) The Governor may and, when designated by him, the Adjutant General, Territorial Judge Advocate General or commanding officer may remit or suspend any part or amount of the unexecuted sentence, including all uncollected forfeitures.

(b) The Governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal.

SOURCE: UCMJ ARTICLE 74.

§ 63722.17. Restoration.

(a) Under such disciplinary regulations as may be prescribed, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or hearing.

(b) If a previously executed sentence of dishonorable discharge or bad-conduct discharge is not imposed on a new trial, the Governor may substitute therefore a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Governor may substitute therefore a form of discharge authorized for administrative issue. The commissioned officer dismissed by that sentence may be, to correct an injustice, reappointed by the Governor alone, to such commissioned grade and with such rank as in the opinion of the Governor that former officer would have attained had he not been dismissed. The reappointment of such former officer may not be made if a position vacancy is not available under applicable tables of organization. Reappointment may not be made if the commissioned officer dismissed was convicted of criminal acts which would be grounds for elimination under

administrative personnel regulations. If the dismissed commissioned officer is reappointed all the time between the dismissal and reappointment shall be considered as service for all purposes.

SOURCE: UCMJ ARTICLE 75.

§ 63722.18. Reserved.

§ 63722.19. Reserved.

**SUBARTICLE 10
PUNITIVE ARTICLES**

§ 63723. Principals.

A principal is any person punishable under this Code who:

(1) commits an offense punishable by this Code, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this Code.

SOURCE: UCMJ ARTICLE 77.

§ 63723.1. Accessory after the Fact.

Any person subject to this Code who, knowing that an offense punishable by this Code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 78.

§ 63723.2. Conviction of Lesser Included in the Offense.

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

SOURCE: UCMJ ARTICLE 79.

§ 63723.3. Attempts.

(a) An act, done with specific intent to commit an offense under this Code, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this Code who attempts to commit any offense punishable by this Code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this Code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

SOURCE: UCMJ ARTICLE 80.

§ 63723.4. Conspiracy.

Any person subject to this Code who conspires with any other person to commit an offense under this Code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 81.

§ 63723.5. Solicitation.

(a) Any person subject to this Code who solicits or advises another or others to desert in violation of § 63723.8 of this Code or mutiny in violation of § 63723.17 of this Code shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this Code who solicits or advises another or others to commit an act of misbehavior before the enemy or opposing forces or individuals in violation of § 63723.22 of this Code or sedition in violation of § 63723.17 of this Code shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 82.

§ 63723.6. Fraudulent Enlistment, Appointment, or Separation.

Any person who engages in the following shall be punished as a court-martial may direct:

(1) procures his own enlistment or appointment in the territorial military forces by knowingly false representation or deliberate concealment as to his qualifications for the enlistment or appointment and receives pay or allowances thereunder, or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation.

SOURCE: UCMJ ARTICLE 83.

§ 63723.7. Unlawful Enlistment, Appointment, or Separation.

Any person subject to this Code who effects an enlistment or appointment in or separation from the territorial military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 84.

§ 63723.8. Desertion.

(a) Any member of the territorial military forces is guilty of desertion who:

(1) without authority goes or remains absent from his unit;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the territorial military forces enlists or accepts an appointment in the same or another of the territorial military forces or one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States and the Territory of Guam.

(b) Any commissioned officer of the territorial military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 85.

§ 63723.9. Absence Without Leave.

Any member of the territorial military forces shall be punished as a court-martial may direct who, without authority:

(a) fails to go to his appointed place of duty at the time prescribed;

(b) goes from that place; or

(c) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed.

SOURCE: UCMJ ARTICLE 86.

§ 63723.10. Missing Movement.

Any person subject to this Code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 87.

§ 63723.11. Contempt Toward Officials.

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of Army, the Secretary of Air Force, the Governor or Legislature of Guam or any State, Territory, Commonwealth of the United States in which he is on duty or present shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 88.

§ 63723.12. Disrespect Toward Superior Commissioned Officer.

Any person subject to this Code who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 89.

§ 63723.13. Assaulting or Willfully Disobeying Superior Commissioned Officer.

