JAG INSTRUCTION 5800.7F

From: Judge Advocate General

Subj: MANUAL OF THE JUDGE ADVOCATE GENERAL

Ref: (a) JAGINST 5219.1G
     (b) U.S. Navy Regulations, 1990
     (c) SECNAVINST 5450.7Q
     (d) SECNAV Green Blazer 8U003687 of 23 Apr 88 (TOTAL)

Encl: (1) JAGMAN
     (2) Summary of Major Changes

1. Purpose. In accordance with reference (a), to publish the Manual of the Judge Advocate General (JAGMAN), enclosure (1). The JAGMAN has been approved under the authority of the Secretary of the Navy, and, under references (b)-(d), the Judge Advocate General. Enclosure (2) lists major changes.

2. Cancellation. JAGINST 5800.7E of 20 Jun 07 is cancelled.

3. Action. The JAGMAN is effective on the date of this document and is applicable throughout the Department of the Navy as a regulation. Proposed changes to the JAGMAN should be forwarded to the Office of the Judge Advocate General, Administrative Law Division (Code 13), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374.

4. Records Management. Records created as a result of this instruction, regardless of media and format, shall be managed in accordance with SECNAV M-5210.1.

Distribution:
MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN)

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Department of the Navy
1322 Patterson Avenue, Southeast
Suite 3000
Washington Navy Yard
Washington, DC 20374-5066
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\textsuperscript{1} The Manual of the Judge Advocate General may be cited as "JAGMAN, 0101a(1)," "JAGMAN, A-1-b," or "JAGMAN, Chapter II."

Forms, certain reference material, and technical guides are located in the Appendices, which are keyed by section number to the relevant chapter.

The words "Navy" and "Naval" as used in this Manual include the Marine Corps, except where the context indicates differently.


The prior Chapter V, Release of Government Information, has been deleted. Instead commands shall rely on SECNAVINST 5720.42 (series), SECNAVINST 5211.5 (series), and SECNAVINST 5820.8 (series), as appropriate. The prior Chapter XI, Customs Requirements, has been deleted. Commands shall rely on DODD 4500.09 and DTR 4500.9-R-Part V, (located at http://www.transcom.mil/dtr/part-v/). In addition, the prior Chapter XIV, Payments Due Mentally Incompetent Members, Physical Examinations of Such Members, and Trustee Designations, has been deleted. Commands shall rely on 37 USC §§ 601-04, MEDMANUAL Chapter 18, and DoD FMR Volume 7B, Chapter 16.

\textsuperscript{2} Prior Chapter XIII, Environmental Law, is renumbered as Chapter V.

\textsuperscript{3} Prior Chapter XII, Maritime and Admiralty Law, is renumbered as Chapter XI.
ARTICLE 139 CLAIMS -- REDRESS OF DAMAGE TO PROPERTY

0401 SCOPE

This chapter provides for assessments against the pay of members of the Naval service in satisfaction of claims for damage or wrongful taking of privately-owned property under Article 139, Uniform Code of Military Justice (UCMJ). Under Article 139, UCMJ, pay may be assessed if the damage, destruction, or loss is caused by willful, wrongful, reckless, riotous, or disorderly conduct by the servicemember. Charges against pay under these regulations shall be made only against the pay of persons shown to have been principal offenders or accessories.

0402 PROPER CLAIMANTS

Proper claimants include any individual (whether civilian or military), a business, charity, or a state or local government that lawfully owns or possesses property.

0403 CLAIMS NOT COGNIZABLE

The following claims are not cognizable under this Chapter:

a. Claims resulting from simple negligence.

b. Claims of subrogees.

c. Claims for personal injury or death.

d. Claims arising from acts or omissions within the scope of employment of the offender.

e. Claims for reimbursement for damage, loss, or destruction of Government property.

f. Claims resulting from a breach of contractual or fiduciary duty, such as nonpayment of rent.

