

**MANUAL
FOR
COURTS-MARTIAL
CALIFORNIA
(2007 EDITION)**

This 2007 Edition of the Manual for Courts-Martial California (MCMC) is an update to the MCMC, 2003 Edition, incorporating recent legislative changes effective 1 January 2007.

PREFACE

The 2003 Edition of the Manual for Courts-Martial California (MCMC) was a complete revision of the California National Guard December 1990 Manual for Courts-Martial California (MCMC) and Nonjudicial Punishment and took a different approach from that prior 1990 manual. The National Guard in Title 10 federal service is expressly subject to the Uniform Code of Military Justice (10 U.S.C. Section 802(a)(3)) and the Manual for Courts-Martial, United States (2002 Edition, Rule 202(a) and Rule 204(a)). The applicable federal law concerning the National Guard not in federal service (i.e., training with Title 32 federal status but not in federal service) requires that the National Guard have courts-martial constituted like similar Title 10 courts with the same jurisdiction and powers, except as to punishments (which shall be provided by state law), and that such courts shall follow the forms and procedures provided for Title 10 courts (32 U.S.C. Section 326). The intent of California law is to conform to all acts and regulations of the United States affecting the military (California Military and Veterans Code Section 100). All acts of the Congress of the United States relating to the control, administration, and government of the military, so far as not inconsistent with the rights reserved to California and guaranteed under California's constitution, constitute the rules and regulations for the government of the California National Guard (California Military and Veterans Code Section 101). California law also makes the UCMJ, and the rules and regulations published thereunder, applicable to the California National Guard except as otherwise provided in the California Military and Veterans Code (California Military and Veterans Code Sections 102 and 103). Where the prior 1990 MCMC restated all military law applicable to California, the 2003 MCMC supplemented the Federal MCM and did not attempt to restate military law. With new revisions of state military law (California Military and Veterans Code Sections 456, 457, and 458) effective 1 January 2007, this updated 2007 Edition is called for.

Where supplementation or modification is appropriate, the added or modified text will be designated by ".1", so that, for example, a MCMC R.C.M. Rule 201.1 would be the California supplement to or modification of MCM R.C.M. Rule 201. Supplementation of a rule does not do away with the original text so that the original text remains applicable, but supplemented. Modification of a rule does do away with the original text so that the original text is no longer applicable, the modified text is controlling for that portion of the rule which is modified. Supplemented text is designated by a "(S)" after the rule designation and modified text is designated by a "(M)" after the rule or chapter designation.

Any and all federal forms applicable for Federal MCM purposes may, once modified by having references to the United States of America changed to references to the State of California, be used for State MCMC purposes.

The language in this Preface is incorporated into and specifically made a part of the MCMC.

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Arnold Schwarzenegger
Governor of California
Commander in Chief of the Militia

**PART I
PREAMBLE**

1.1 Sources of Military Jurisdiction (S)

Additional sources of military jurisdiction for California include the Constitution of the State of California and the laws of the State of California including, but not limited to, the California Military and Veterans Code.

2.1 Exercise of Military Jurisdiction (M)

(b)(4). Nonjudicial punishment proceedings of a commander under California Military and Veterans Code Section 450.

3.1 Nature and Purpose of Military Law (S)

"Military commanders" includes the Governor of the State of California acting as the Commander in Chief of the Militia of the State of California, including the California National Guard (California Military and Veterans Code Section 140), and The Adjutant General. Military law also provides for the organization, maintenance, and training of the Militia.

4.1 Structure and Application of the Manual for Courts-Martial (S)

The Manual for Courts-Martial California shall consist of the Manual for Courts-Martial, United States and this supplement thereto. This supplement shall be identified as "Manual for Courts-Martial California (2007 Edition)". Any changes to the Manual for Courts-Martial, United States are hereby automatically included as changes to the Manual for Courts-Martial California (2007 Edition) unless the Governor makes a specific finding that it is impracticable to conform to the change. (California Military and Veterans Code Section 148).