Any person subject to this Code shall be punished as a court-martial may direct if that person:

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(a) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(b) willfully disobeys a lawful command of his superior commissioned officer.

SOURCE: UCMJ ARTICLE 90.

§ 63723.14. Insubordinate Conduct Toward Warrant Officer or Noncommissioned Officer.

Any warrant officer or enlisted member shall be punished as a court-martial may direct if that person:

(a) strikes or assaults a warrant or noncommissioned officer while that officer is in the execution of his office;

(b) willfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(c) treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his office.

SOURCE: UCMJ ARTICLE 91.

§ 63723.15. Failure to Obey Order or Regulation.

Any person subject to this Code shall be punished as a court-martial may direct if that person:

(a) violates or fails to obey any lawful general order or regulation;

(b) having knowledge of any other lawful order issued by a member of the territorial military forces, which it is his duty to obey, fails to obey the order; or

(c) is derelict in the performance of his duties.

SOURCE: UCMJ ARTICLE 92.

§ 63723.16. Cruelty and Maltreatment.

Any person subject to this Code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 93.

§ 63723.17. Mutiny or Sedition.

(a) Any person subject to this Code is guilty of a failure to suppress or report a mutiny or sedition if that person:

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition; or

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 94.

§ 63723.18. Resistance, Breach of Arrest, and Escape.

Any person subject to this Code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 95.

§ 63723.19. Releasing Prisoner Without Proper Authority.

Any person subject to this Code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with the law.

SOURCE: UCMJ ARTICLE 96.

§ 63723.20. Unlawful Detention.

Any person subject to this Code who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 97.

§ 63723.21. Noncompliance with Procedural Rules.

Any person subject to this Code shall be punished as a court-martial may direct if that person:

(a) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this Code; or

(b) knowingly and intentionally fails to enforce or comply with any provision of this Code regulating the proceedings before, during, or after trial of an accused.

SOURCE: UCMJ ARTICLE 98.

§ 63723.22. Misbehavior Before the Enemy.

Any person subject to this Code shall be punished as a court-martial may direct if that person before or in the presence of the enemy, opposing forces or individuals:

(a) runs away;

(b) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(c) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(d) casts away his arms or ammunition;

(e) is guilty of cowardly conduct;

(f) quits his place of duty to plunder or pillage;

(g) causes false alarms in any command, unit, or place under control of the territorial military forces;

(h) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, insurgents, combatants, vessels, aircraft,

or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(i) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the territorial military forces and/or armed forces belonging to the United States or their allies when engaged in battle.

SOURCE: UCMJ ARTICLE 99.

§ 63723.23. Subordinate Compelling Surrender.

Any person subject to this Code shall be punished as a court-martial may direct compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the territorial military forces, to give it up to an enemy without proper authority.

SOURCE: UCMJ ARTICLE 100.

§ 63723.24. Improper Use of Countersign.

Any person subject to the Code who in time of insurrection or civil disturbance discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized to give, shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 101.

§ 63723.25. Forcing a Safeguard.

Any person subject to this Code who forces a safeguard shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 102.

§ 63723.26. Captured or Abandoned Property.

(a) All persons subject to this Code shall secure all public property taken from the enemy or insurrectionist for the service of the Territory and/or the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this Code shall be punished as a court-martial may direct if that person:

(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging.

SOURCE: UCMJ ARTICLE 103.

§ 63723.27. Aiding the Enemy or Insurrectionist.

Any person subject to this Code shall be punished as a court-martial may direct if that person:

(a) aids, attempts to aid, the enemy or insurrectionist with arms, ammunition, supplies, money, or other things; or

(b) without proper authority, knowingly harbors or protects or gives intelligence to or communicates or corresponds with or holds intercourse with the enemy or insurrectionist, either directly or indirectly.

SOURCE: UCMJ ARTICLE 104.

§ 63723.28. Misconduct of a Prisoner.

Any person subject to this Code shall be punished as a court-martial may direct if that person, while in the hands of the enemy or an insurgent in time of insurrection:

(a) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy or insurgents as civilian or military prisoners; or

(b) while in a position of authority over such persons maltreats them without justifiable cause.

