

## HAWAII ADMINISTRATIVE RULES

### TITLE 7 DEPARTMENT OF DEFENSE

#### SUBTITLE 1 MILITARY JUSTICE

---

### CHAPTER 4 COURTS-MARTIAL PREPARATION AND TRANSMITTAL OF CHARGE SHEET (AGHI Form SJAG 2)

---

[§7-4-1: Charge sheet generally](#)

[§7-4-2: Personal data](#)

[§7-4-3: Witnesses](#)

[§7-4-4: Documents and objects](#)

[§7-4-5: Data as to restraint](#)

[§7-4-6: Charges and specifications](#)

[§7-4-7: Preferral of charges](#)

[§7-4-8: Reading charges to the accused](#)

[§7-4-9: Nonjudicial punishment](#)

[§7-4-10: Letter of transmittal](#)

[§7-4-11: Inclosures](#)

[§7-4-12: Original documents and physical evidence](#)

[§7-4-13: Time limits](#)

[§7-4-14: Action upon receipt or initiation of charges by convening authority](#)

[§7-4-15: Action when charges are to be referred for trial](#)

[§7-4-16: Action when charges are not to be referred for trial](#)

[Amendments to Chapter 7-4](#)

---

#### **§7-4-1 Charge sheet generally.**

(a) The charge sheet is the basic document for court-martial action. In preparing charges for trial by court-martial, the AGHI Form SJAG 2 (Charge Sheet) shall be used. This form may be prepared in an original only, which shall be forwarded to the convening authority. After all necessary information is entered by the convening authority, copies of the charge sheet shall be made for use by trial personnel.

(b) Preparation of the charge sheet is the most critical step prior to referral of the case for trial and shall not be accomplished without the assistance of a legal officer or judge advocate, unless none are available. Once the charges and specifications have been prepared and signed under oath, the charge sheet shall not

be altered unless ordered by a judge advocate or legal officer.

(c) The exhibit entitled "[Annex 10](#)" dated 1 November 1984, located at the end of this subtitle is a **sample** charge sheet with instructions.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-2 Personal data.**

The first one-third of the first page of the charge sheet contains personal information concerning the accused. The accused's "grade" or "rank" is the accused's military title (for example, "PFC") and "pay grade" is the alphabetical and numerical designation (for example, "E-3"). "Home address" means the last known home address of the accused as shown on the records of the unit. The initial date of the accused's current service shall be the date of latest enlistment. All other military service shall be recorded in the section entitled "Prior Service".

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-3 Witnesses.**

The name and address (military unit or organization, if any, and home address) of all known prospective witnesses shall be listed on the charge sheet under "Data as to Witnesses". All witnesses shall be shown as witnesses for the "prosecution" unless the witness is one whom the accused has requested by name to give a statement or to be available to testify at the trial.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-4 Documents and objects.**

The commanding officer shall list all known documents or objects which are items of evidence. A clear identification of the item shall be given with the current location of the item. This section shall be subject to the conditions set forth in [section 7-4-12](#).

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-5 Data as to restraint.**

The charge sheet shall include data regarding an restraint imposed pursuant to [section 7-5-1](#).

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-6 Charges and specifications.**

(a) The most important part of the charge sheet is the page which contains the charges and specifications. The "charge" shall indicate the section of chapter 124A, HRS, which is alleged to have been violated. The "specification" under the charge shall state the facts and circumstances which constitute a violation of that section. There may be more than one specification under a single charge and more than one charge on a charge sheet. The charges and specifications shall be written so that they clearly advise the accused of the date, time, place, and circumstances of each alleged offense. The servicing judge advocate may be consulted prior to drafting the charges and specifications. Defective charges or specifications may result in dismissal of the case.

(b) The exhibit entitled "[Annex 11](#)" dated 1 November 1984, located at the end of this subtitle contains sample charges and specifications for some of the more common offenses. Particular care shall be exercised to insure that charges and specifications are legally and technically correct. Appendix 6 of the Manual for Courts-Martial, United States, contains sample charges and specifications for all offenses as well as instructions for their preparation.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-7 Preferral of charges.**

Any person subject to chapter 124A, HRS, may be an accuser. The signing of charges shall be done in the presence of a commissioned officer authorized to administer oaths under section 124A-162, HRS or any notary public of the State. All officers of the state military forces may administer oaths for the purpose of military administration and military justice when they are in a duty status. The accuser shall take the oath described in item twenty-three of the charge sheet.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-8 Reading charges to the accused.**

After the charges have been preferred, the commanding officer or a representative shall read the charges and specifications to the accused. The accused shall be advised of all rights through the use of AGHI

Form SJAG 2a, a copy of which is set forth in the exhibit entitled "[Annex 12](#)", dated 1 November 1984, located at the end of this subtitle. The accused shall sign the form. The commanding officer or representative shall complete the certificate in item twenty-four of the charge sheet. If the accused is not immediately available, processing of the charge sheet may continue and the requirements of this section met at a later time.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-9 Nonjudicial punishment.**

The commanding officer shall complete items twenty-eight to thirty of the charge sheet as to all offenses charged in item twenty.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-10 Letter of transmittal.**