**PART II
RULES FOR COURTS-MARTIAL**

CHAPTER I. GENERAL PROVISIONS

Rule 103.1 Definitions and Rules of Construction (S)

(5) "**Commander**" includes the Governor of the State of California as the Commander in Chief of the Militia of the State of California and The Adjutant General of the State of California as the commander of all state military forces (California Military and Veterans Code Sections 140 and 160). Whenever the President of the United States is given rights, responsibilities, obligations, and/or powers under the UCMJ and/or the Manual for Courts-Martial (MCM), analogous

similar rights, responsibilities, obligations, and/or powers are deemed to exist in the Governor of the State of California in regard to matters related to the administration of military justice within the California National Guard not in federal service. Whenever the Secretary of Defense or Secretary of a Military Department (i.e., service) is given rights, responsibilities, obligations, and/or powers under the UCMJ and/or the MCM, analogous similar rights, responsibilities, obligations, and/or powers are deemed to exist in The Adjutant General of the State of California in regard to matters related to the administration of military justice within the California National Guard not in federal service. As the commander of all state military forces, The Adjutant General has general court-martial convening authority under California Military and Veterans Code Section 452. This is consistent with usage and practice, and with The Adjutant General's obligation to perform all of the duties prescribed by the laws of the applicable jurisdiction (32 U.S.C. Section 314(a)).

(16)(B). "**Party**" includes any trial or assistant trial counsel representing the State of California in the prosecution of courts-martial, and agents of the trial counsel when acting on behalf of the trial counsel with respect to the court-martial in question.

(20) The "**State Staff Judge Advocate**" is the principal legal advisor to The Adjutant General of the State of California on matters related to the administration of military justice and on all non-state law military issues. Nothing in this definition precludes the Adjutant General of the State of California from having a General Counsel who would act as the principal legal advisor to The Adjutant General on matters not related to the administration of military justice while involving purely state law issues and who would be the General Counsel for the State Military Department. Nothing in this definition would preclude The Adjutant General from using the same principal legal advisor on state law and non-state law matters. Wherever a Judge Advocate General is given rights, responsibilities, obligations, and/or powers under the UCMJ and/or the MCM, analogous similar rights, responsibilities, obligations, and/or powers are deemed to exist in the State Staff Judge Advocate in regard to matters related to the administration of military justice within the California National Guard when not in federal service.

(21) "**Government**" refers to the State of California for purposes of California courts-martial.

(22) "**California Military Appeals Panel**" refers to the military court with jurisdiction to review and hear appeals of a judgment or sentence of a California court-martial.

Rule 105.1 Direct Communications: Convening Authorities and Staff Judge Advocates; Among Staff Judge Advocates (S)

(b) The Staff Judge Advocate of any command is entitled to communicate directly with the State Staff Judge Advocate.

Rule 106.1 Delivery of Military Offenders to Civilian Authorities (M)

Whenever any person in the military service of California (i.e., not in federal service) is charged with the commission while on duty of an offense which is a felony under California law, that person shall be delivered by his or her superior officer to the proper civil authorities for trial. Trial and punishment by civil authorities shall not preclude trial and additional punishment by court-martial for any military offense resulting from commission of the felony. (California Military and Veterans Code, Section 471). For non-felony offenses which are both a military offense and an offense under California law applicable to civilians, the officer whose duty it is to order trial may order the person charged to be turned over to the proper civil authorities for trial. (California Military and Veterans Code, Section 470). Nothing in this rule precludes the military prosecution of a service member where civil authorities decline to prosecute.

CHAPTER II. JURISDICTION

Rule 201.1 Jurisdiction in General (M)

(c) Contempt. A court-martial may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for three days. (California Military and Veterans Code, Section 468).