SOURCE: UCMJ ARTICLE 105.

§ 63723.29. Reserved.

§ 63723.30. Reserved.

§ 63723.31. False Official Statements.

Any person subject to this Code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 107.

§ 63723.32. Military Property of United States and/or the Territory of Guam: Loss, Damage, Destruction, or Wrongful Disposition.

Any person subject to this Code shall be punished as a court-martial may direct if that person, without proper authority:

- (a) sells or otherwise disposes of;
- (b) willfully or through neglect damages, destroys, or loses; or
- (c) willfully or through neglect suffers to be lost, damaged, sold, or wrongfully disposed of; any military property of the United States and/or the Territory of Guam.

SOURCE: UCMJ ARTICLE 108.

§ 63723.33. Property other than Military Property of the United States and/or the Territory of Guam: Waste, Spoilage, or Destruction.

Any person subject to this Code who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States and/or the Territory of Guam shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 109.

§ 63723.34. Improper Hazarding of Vessel.

(a) Any person subject to this Code who willfully and wrongfully hazards or suffers to be hazard by any vessel of the territorial military forces and/or the Armed Forces of the United States shall be punished as a court-martial may direct.

(b) Any person subject to this Code who negligently hazards or suffers to hazard any vessel of the territorial military forces and/or the Armed Forces of the United States shall be punished as the court-martial may direct.

SOURCE: UCMJ ARTICLE 110.

§ 63723.35. Reserved.

§ 63723.36. Drunk on Duty.

Any person subject to this Code other than a sentinel or look-out who is found drunk on duty, shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 112.

§ 63723.37. Wrongful Use, Possession, etc., of Controlled Substances.

(a) Any person subject to this Code who wrongfully uses, possesses, manufactures, distributes, imports into the Territory of Guam or the customs territory of the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the Armed Forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in item (1) that is listed on a schedule of controlled substances prescribed by the President of the United States for purposes of this article.

(3) Any other substance not specified in item (1) or contained on a list prescribed by the President of the United States under item (2) that is listed in schedules I through V of §202 of the Controlled Substances Act (21 U.S.C. 812).

SOURCE: UCMJ ARTICLE 112A.

§ 63723.38. Misbehavior of Sentinel.

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 113.

§ 63723.39. Reserved.

§ 63723.40. Malingering.

Any person subject to this Code shall be punished as a court-martial may direct if that person, for the purpose of avoiding work, duty, or service:

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(a) feigns illness, physical disablement, mental lapse or derangement; or

(b) intentionally inflicts self-injury.

SOURCE: UCMJ ARTICLE 115.

§ 63723.41. Reserved.

§ 63723.42. Provoking Speeches or Gestures.

Any person subject to this Code who uses provoking or reproachful words or gestures toward any other person subject to this Code shall be punished as the court-martial may direct.

SOURCE: UCMJ ARTICLE 117.

§ 63723.43. Reserved.

§ 63723.44. Reserved.

§ 63723.45. Reserved.

§ 63723.46. Wrongful Appropriation.

Any person subject to this Code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any other person other than the owner, is guilty of wrongful appropriation and shall, upon conviction, be punished as the court-martial may direct.

SOURCE: UCMJ ARTICLE 121.

§ 63723.47. Reserved.

§ 63723.48. Reserved.

§ 63723.49. Reserved.

§ 63723.50. Reserved.

§ 63723.51. Reserved.

§ 63723.52. Reserved.

§ 63723.53. Reserved.

§ 63723.54. Reserved.

§ 63723.55. Reserved.

§ 63723.56. Reserved.

§ 63723.57. Reserved.

§ 63723.58. Fraud Against the United States and/or the Territory of Guam.

Any person subject to this Code shall, upon conviction, be punished as a court-martial may direct:

(a) who, knowing it to be false or fraudulent,

(1) makes any claim against the United States or officer thereof;

(2) makes any claim against the Territory of Guam or officer thereof;

(3) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof; or

(4) presents to any person in the civil or territorial military service thereof, for approval or payment, any claim against the Territory of Guam or any officer thereof;

(b) who, for the purpose of obtaining the approval, allowance, or payment against the United States or any officer thereof and/or the Territory of Guam or any officer thereof,

(1) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(2) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(3) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(c) who, having charge, possession, custody, or control of any money, or other property of the United States and/or the Territory of Guam, forces of the United States, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

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(d) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States and/or the Territory of Guam furnished or intended for the territorial military forces or the Armed Forces of the United States, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the Territory of Guam.