0404 LIMITATION ON CLAIMS

a. Time limitations. A claim must be submitted within 90 days of the incident.

b. Acts of property owner. When the acts or omissions of the property owner, his lessee, or agent were a proximate contributing factor to the loss
or damage of the property, assessments will not be made against members of the Naval service in excess of the amount for which they are found to be directly responsible, i.e., comparative responsibility for the loss will be the standard for determining financial responsibility.

c. Only direct physical damage considered. Assessment will be made only for direct physical damage to the property. Consequential damages, such as loss of use, will not be considered.

0405 COMPLAINT BY THE INJURED PARTY AND INVESTIGATION

a. Contents of the claim. A claim shall contain a statement setting forth the amount of the claim, the facts and circumstances surrounding the claim, and any other information that will assist in the investigation and resolution of the matter. When there is more than one complaint resulting from a single incident, each claimant must file a claim separately and individually. The claim shall be personally signed by the claimant or his duly authorized representative or agent.

b. Claim submission. A claim shall be filed with the commanding officer of the alleged offender.

c. Actions by the command. A commanding officer is responsible for ensuring any complaint filed under this chapter is promptly investigated and adjudicated. Where a complaint is received by a commanding officer to whose command the alleged offender does not report, that officer shall forward the claim and other pertinent information about the matter to the alleged offender's commanding officer. Where the command of the alleged offender cannot be determined, the claim and supporting materials shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, for action.

(1) Upon receipt of the claim, the commanding officer shall provide notice to the alleged offender of the basic allegations in the claim. If at any time during the processing of the claim, the alleged offender voluntarily elects to make restitution, this matter may be closed.

(2) The commanding officer shall convene an investigation under Chapter II of this Manual to inquire into the circumstances surrounding the claim.

(a) The investigation shall gather all relevant information about the matter, answering the who, what, where, when, why, and how questions, and make findings and opinions, as appropriate, about the validity of the claim under Article 139, UCMJ, and these regulations.

(b) The investigation shall determine the amount of damage suffered by the property owner. The standard of proof for a finding of pecuniary liability and for the amount to be assessed under Article 139, UCMJ, is preponderance of the evidence. See section 0207 of this Manual for an explanation of the various standards of proof.

(c) The investigation shall make recommendations about the amount
to be assessed against the pay of the responsible parties. If more than one person is found responsible, recommendations shall be made about the assessments against each individual.

(d) Where a recommendation of pecuniary liability is made, the investigating officer will forward a copy of the investigation to the identified responsible member. The member will be advised that he has five working days to submit a statement or additional information about the incident.

(e) Upon receipt of comments from the member or the expiration of the comment period, the investigating officer shall forward the investigation to a judge advocate for review.

d. Judge advocate review. The judge advocate shall examine whether the evidence supports the findings and if the investigation’s recommendations are consistent with the findings. If necessary, the report may be returned to the investigating officer for further investigation. Once satisfied the report is complete, the judge advocate will forward the investigation and his review to the commanding officer.

0406 ACTION BY THE COMMANDING OFFICER AND GENERAL COURT MARTIAL CONVENING AUTHORITY

a. GCMCA action required. If the commanding officer is not a general court martial convening authority (GCMCA), the claim, the investigative report, the offender’s statement (if any), and the commanding officer’s recommendations thereon shall be forwarded to the GCMCA over the command for review and action on the claim.

b. Multiple offenders. Where a claim involves multiple offenders that are members of different commands:

(1) Action by common superior. The investigative report shall be forwarded to the common superior GCMCA over the commands to which the alleged offenders are assigned.

(2) Forwarding to OJAG. Where it is not practical or possible to forward the investigation to a common superior GCMCA, the investigative report shall be forwarded to OJAG (Code 15), who will take action on the matter. In such a situation, commanding officers are not to make charges against the pay of their members until directed by OJAG (Code 15).

c. GCMCA review. The GCMCA shall review the entire claim file and determine whether the claim is properly within the provisions of Article 139, UCMJ, and these regulations, and whether the facts indicate responsibility for the damage by members of the command.