(d)(2). An act or omission that violates both military law and local criminal law may be tried by a court-martial subject to the provisions of sections 470 and 471 of the California Military and Veterans Code.

(e)(8). The term "armed force" in RCM 201(e) refers individually to the California Army National Guard and the California Air National Guard, and includes the State Defense Forces.

(f)(1)(A)(i). For the National Guard not in federal service, general courts-martial have the power to try commissioned officers, warrant officers, and enlisted men and women of the active militia. (California Military and Veterans Code Section 456).

(f)(1)(A)(ii). For the National Guard not in federal service, general courts-martial have the power to adjudge:

- (1) Dismissal, in the case of a commissioned or warrant officer.
- (2) Dishonorable discharge, in the case of an enlisted man or woman.
- (3) Any other punishment authorized for a special court-martial handling analogous charges under the Uniform Code of Military Justice and the federal Manual for Courts-Martial, including, but not limited to, up to one year in confinement. (California Military and Veterans Code Section 456).

(f)(2)(A). For the National Guard not in federal service, special courts-martial have the power to try commissioned officers, warrant officers and enlisted members of the active militia. (California Military and Veterans Code Section 457).

(f)(2)(B). For the National Guard not in federal service, special courts-martial have the power to adjudge:

Any punishment authorized for a special court-martial handling analogous charges under the Uniform Code of Military Justice and the federal Manual for Courts-Martial, including, but not limited to, up to 180 days in confinement. (California Military and Veterans Code Section 457).

(f)(3). For the National Guard not in federal service, summary courts-martial have the power to try enlisted members of the active militia unless they object thereto. (California Military and Veterans Code Section 458).

For the National Guard not in federal service, summary courts-martial have the power to adjudge:

Any punishment authorized for a summary court-martial handling analogous charges under the Uniform Code of Military Justice and the federal Manual for Courts-Martial, including, but not limited to, up to 30 days in confinement. (California Military and Veterans Code Section 458).

Rule 202.1 Persons subject to the jurisdiction of courts-martial (S)

(a) Courts-Martial for the National Guard not in Federal service may try any person authorized to do so under federal or state law.

Rule 204.1 Jurisdiction Over Certain Reserve Component Personnel (S)

(a) Courts-Martial Jurisdiction

Members of the active militia of the State of California, including members of the California Army National Guard or the California Air National Guard, when not in

federal service, and members of the State Defense Forces, are subject to courts-martial jurisdiction for courts-martial for the National Guard not in federal service.

(b) Courts-Martial

Members of the California Army National Guard or the California Air National Guard, when not in federal service, may be tried by courts-martial for the National Guard not in federal service while in an inactive-duty training status or a state active duty status.

CHAPTER III. INITIATION OF CHARGES; APPREHENSION; PRETRIAL RESTRAINT; RELATED MATTERS

Rule 304.1 Pretrial Restraint (M)

(a)(4). **Confinement.** Pretrial confinement is physical restraint, imposed by order of competent authority, depriving a person of freedom pending disposition of offenses. The Adjutant General of California, the Commander of the California Army National Guard, and the Commander of the California Air National Guard are the only people authorized to order pretrial confinement for a California National Guard member facing trial by a California court-martial.

Rule 305.1 Pretrial Confinement (M)

(c) **Who may order confinement.** The Adjutant General of California, the Commander of the California Army National Guard, and the Commander of the California Air National Guard are the only commanders authorized to order pretrial confinement for a California National Guard member facing trial by a California court-martial, including the authority to issue a bench warrant for a Soldier absent without leave. The detailed military judge dealing with a case referred to trial may issue a bench warrant for a defendant who fails, after being properly notified, to appear at a court-martial proceeding.

CHAPTER IV. FORWARDING AND DISPOSITION OF CHARGES

Rule 405.1 Pretrial Investigation (M)

(d)(2)(C). **Civilian counsel.** The accused may be represented by civilian counsel at no expense to the State of California. Upon request, the accused is entitled to a reasonable time to obtain civilian counsel and to have such counsel present for the investigation. However, the investigation shall not be unduly delayed for this purpose. Representation by civilian counsel shall not limit the rights to military counsel under subsections (d)(2)(A) and (B) of this rule.