SOURCE: UCMJ ARTICLE 132.

§ 63723.59. Conduct Unbecoming of an Officer and Gentleman.

Any commissioned officer or cadet who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

SOURCE: UCMJ ARTICLE 133.

§ 63723.60. General Article.

(a) Though not specifically mentioned in this Code, all violations of the criminal laws of the Territory of Guam or the criminal laws of the federal government of the United States, of which persons subject to the Code may be guilty, shall be taken cognizance of by a general, special or summary court-martial according to the nature and degree of the offense, and punishment shall, at the discretion of that court, be limited to the maximum punishment allowed for such crime or offense by the criminal statutes of said Territory or United States.

(b) Although not specifically mentioned in this Code, all disorders and neglects to the prejudice of good order and discipline in the territorial military forces, all conduct of a nature to bring discredit upon the territorial military forces, and crimes and offenses not capital, of which persons subject to this Code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the punishment allowed for such crime or offense by the criminal statutes of said Territory or United States.

(c) Although not specifically mentioned in this Code, all disorders and neglects to the prejudice of good order and discipline in the territorial military forces, all conduct of a nature to bring discredit upon the territorial military forces, and crimes and offenses not capital, of which persons subject to this Code may be guilty, shall be taken cognizance of by a

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general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

(d) Specifically mentioning a violation in this Code does not preclude the general, special or summary court-martial from taking cognizance of all violations of the criminal laws of the Territory of Guam or the criminal laws of the federal government of the United States as authorized in (a) and (b) above, of which persons subject to this Code may be guilty, and punishment shall, at the discretion of that court, be limited to the maximum punishment allowed for such crime or offense by the criminal statutes of said territory or United States. It is within the sole discretion of the convening authority to determine whether to charge under the specific provisions of this Code or under this general article § 63723.60. The convening authority may charge, at his own discretion, either under a specific provision of this Code or under this general article § 63723.60 for the same offense but not both.

SOURCE: UCMJ ARTICLE 134.

§ 63723.61. Civilian Jurisdiction.

Inclusion of offenses within this Code does not preclude the prosecution of such criminal conduct under other territorial laws in the Superior Court of Guam unless prohibited by the United States Constitution; provided, however, that nothing in this Code shall be construed to give jurisdiction of the courts established by this Code over any person not in the territorial military forces.

**SUBARTICLE 11
MISCELLANEOUS PROVISIONS**

§ 63724. Courts of Inquiry.

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Adjutant General for that purpose, whether or not the persons involved have requested such inquiry.

(b) A court of inquiry consists of three (3) or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

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(c) Any person subject to this Code whose conduct is subject to inquiry shall be designated as a party. Any person subject to the Code or employed by the Department of Military Affairs who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for in courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

SOURCE: UCMJ ARTICLE 135.

§ 63724.1. Authority to Administer Oaths and to Act as Notary Public.

(a) The following persons on duty status with the territorial military forces may administer oaths for the purposes of military administration, including military justice, and have the general power of a notary public in the performance of all notarial acts to be executed by members of the territorial military forces and/or their dependents, wherever they may be:

(1) The Territorial Judge Advocate General and all judge advocates;

(2) all summary courts-martial;

(3) all Adjutants, Assistant Adjutants, Acting Adjutants, and Personnel Adjutants;

(4) all Staff Judge Advocates and Legal Officers, and Acting or Assistant Staff Judge Advocates and Legal Officers; and

(5) all other persons designated by regulation of the Adjutant General or Territory law.

(b) The following persons on duty status with the territorial military forces may administer oaths necessary in the performance of their duties:

(1) The president, military judge, trial counsel, and assistant trial counsel;

(2) The president, counsel for the court, and recorder of any court of inquiry;

(3) All officers designated to take a deposition;

(4) All persons detailed to conduct an investigation;

(5) All recruiting officers; and

(6) All other persons designated by regulations of the Adjutant General or Territorial law.

