

It is a continuing DoD policy to make every effort to achieve a balanced membership on all DoD advisory committees. Each committee is evaluated in terms of the functional disciplines, levels of experience, professional diversity, public and private association, and similar characteristics required to ensure a high degree of balance is obtained.

FOR FURTHER INFORMATION CONTACT: Contact Jennifer Spaeth, DoD Committee Management Officer, 703-695-4281.

Dated: May 9, 2000.

L.M. Bynum,

*OSD Federal Register Liaison Officer,
Department of Defense.*

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BILLING CODE 5001-10-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of proposed amendments to the Manual for Courts-Martial, United States, (1998 ed.)

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, (1998 ed.) (MCM). The proposed changes are the 2000 draft annual review required by the MCM and DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. The proposed changes concern the rules of procedure applicable in trials by court-martial. More specifically, the proposed changes would: (1) Add references to Military Rule of Evidence 513, *Psychotherapist-patient privilege*, in Rule for Courts-Martial (R.C.M.) 701, *Discovery*; (2) clarify the analysis accompanying R.C.M. 707, *Speedy trial*, in light of current case law; and (3) clarify R.C.M. 1003 and R.C.M. 1107, governing the authority of a court-martial to adjudge, and the convening authority to approve, the combination of both a fine and forfeitures at summary and special courts-martial.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military

Departments, or any other government agency.

In accordance with paragraph III B 4 of the Internal Organization and Operating Procedures of the Joint Service Committee on Military Justice (2 March 2000), the JSC invites members of the public to suggest changes to the Manual for Courts-Martial in accordance with the herein described format.

This notice is provided in accordance with DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

DATES: Comments on the proposed changes must be received no later than July 31, 2000, for consideration by the JSC.

ADDRESSES: Comments on the proposed changes should be sent to Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332-8000.

FOR FURTHER INFORMATION CONTACT: Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332-8000, (202) 767-1539; FAX (202) 404-8755.

SUPPLEMENTARY INFORMATION: The proposed amendments to the Manual for Courts-Martial are as follows:

Amend the Discussion following R.C.M. 701(a)(2)(B) to read as follows:

"For specific rules concerning certain mental examinations of the accused or third party patients, see R.C.M. 701(f), R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513."

Amend R.C.M. 701(b)(4) to read as follows:

"Reports of examination and tests. If the defense requests disclosure under subsection (a)(2)(B) of this rule, upon compliance with such request by the Government, the defense, on request of trial counsel, shall (except as provided in R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513) permit the trial counsel to inspect any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, which are within the possession, custody, or control of the defense which the defense intends to introduce as evidence in the defense case-in-chief at trial or which were prepared by a witness whom the defense intends to call at trial when the results or reports relate to that witness' testimony."

Amend the Analysis accompanying R.C.M. 701(b) by inserting the following prior to the current paragraph:

"2000 Amendment: Subsection (b)(4) was amended in light of Mil. R. Evid. 513."

Amend the analysis accompanying R.C.M. 707(A) by inserting the following paragraph after the second full paragraph:

"2000 Analysis Amendment: Burton and its progeny were re-examined in 1993 when the Court of Military Appeals specifically overruled *Burton* and reinstated the earlier rule from *United States v. Tibbs*, 15 C.M.A. 350, 35 C.M.R. 322 (1965). *United States v. Kossman*, 38 M.J. 258 (C.M.A. 1993). In *Kossman*, the Court reinstated the "reasonable diligence" standard in determining whether the prosecution's progress toward trial for a confined accused was sufficient to satisfy the speedy trial requirement of Article 10, UCMJ."

Amend R.C.M. 1003(b)(3) to read as follows:

"Fine. Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. Special and summary courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In order to enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial;"

Amend the Discussion accompanying R.C.M. 1003(b)(3) by adding the following after the second paragraph:

"Where the sentence adjudged at a special court-martial includes a fine, see R.C.M. 1107(d)(5) for limitations on convening authority action on the sentence."

Amend the Analysis accompanying R.C.M. 1003(b)(3) by inserting the following before the discussion of subsection (b)(4):

"2000 Amendment: The amendment clearly defines the authority of special and summary courts-martial to adjudge both fines and forfeitures. See generally, *United States v. Tualla*, 52 M.J. 228 (2000)."

Add R.C.M. 1107(d)(5) as follows:

"Limitations on sentence of a special court-martial where a fine has been adjudged. A convening authority may not approve in its entirety a sentence adjudged at a special court-martial where, when approved, the cumulative impact of the fine and forfeitures, whether adjudged or by operation of Article 58b, UCMJ, would exceed the jurisdictional maximum dollar amount of forfeitures that may be adjudged at that court-martial."