(d)(3)(A). **Counsel to represent the State of California.**

(g)(3). **Witness expenses.** Transportation expenses and a per diem allowance may be paid to civilians requested to testify in connection with an investigation under this rule in accordance with procedures allowing for the acceptance by the civilian witness of invitational travel orders.

CHAPTER V. COURTS-MARTIAL COMPOSITION AND PERSONNEL; CONVENING COURTS-MARTIAL

Rule 502.1 (M)

(c) **Qualifications of military judge.** A military judge shall be a commissioned officer who is a Judge Advocate and who is deemed qualified by the State Staff Judge Advocate to serve as a military judge. As used in this subsection, "military judge" does not include the president of a special court-martial without a military judge.

(d) **Counsel.**

(1) **Qualified counsel required.** Only persons deemed qualified by the State Staff Judge Advocate to perform duties as counsel in California courts-martial may be detailed as defense counsel or associate defense counsel in general or special courts-martial or as trial counsel in general courts-martial.

(2) **Other military counsel.** Any commissioned officer deemed qualified by the State Staff Judge Advocate to perform the necessary duties may be detailed as trial counsel in special courts-martial, or as assistant trial counsel or assistant defense counsel in general or special courts-martial. The Adjutant General of California may establish additional qualifications for such counsel.

(3) **Qualifications of individual military and civilian defense counsel.** Individual military or civilian defense counsel who represent an accused in a court-martial shall be:

(A) A member of the bar of a federal court or of the bar of the highest court of a state; or

(B) If not a member of such a bar, a lawyer who is authorized by a recognized licensing authority to practice law and is found by the military judge to be qualified to represent the accused, upon a showing to the satisfaction of the military judge, that the counsel has appropriate training and familiarity with the general principles of criminal law which apply in a California court-martial.

(4) **Duties of trial and assistant trial counsel.** The trial counsel shall prosecute cases on behalf of the State of California and shall cause the record of trial of such cases to be prepared. Under the supervision of trial counsel, an

assistant trial counsel may perform any act or duty which trial counsel may perform under law, regulation, or custom of the service.

Rule 503.1 Detailing Members, Military Judge, and Counsel (M)

(b) Military judge.

(1) **By whom detailed.** The military judge shall be detailed by the State Staff Judge Advocate or by a person assigned to a military judge TDA or TOE position. If the authority to detail resides in a military judge, that military judge may detail himself or herself as military judge for a court-martial.

(2) **Record of detail.** The order detailing a military judge shall be reduced to writing and included in the record of trial or announced orally on the record at the court-martial. The writing or announcement shall indicate by whom the military judge was detailed.

(3) **Military judge from a different armed force.** A military judge from one armed force may be detailed to a California court-martial convened in a different armed force when permitted by the State Staff Judge Advocate and deemed appropriate by the State Staff Judge Advocate after receiving the concurrence of the Staff Judge Advocate for the Commander of the armed force, California Army National Guard or California Air National Guard, to which the military judge belongs.

(c) Counsel.

(1) **By whom detailed.** Trial and defense counsel, assistant trial and defense counsel, and associate defense counsel shall be detailed by the State Staff Judge Advocate. The State Staff Judge Advocate may delegate the authority to detail counsel to the Staff Judge Advocate of any subordinate command which has court-martial jurisdiction. If authority to detail counsel has been delegated to a person, that person may detail himself or herself as counsel for a court-martial. If defense counsel is available through a Trial Defense Service (TDS) organization, then the State Staff Judge Advocate shall detail defense counsel designated by that TDS organization to serve as defense counsel on the matter in question.