(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.

SOURCE: UCMJ ARTICLE 136.

§ 63724.2. Articles to Be Explained.

Sections 63702, 63703, 63705, 63706-63715, 63717.3, 63718.1, 63719.1, 63720.1, 63720.2, 63721, 63723-63723.60, and 63724.2-63724.4 of this Code shall be carefully explained to every enlisted member at the time of his enlistment or transfer or induction into, or at the time of his order to duty in or with any of the territorial military forces or within 30 days thereafter. They shall be explained annually to each unit of the territorial military forces. A complete text of this Code and of the regulations prescribed by the Adjutant General thereunder shall be made available to any member of the territorial military forces, upon his request, for his personal examination.

SOURCE: UCMJ ARTICLE 137.

§ 63724.3. Complaints of Wrongs.

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(a) Any member of the territorial military forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior officer who shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Adjutant General a true statement of that complaint with the proceedings had thereon.

(b) When an action or proceeding is commenced in any court, other than a military court, against any member of the territorial military forces for any act done in the lawful performance of their duty, as determined by a finding of fact made by a court of inquiry under § 63724 of this Code, while such member was on active territorial duty, the member may be represented, pursuant to § 30108 of Title 5, Guam Code Annotated, by the Attorney General's office. The Adjutant General, upon the written request of the member involved, shall forward the member's request for representation to the Attorney General, and instruct the Territorial Judge Advocate General, a judge advocate or legal officer to assist the Attorney General's office in the preparation and trial of such case.

(c) Members of the territorial military forces on active territorial duty by order of the Governor or other proper authority, shall not be liable, civilly or criminally, for any act or acts done by them while in the lawful performance of their duty.

(d) Members of the territorial military forces on active territorial duty shall have the powers of peace officers when they are:

(1) called or ordered into active territorial duty by the Governor pursuant to the provisions of § 63500, Title 10, Guam Code Annotated,

(2) serving within the area wherein military assistance is required, and

(3) directly assisting civil authorities in any of the situations specified in § 63500, Title 10, Guam Code Annotated. The authority of any such peace officer extends to the area wherein military assistance is required as to a public offense committed or which there is reasonable cause to believe has been committed within that area.

SOURCE: UCMJ ARTICLE 138.

§ 63724.4. Redress of Injuries to Property.

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(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the territorial military forces, he may, subject to such regulations as the Adjutant General may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers, and for the purpose of that investigation, it has the power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (c), on any disbursing officer for the payment by him to the injured parties of the damages assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

(c) Any person subject to this Code who is accused of causing willful damage to property has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. He has the right to appeal to the next higher commander.

SOURCE: UCMJ ARTICLE 139.

§ 63724.5. Immunity for Action of Military Courts.

No accused may bring an action or proceeding against the convening authority or a member of military court, board convened under this Code or military regulations, or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court, board convened under this Code, or military regulation.

§ 63724.6. Delegation of Authority.

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(a) The Governor may delegate any authority vested in him under this Code, and may provide for the sub delegation of any such authority, except the power given him by §§ 63721.2 and 63724.15 of this Code.

(b) In the absence of the Territorial Judge Advocate General, the Adjutant General may, upon the recommendation of his senior judge advocate, appoint or designate legal officers and delegate required legal duties as appropriate.

SOURCE: UCMJ ARTICLE 140.

§ 63724.7. Execution of Process and Sentence.

(a) In the territorial military forces not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the Territory.

(b) When the sentence of a court-martial, as approved and ordered executed, adjudges confinement, and the convening authority, or the convening authority for the time being, as the case may be, shall issue a warrant of commitment to a peace officer, directing such peace officer to take the body of the person so sentenced and confine him in the appropriate confinement facility for the period named in such sentence, as approved, or until he or the confinement facility official in charge may be directed to release him by proper authority.

§ 63724.8. Process of Military Courts.

(a) Military courts may issue any process or mandate necessary to carry into effect their powers. Said court(s) may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the Territory and the witnesses, books and records sought are also so located.