The letter of transmittal is the form used to forward the charge sheets and allied papers to the court-martial convening authority. This letter contains information about the accused and the commanding officer's specific recommendation for disposition of the charges. The commanding officer shall consider that charges against an accused shall be tried by the lowest court which has the power to adjudge an appropriate and adequate punishment. A sample letter of transmittal is contained in the exhibit entitled "[Annex 13](#)" dated 1 November 1984, located at the end of this subtitle.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-11 Inclosures.**

Certain allied papers shall be prepared and forwarded with the charge sheet; they are:

- (1) Reports prepared by military police or investigators, if available;
- (2) Copies of all available witness statements, sworn or unsworn, and summaries of expected testimony of witnesses whose statements are not available;
- (3) Available records of all previous court-martial actions known to have been taken against the accused under chapter 124A, HRS, and the Uniform Code of Military Justice;
- (4) Copies of documentary evidence and descriptions of physical evidence.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-12 Original documents and physical evidence.**

In order to safeguard documentary evidence, originals of documents shall not be forwarded with the charge sheet nor shall physical evidence be forwarded. Information as to the location of original documentary and physical evidence shall be shown on the charge sheet in the section entitled "Documents and Objects".

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-13 Time limits.**

The prompt disposition of charges is essential to an efficient system of military justice. The following are recommendations for avoiding delays in the processing of court-martial charges:

- (1) Investigate an incident as soon as it becomes known;
- (2) Do not allow a case to remain in the unit because of pressure of other duties;
- (3) Hand carry or mail by certified mail all court-martial files to higher headquarters;
- (4) At any stage of the proceeding, the commanding officer may consult a staff judge advocate for advice if the commanding officer has any questions or doubts.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

### **§7-4-14 Action upon receipt or initiation of charges by convening authority.**

Upon receipt of a completed charge sheet and allied papers, or upon initiating charges, the convening authority shall complete and sign the receipt of charges, item twenty-five of the charge sheet. The convening authority shall then decide whether the charges warrant trial by court-martial. If the convening authority concludes that trial by special or general court-martial is appropriate, and the convening authority is not authorized to convene those courts, the charge sheet and allied papers shall be forwarded to the next higher convening authority with recommendations as to disposition. Upon receipt of the charges, the special or general court-martial convening authority shall proceed in accordance with chapter 124A, HRS, this subtitle, and the Manual for Courts-Martial, United States, as it existed on 1 July 1984.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

**§7-4-15 Action when charges are to be referred for trial.**

- (a) The convening authority shall contact the state judge advocate for the case number to be inserted in item thirty-one. Case numbers shall be assigned in numerical sequence, using the year and consecutive numbering (for example, 1983-1, 1983-2, 1983-3, etc.) and start anew each year.
- (b) The convening authority shall then contact the office of the appropriate judge advocate to obtain a law officer, trial and defense counsel, as required, to conduct the court-martial.
- (c) Upon selection of any law officer, trial counsel and defense counsel (military or civilian), the convening authority shall publish orders appointing the military personnel to serve in their respective capacities. A sample order is contained in the exhibit entitled "[Annex 14](#)" dated 1 November 1984, located at the end of this subtitle.
- (d) The convening authority shall then complete item twenty-six. This action refers the charges to the previously appointed court-martial for trial.
- (e) The convening authority shall notify the accused of the name, address and phone numbers of the assigned military defense counsel.
- (f) If the accused waives right to military counsel, the accused shall do so in writing. The convening authority shall then notify the office of the appropriate staff judge advocate in order to release the military defense counsel for other assignment.
- (g) Block twenty-seven shall not be completed in the case of a summary court-martial. In all other cases it shall be accomplished and completed by the trial counsel.
- (h) The "Record of Trial by Summary Court-Martial" section of the charge sheet shall be completed by the summary court officer.
- (i) The remainder of the charge sheet shall be completed after the trial and review are completed.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

**§7-4-16 Action when charges are not to be referred for trial.**

- (a) If the convening authority decides not to refer the case for trial by court-martial, the convening authority shall return the charge sheet and allied papers to the initiating commanding officer, who then, subject to subsection (b), may:
  - (1) Take no further action with regard to the case;
  - (2) Take or recommend administrative action;
  - (3) Initiate or recommend nonjudicial punishment; or

(4) Take any action not inconsistent with the directions of the higher convening authority.

(b) If the returned court-martial charges were initiated following demand by the member for court-martial in lieu of nonjudicial punishment, nonjudicial punishment action shall not be re-initiated.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)

---

## **Amendments to Chapter 7-4**

### **§7-4-14 Action upon receipt or initiation of charges by convening authority.**

Upon receipt of a completed charge sheet and allied papers, or upon initiating charges, the convening authority shall complete and sign the receipt of charges, item twenty-five of the charge sheet. The convening authority shall then decide whether the charges warrant trial by court-martial. If the convening authority concludes that trial by special or general court-martial is appropriate, and the convening authority is not authorized to convene those courts, the charge sheet and allied papers shall be forwarded to the next higher convening authority with recommendations as to disposition. Upon receipt of the charges, the special or general court-martial convening authority shall proceed in accordance with chapter 124A, HRS, this subtitle, and the Manual for Courts-Martial, United States, it existed on 1 July 1988.

[Eff: FEB 11 1985; **am APR 27 1989**] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-51)

[BACK TO TOP](#)