(2) **Record of detail.** The order detailing a counsel shall be reduced to writing and included in the record of trial or announced orally on the record at the court-martial. The writing or announcement shall indicate by whom the counsel was detailed.

(3) **Counsel from a different armed force.** A person from one armed force may be detailed to serve as counsel in a California court-martial in a different armed force when permitted by the State Staff Judge Advocate and deemed

appropriate by the State Staff Judge Advocate after receiving the concurrence of the Staff Judge Advocate for the Commander of the armed force, California Army National Guard or California Air National Guard, to which the counsel belongs.

Rule 504.1 (M)

(b) Who may convene courts-martial.

(1) **General courts-martial.** Unless otherwise limited by superior competent authority, general courts-martial may be convened by the President of the United States or the Governor or The Adjutant General. The convening authority shall be the approving, reviewing and confirming authority. After authentication, the record will be sent by trial counsel to the reviewing authority for proper action and will thereafter be filed in the Office of The Adjutant General. (California Military and Veterans Code Section 452).

(2) **Special courts-martial.** Unless otherwise limited by superior competent authority, special courts-martial may be convened by the commanding officer of a district, garrison, fort, post, camp, station, or other place where troops are on duty, division, brigade, regiment, detached battalion, or other detached command or corresponding unit of the Army or Air Force, and by the commanding officer of any group of detached units placed under a single commander for this purpose. Such courts-martial may also be appointed by superior authority when by the latter deemed desirable. When any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority. After final action by the reviewing authority, the record of the trial by special courts-martial shall be filed in the Office of The Adjutant General. (California Military and Veterans Code Section 453).

(3) **Summary courts-martial.** Unless otherwise limited by superior competent authority, summary courts-martial may be appointed by the commanding officer of a garrison, fort, post, camp, or other place where troops are on duty, regiment, detached battalion, detached company, or other detachment; but such summary courts-martial may in any case be appointed by superior authority when by the latter deemed desirable: Except when only one officer is present with a command, he shall be the summary courts-martial of that command and shall hear and determine cases brought before him. After final action by the reviewing authority an authenticated copy of the completed charge sheet shall be filed in the Office of The Adjutant General. (California Military and Veterans Code Section 454).

CHAPTER VII. PRETRIAL MATTERS

Rule 703.1 (M)

(e)(2)(D). **Service.** A subpoena may be served by the person authorized by this rule to issue it, the sheriff of any county, any peace officer, the police of any city

and the constables and marshals of any town or city, any officer or enlisted man appointed by the court to serve the same, or any other person who is not less than 18 years of age. Service shall be made by delivering a copy of the subpoena to the person named and by tendering to the person named any fees required to be tendered in accordance with the service of a witness subpoena under California law.

(e)(2)(E). Place of service.

(i) In general. A subpoena requiring the attendance of a witness at a deposition, court-martial, or court of inquiry may be served at any place within the State of California.

(e)(2)(G). Neglect or refusal to appear.

(iv) Execution. A warrant of attachment is a process and mandate of a California court-martial under California Military and Veterans Code Section 463, and may be directed to the sheriff of any county, any peace officer, the police of any city and the constables and marshals of any town or city, or to any officer or enlisted man appointed by the court to serve or execute the same. Every person to whom process or mandates are directed shall execute such process or mandates and make return of their acts thereunder according to the requirements thereof, however, only such nondeadly force as may be necessary to bring the witness before the court-martial or other proceeding may be used to execute the warrant. A witness attached under this rule shall be brought before the court-martial or proceeding without delay and shall testify as soon as practicable and be released.

Rule 704.1 Immunity (M)

(c)(1). Persons subject to the code. A general court-martial convening authority may grant immunity to any person subject to the code. However, a general court-martial convening authority may grant immunity to a person subject to being prosecuted under laws of the State of California other than the Military and Veterans Code only when specifically authorized to do so by the Attorney General of the State of California.