(b) Process and mandates may be issued by summary courts-martial, provost courts, or the president of other military courts as well as any military judge and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this Code.

(c) All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirement of those documents. Except as otherwise specifically provided in this Code, no such officer may demand or require payment of any fee or

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charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

(d) A military judge, president of any court-martial, and any summary court officer, shall have authority to issue under his hand, in the name of the Territory of Guam, process and mandates directed to the marshal, his deputy, any peace officer of the Territory, or any official of Guam authorized to serve process, and it shall be the duty of said party to serve and execute in the same manner in which like process is served or executed under court procedures of the Territory for necessary process, subpoenas, attachments, warrants of arrest and warrant of commitment.

§ 63724.9. Payment of Fines, Costs, and Disposition Thereof.

(a) All fines and forfeitures imposed by general or special courts-martial, shall be paid to the officer ordering such court, and/or to the officer commanding at the time being and by said officer, within five (5) days from receipt thereof, paid to the Adjutant General, who shall cause said monies to be placed in the fund for the Department of Military Affairs to be used to defray the cost of the administration of military justice for the Guam National Guard.

(b) All fines and forfeitures imposed by a summary court-martial or a Commanding Officer under § 63715 shall be paid to the officer ordering said court-martial, or the officer commanding for the time being, and by such officer, within five (5) days from the receipt thereof, placed to the credit of the military unit fund of the unit of which the person fined was a member when the fine was imposed.

(c) When a fine is imposed by a Commanding Officer under § 63715 or the sentence of a court-martial adjudges a fine against any person, and such fine has not been fully paid within ten (10) days after the confirmation thereof, the convening authority or the Adjutant General may issue a warrant of commitment directed to a peace officer directing him to take the body of the person so convicted and confine him in a confinement facility for one (1) day for any fine not exceeding One Dollar (\$1) and one (1) additional day for every dollar above that sum. However, if the Adjutant General so requests, the fine shall be enforced by the office of Attorney General in the same manner as a money judgment in a civil case or by the withholding of any funds due the accused from the Territory or any of its agencies in accordance with regulations prescribed by the Adjutant General.

To the extent not prohibited by federal laws or regulations, a fine may be enforced by withholding federal funds due the accused.

§ 64724.10. Presumption of Jurisdiction.

The jurisdiction of the military courts and boards established by this Code shall be presumed and the burden of proof rest on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding.

§ 63724.11. Witnesses Expenses.

(a) Persons in the employ of this Territory, not belonging to the territorial military forces, when traveling upon summons as witnesses before Territorial Military Courts, Territory or defense, are entitled to the same reimbursements for costs as if testifying for any other Territory agency.

(b) A person not in the employ of this Territory and not belonging to the military forces thereof, who has been duly summoned to appear as a witness before a military court, Territory or defense, will receive the same fees and reimbursement as any witness called to testify on behalf of the Territory in court proceedings before the Superior Court of Guam. Civilian witnesses will be paid by the Department of Military Affairs.

(c) The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance without waiting for completion of return travel.

(d) No fees shall be allowed to a person as witness fees, unless such person has been subpoenaed, attached, or recognized as a witness in the case.

§ 63724.12. Arrest, Bonds, Laws Applicable.

(a) When charges against any person in the military forces of this Territory are made or referred to a convening authority authorized to convene a court-martial for the trial of such person, and a convening authority, believing that such charges can be sustained, and has reason to believe that the person so charged will not appear for trial, or intends to flee from justice, a convening authority may issue a warrant of arrest to any peace officer commanding said peace officer to take the body of the person so the case may be finally disposed of; and a peace officer, on the order of the convening authority, shall bring the person so charged before the court-