(1) If the GCMCA finds the claim payable under these regulations, he shall determine the amount to be assessed against the member.

(2) If the GCMCA determines that a member should be charged an amount
in excess of $5,000, the GCMCA will forward the entire claim file to the Office of the Judge Advocate General (OJAG) (Code 15), or Commandant of the Marine Corps (JAR), as appropriate, for review. After review, OJAG or JAR will return the claim file to the GCMCA for action.

(3) After the claim has been fully reviewed by the GCMCA, and OJAG/JAR if required, and a final determination has been made, the GCMCA shall promptly notify the claimant and member of the proposed action to be taken on the claim and inform both of the right to request reconsideration under section 0407.

0407 RECONSIDERATION

a. Original action by GCMCA. Either a claimant or a member who has been assessed pecuniary liability may request reconsideration of the decision. In the event of a request for reconsideration by the member, no action will be taken to assess pecuniary liability until OJAG (Code 15) has made a final decision on the reconsideration request.

(1) A request for reconsideration must be submitted to the GCMCA that took initial action within five working days of receipt of the GCMCA’s decision. However, if it appears that good cause exists that would make it impractical for a request to be submitted within five days, the GCMCA may, in his discretion, grant an extension of time. The GCMCA’s decision on extensions is final.

(2) Upon receipt of a request for reconsideration, the GCMCA may reopen the investigation or take any other action that the GCMCA believes is necessary in the interests of justice. If the GCMCA contemplates modifying the decision, the GCMCA will provide all parties to the claim with notice and a reasonable opportunity to respond.

(3) The GCMCA will forward the claim for review and final action to the Office of the Judge Advocate General, Claims and Tort Litigation (Code 15), 1322 Patterson Avenue, SE, Suite 3000, Washington Navy Yard, DC 20374-5066. The GCMCA’s endorsement will state the claimant’s name, the offender’s name, the convening authority, the amount assessed, and the original determination, as well as the GCMCA’s recommendation for action to be taken on the request for reconsideration. All documents, including the claim, the investigative report and the judge advocate review, will be included in the materials forwarded. The GCMCA shall notify the parties that the claim has been forwarded to OJAG (Code 15) for review and final action.

b. Original action by OJAG. A claimant or member who has been assessed pecuniary liability by OJAG, under section 0406b(2), may submit a request for reconsideration of the decision to OJAG (Code 15) within five working days of receipt of the original decision.
0408 ASSESSMENT OF PECUNIARY LIABILITY

a. No action shall be taken under this section until the member has been provided an opportunity to request reconsideration and final action has been taken on any such request.

b. If the GCMCA is not the member’s commanding officer, the GCMCA shall direct the commanding officer to implement the charge against pay.

c. The commanding officer will order that the charged amount be collected from the member’s pay as provided in the DoD Financial Management Regulation. The amount collected will then be paid to the claimant.

d. The amount charged in any single month against the pay of the member shall not exceed one-half of basic pay, as defined in Rule for Courts-Martial 1003(b)(2), Manual for Courts-Martial.

e. The action of the commanding officer in ordering the assessment shall be conclusive on any disbursing officer for payment to the claimant of the damages assessed, approved, charged, and collected.

0409 EFFECT OF COURT-MARTIAL PROCEEDINGS

Administrative action under these regulations is separate and distinct from, and is not affected by, any disciplinary action against the offender. The two proceedings are independent. The processing of the claim under Article 139, UCMJ, should not be delayed solely for the resolution of a pending court-martial. While acquittal or conviction of the alleged offender by court-martial is evidence for the administrative action, it is not determinative on the issue of responsibility for damages under these regulations. The GCMCA may, in the interest of justice, consider a request for reconsideration based upon the outcome of the court-martial submitted by a claimant or member who has been assessed pecuniary liability.