(c)(2). Persons not subject to the code. A general court-martial convening authority may grant immunity to persons not subject to the code only when specifically authorized to do so by the Attorney General of the State of California.

CHAPTER VIII. TRIAL PROCEDURE GENERALLY

Rule 809.1 Contempt Procedures (M)

(a) In general. A California court-martial may exercise contempt powers under California Military and Veterans Code Section 468.

(e) **Sentence.** The maximum sentence pursuant to a finding of contempt in a California court-martial is confinement for a period not to exceed three days.

CHAPTER IX. TRIAL PROCEDURES THROUGH FINDINGS

Rule 901.1 Opening Session (M)

(d)(4)(A). Inform the accused of the rights to be represented by military counsel detailed to the defense; or by individual military counsel requested by the accused, if such military counsel is reasonably available; and by civilian counsel, either alone or in association with military counsel, if such civilian counsel is provided at no expense to the State of California.

Rule 905.1 Motions Generally (M)

(g) **Effect of final determinations.** Any matter put in issue and finally determined by a court-martial or by the reviewing authority may not be disputed by the State of California in any other court-martial of the same accused, except that, when the offenses charged at one court-martial did not arise out of the same transaction as those charged at the court-martial at which the determination was made, a determination of law and the application of law to the facts may be disputed by the State of California. This rule also shall apply to matters that were put in issue and finally determined in any other judicial proceeding in which the accused and the State of California were parties.

Rule 908.1 Appeal by the State of California (M)

The State of California has no right to appeal an order or ruling issued by the military judge or the president of a California court-martial. Nothing in this rule precludes the State of California from seeking a writ in a court that has appropriate jurisdiction to challenge the order or ruling of a military judge or the president of a California court-martial.

CHAPTER X. SENTENCING

Rule 1010.1 Notice Concerning Post-Trial and Appellate Rights (M)

(c) The right to apply for relief from the State Staff Judge Advocate within 30 days after a copy of the authenticated record of trial is served on the accused. Additionally, for matters wherein there is an adjudged punitive discharge or dismissal which has been initially approved by the convening authority, the right to apply for relief from the California Military Appeals Panel within the meaning of MCMC R.C.M. 1200.1. Additionally, the right to request, within 30 days of notice of final action, that a case upon which a convening authority other than The

Adjutant General has taken final action be reviewed by The Adjutant General. Additionally, the right to request, within 30 days of notice of final action, that a case upon which The Adjutant General has taken final action be reviewed by the Governor. Additionally, the right to timely (within 60 days of the notice of approval of the sentence by the convening authority if notice is personally served on the accused, within 70 days of mailing if notice of approval of the sentence by the convening authority is mailed to the accused's last known address) petition by the accused alleging specific error(s) where a judge of the California Military Appeals Panel determines that there may be an issue of state or federal constitutional dimension requiring resolution by the panel.

CHAPTER XI. POST-TRIAL PROCEDURE

Rule 1105.1 Matters Submitted by the Accused (S)

(c) (1) **California general and special courts-martial.** After a California general or special court-martial, the accused may submit matters under this rule within the later of 30 days after a copy of the authenticated record of trial or, if applicable, the recommendation of the staff judge advocate or legal officer, or an addendum to the recommendation containing new matter is served on the accused. If, within the 30-day period, the accused shows that additional time is required for the accused to submit such matters, the convening authority or that authority's staff judge advocate may, for good cause, extend the 30-day period for not more than 30 additional days; however, only the convening authority may deny a request for such an extension.

(2) **Summary courts-martial.** After a summary court-martial, the accused may submit matters under this rule within 30 days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such comments, the convening authority may, for good cause, extend the period in which comments may be submitted for up to an additional 30 days.

Rule 1110.1 Waiver or Withdrawal of Appellate Review (S)

(f) Time limit.