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martial for trial, or turn him over to whomever the order may direct; the convening authority issuing the warrant of arrest, shall indorse thereon the amount of bail to be required and such bail shall not exceed two hundred fifty dollars by a summary court-martial convening authority, one thousand dollars by a special court-martial convening authority and two thousand dollars by a general court-martial convening authority unless said offense alleged is under § 63723.60 as a violation of Guam Penal Law, in which case the bond shall be the same as that required for the violation alleged; and it shall be a violation of duty on the part of any peace officer, including Department of Correction personnel, to permit a person so committed to remain out of jail or a confinement facility, except that he may, when such person desires it, permit him to give bail in the sum indorsed on the warrant, on the following conditions: for his appearance, from time to time before the court-martial as he may be ordered for trial or court appearance, to keep his unit of the territorial military forces of which he is a member advised of his current home and work addresses and telephone numbers, to accept and receipt for all mail sent to him by the territorial military forces, to satisfactorily attend and participate in all territorial military duty which he is ordered to perform and to be responsible for obtaining information concerning all duty dates, times, places of his territorial military unit or duty assignment, until his case is finally disposed of, or until such time as he may surrender to a peace officer as directed by the convening authority of the court-martial before which he may be ordered for trial.

(b) Upon the failure of any person, who has been admitted to bail to appear as a witness in any case before a court-martial, as conditioned in the bail bond of any such person, the court-martial shall certify the fact of failure to so appear to the convening authority, or to the convening authority for the time being, as the case may be; and such officer shall cause a judge advocate or the Attorney General to file suit in the appropriate courts of Guam to take action on the same.

(c) The rules laid down in Title 8, Guam Code Annotated (Criminal Procedure) of this Territory relating to giving of bail, amount of bail, the number of sureties, the property exempt from liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent with this Code are applicable to bail taken as provided herein.

(d) A warrant of arrest issued by a convening authority authorized to order a court-martial, and all process, subpoenas, attachments, warrants of

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commitment and other process issued by courts-martial and courts of inquiry shall extend to every part of the Territory.

(e) When any lawful process, issued by the proper officer of any court-martial, comes to the hands of any peace officer or other official authorized by Guam law to serve process, subpoenas, and/or attachments, he shall perform the usual duties of such officer and perform all acts and duties by this Code imposed or authorized to be performed by any peace officer or other official authorized to serve process, subpoenas, and/or attachments. Failure of any peace officer or official authorized to serve process, subpoenas, and/or attachments to perform the duties required by this Code shall be a misdemeanor offense punishable by a fine of not more than One Thousand Dollars (\$1,000) and a confinement of not more than twelve (12) months in jail.

(f) In any case whereby the offense alleged is a violation of Guam Penal law charged under § 63723.60 of this Code and the punishment to be assessed is to be that authorized by the laws of Guam for such offense the rules of bail shall be the same as set out in Title 8, Guam Code Annotated (Criminal Procedure) of the Territory law, except that the conditions set out in subsection (a) shall be applicable as the Adjutant General so desires.

§ 63724.13. Expenses of Administration.

The Adjutant General shall have authority to pay all expenses incurred in the administration of Territorial Military Justice, including the expenses of courts-martial and expenses incurred under §§ 63722.8, 63724, 63724.3, 63724.4, and 63724.11 of this Code, from any funds appropriated to the Department of Military Affairs.

§ 63724.14. Powers of Commanding Officers.

Persons in the position of commanding officer in any unit or organization of the territorial military forces, whether in said capacity as a regularly assigned commander or, if assumption or delegation of command letter has been published designating acting commander, the acting commander, whether on duty status or not, shall be vested with the authority to perform all acts necessary for the purpose of administration of military justice or those acts necessary for the administration of general military matters.

§ 63724.15. Regulations.

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The Adjutant General shall issue and promulgate appropriate and/or necessary disciplinary or military justice regulations for the administration of military justice under this code and such regulations shall take effect by Executive Order of the Governor. The provisions of the Administrative Adjudication Act shall not apply to the issuance and promulgation of regulations in furtherance of the provisions of this Code.

NOTE: The following section is found as P.L. 23-12:2:

Section 2. Annual report. The Adjutant General shall submit, to the Speaker of the Guam Legislature, no later than ninety (90) days after the anniversary date of the enactment hereof, a detailed statistical report detailing all actions taken by the National Guard relative to the enforcement or implementation of the provisions of the Guam National Guard Code of Military Justice. Without the use of individual names or identifications, the statistical report required herein shall contain all information necessary for the determination of the extent the provisions of the Code are being cited, and/or charged.