Amend the Analysis accompanying R.C.M. 1107(d) by inserting the following before the discussion of subsection (e):

"2000 Amendment: Subparagraph (d)(5). This subparagraph is new. The amendment addresses the impact of Article 58b, UCMJ. In special courts-martial, where the cumulative impact of a fine and forfeitures, whether adjudged or by operation of Article 58b, would otherwise exceed the total dollar amount of forfeitures that could be adjudged at the special court-martial, the fine and/or adjudged forfeitures should be disapproved or decreased accordingly. See generally, *United States v. Tualla*, 52 M.J. 228, 231-32 (2000)."

Members of the public are hereby invited to submit proposals for changes to the Manual for Courts-Martial for consideration by the JSC. All submissions should be received by the close of the public comment period in order to be considered in the next annual review cycle. Proposals should include reference to the specific provision you wish changed, a rationale for the proposed change, and specific and detailed proposed language to replace the current language. Incomplete submissions will not be considered. The individual or agency submitting each proposal will be notified in writing whether the JSC voted to decline the proposal as not within the JSC's cognizance, reject it, table, or accept it.

Dated: May 9, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of

the Department of Defense, the Military Departments, or any other government agency.

In accordance with paragraph III B 4 of the Internal Organization and Operating Procedures of the Joint Service Committee on Military Justice (2 March 2000), the JSC invites members of the public to suggest changes to the Manual for Courts-Martial in accordance with the herein described format.

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Amend R.C.M. 701(b)(4) to read as follows:

"*Reports of examination and tests.* If the defense requests disclosure under subsection (a)(2)(B) of this rule, upon compliance with such request by the Government, the defense, on request of trial counsel, shall (except as provided in R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513) permit the trial counsel to inspect any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, which are within the possession, custody, or control of the defense which the defense intends to introduce as evidence in the defense case-in-chief at trial or which were prepared by a witness whom the defense intends to call at trial when the results or reports relate to that witness' testimony."

Amend the Analysis accompanying R.C.M. 701(b) by inserting the following prior to the current paragraph:

"2000 Amendment: Subsection (b)(4) was amended in light of Mil. R. Evid. 513."

Amend the analysis accompanying R.C.M. 707(a) by inserting the following paragraph after the second full paragraph:

"2000 Analysis Amendment: Burton and its progeny were re-examined in 1993 when the Court of Military Appeals specifically overruled *Burton* and reinstated the earlier rule from *United States v. Tibbs*, 15 C.M.A. 350, 35 C.M.R. 322 (1965). *United States v. Kossman*, 38 M.J. 258 (C.M.A. 1993). In *Kossman*, the Court reinstated the 'reasonable diligence' standard in determining whether the prosecution's progress toward trial for a confined accused was sufficient to satisfy the speedy trial requirement of Article 10, UCMJ."

Amend R.C.M. 1003(b)(3) to read as follows:

"Fine. Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. Special and summary courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In order to enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered and equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial;"

Amend the Discussion accompanying R.C.M. 1003(b)(3) by adding the following after the second paragraph:

"Where the sentence adjudged at a special court-martial includes a fine, see R.C.M. 1107(d)(5) for limitations on convening authority action on the sentence."

Amend the Analysis accompanying R.C.M. 1003(b)(3) by inserting the following before the discussion of subsection (b)(4):

"2000 Amendment: The amendment clearly defines the authority of special and summary courts-martial to adjudge both fines and forfeitures. See generally, *United States v. Tualla*, 52 M.J. 228 (2000)."

Add R.C.M. 1107(d)(5) as follows:

"*Limitations on sentence of a special court-martial where a fine has been adjudged.* A convening authority may not approve in its entirety a sentence adjudged at a special court-martial where, when approved, the cumulative impact of the fine and forfeitures, whether adjudged or by operation of Article 58b, UCMJ, would exceed the jurisdictional maximum dollar amount of forfeitures that may be adjudged at that court-martial."

Amend the Analysis accompanying R.C.M. 1107(d) by inserting the following before the discussion of subsection (e):

"2000 Amendment: Subparagraph (d)(5). This subparagraph is new. The amendment addresses the impact of Article 58b, UCMJ. In special courts-martial, where the cumulative impact of a fine and forfeitures, whether adjudged or by operation of Article 58b, would otherwise exceed the total dollar amount of forfeitures that could be adjudged at the special court-martial, the fine and/or adjudged forfeitures should be disapproved or decreased accordingly. See generally,