(1) **Waiver.** The accused may sign a waiver of appellate review at any time after the sentence is announced. The waiver must be filed within 30 days after the accused or defense counsel is served with a copy of the action under R.C.M. 1107(h). Upon a written application of the accused, the convening authority may extend this period for good cause, for not more than 30 additional days.

Rule 1111.1 Disposition of Record of Trial After Action (M)

After action by the convening authority and review by The Adjutant General where appropriate, the completed record of trial will be maintained in the Office of The Adjutant General.

Rule 1113.1 Execution of Sentences (M)

(c) Punishments which the convening authority may not order executed in the initial action.

(1) **Dishonorable or a Bad-Conduct Discharge.** A punitive (dishonorable or bad-conduct) discharge may be ordered executed only after a final judgment within the meaning of MCMC R.C.M. 1200.2 or when there is an adjudged punitive discharge and an express written waiver by a defendant of the right to judicial appellate review.

(2) **Dismissal.** Dismissal of a commissioned officer may be ordered executed only after a final judgment within the meaning of MCMC R.C.M. 1200.2 or when there is an adjudged dismissal and an express written waiver by a defendant of the right to judicial appellate review.

CHAPTER XII. APPEALS AND REVIEW (M)

Rule 1200.1 The California Military Appeals Panel

(a) The California Military Appeals Panel (CMAP) is established in the California Military Department to review and hear appeals of a judgment or sentence of a California court-martial, including matters where there is an adjudged and approved punitive discharge or dismissal, matters where the CMAP chooses to exercise discretionary review authority hereinafter conferred, or matters certified for review by The Adjutant General.

(b) The CMAP shall be comprised of three judges appointed by The Adjutant General who shall serve voluntarily without compensation, one Chief Judge and two Associate Judges. These appointments shall be for a term of six years, except that the initial appointments of such judges shall be one judge for a two year term, one judge for a four year term, and one judge for a six year term. The term of office of any successor judges shall be for a six year period of time, but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Any personnel appointed to a full or partial term on the panel, unless otherwise disqualified, shall be eligible for appointment.

(c) Qualifications for appointment as Chief Judge or Associate Judge: A person is eligible for appointment to the CMAP if:

(1) He or she is a member of the State Bar of California and admitted to practice before the highest court of this State, or is a member of the judiciary of the State of California,

(2) He or she is a retired commissioned officer of the Armed Forces of the United States (regular, reserve, or National Guard), or a retired or current member of the State Military Reserve, and

(3) He or she has at least five years experience as an officer in the Army, Air Force, or Navy Judge Advocate General's Corp, or at least 15 years experience in the Judge Advocate Branch of the State Military Reserve.

(d) Judges of the CMAP may be removed by the Governor, upon notice and hearing, for neglect of duty or malfeasance in office or for mental or physical disability, but for no other cause.

(e) If a judge of the CMAP is temporarily unable to perform his or her duties due to disability, the Governor may designate another person eligible for appointment to the panel to fill the office for the period of disability.

(f) The CMAP has exclusive jurisdiction to hear any allegations of error and to review the record in:

(1) All cases where there is an adjudged punitive (dishonorable or bad-conduct) discharge which has been initially approved by the convening authority and where the accused has not entered a written waiver of the right to appellate review; or

(2) All cases where there is an adjudged dismissal which has been initially approved by the convening authority and where the accused has not entered a written waiver of the right to appellate review; or

(3) Cases upon timely (within 60 days of the notice of approval of the sentence by the convening authority if notice is personally served on the accused, within 70 days of mailing if notice of approval of the sentence by the convening authority is mailed to the accused's last known address) petition by the accused alleging specific error(s) where a judge of the CMAP determines that there may be an issue of state or federal constitutional dimension requiring resolution by the panel; or

(4) Cases certified for review by The Adjutant General.

(g) In any case reviewable under (f)(1) or (2) above, the CMAP may act only with respect to the findings and sentence as initially approved by the convening authority.

(h) In any case reviewable under (f)(3) or (4) above, the CMAP may act only with respect to the alleged specific error(s) or the issues specified in the certification for review.

(i) The CMAP shall act upon petitions for review, granting or denying the petition for review under (f)(3) above, within 60 days of receipt of the petition for review. Failure of the CMAP to grant a petition for review within 60 days shall be deemed a denial of the petition for review. If the panel refuses to grant or denies any such petition for review, the final action of the convening authority will be deemed approved. The CMAP shall act upon matters reviewed under (f)(1), (f)(2), and (f)(4) above and upon matters wherein a petition under (f)(3) above has been granted, within 90 days of the matter being submitted to the CMAP for determination following compliance with any procedural rules the CMAP may utilize for the orderly resolution of matters requiring review by the CMAP.

(j) Notwithstanding any other provision of the MCMC, upon the granting by the panel of any petition for review or the receipt by the panel of any case forwarded for review under (f)(1),(2), or (4) above, the panel may grant a stay or defer service of the sentence to confinement or any other punishment under the MCMC until the panel's final decision upon the case.

Rule 1200.2 Limitations Upon and Finality of Decisions

(a) The CMAP may take action only with respect to allegations of errors in regard to matters of law. There is no authority for the CMAP to independently change factual determinations made by a California court-martial.

(b) With respect to any matters of law where the panel is reviewing a portion of law found in federal military law sources, the most current, if any, reported federal military case precedents from the service Courts of Criminal Appeals (or a predecessor court), from the Court of Appeals for the Armed Forces (or the predecessor court), or from the United States Supreme Court, shall be viewed as controlling legal precedent.

(c) A court-martial conviction subject to review by the CMAP is final when review is completed by the CMAP and ten days have passed since a decision is announced by the CMAP. There is no provision for rehearing or reconsideration of matters after a decision has become final.

(d) Nothing in this manual precludes the accused from seeking a writ in a court with appropriate jurisdiction to challenge the order or ruling of a military judge or president of a California court-martial where the accused has exhausted all of the available review remedies.

CHAPTER XIII. SUMMARY COURTS-MARTIAL

Rule 1301.1 Summary Courts-Martial Generally (S)

(a) **Composition.** A summary court-martial for state military law purposes is composed of one commissioned officer who need not be on active duty.

ORDER OF APPROVAL

By virtue of the authority vested in me as Governor of the State of California, Commander in Chief of the Militia of the State, and Section 148 of the Military and Veterans Code of the State of California, I hereby prescribe the above Manual for Courts-Martial California (2007 Edition) for the administration of military justice in the Militia of the State.

This Manual supersedes the California National Guard's Manual for Courts-Martial California (2003 Edition). Changes in the law have been incorporated into this new Manual.

This Manual shall be effective as to all courts-martial referred on and after 1 January 2007, provided: that nothing contained in this Manual shall be construed to invalidate any restraint, investigation, referral of charges, designation or detail of a military judge or counsel, trial in which arraignment has been had, or other action begun prior to that date; and that any such restraint, investigation, trial, or other action may be completed in accordance with applicable laws and regulations in the same manner and with the same effect as if this Manual had not been prescribed. Further, this Manual and any future amendments thereto shall not be applicable to any case in which the findings and sentence were adjudged by a court-martial prior to 1 January 2007.

The contents of this Manual conform as nearly as practicable to those governing the armed forces of the United States. However, insofar as any provisions in the Manual are inconsistent therewith, I have found that it is impracticable to conform those provisions to the rules and regulations governing the armed forces of the United States. Accordingly, where inconsistencies exist, this Manual will prevail.

Except where expressly stated, this Manual is not intended to and does not create any right, benefit, or privilege, substantive or procedural, enforceable at law or equity by any party, against the State of California, its departments, agencies, or other entities.

Dated: September 4, 2007



Arnold Schwarzenegger
Governor of California
Commander in Chief of the Militia



