

CENTRAL JUDICIAL CIRCUIT
RULES OF PRACTICE

Preamble

The Central Judicial Circuit Rules of Practice (CJCs) supplement the Uniform Rules of Practice before Navy-Marine Corps Courts-Martial (*see* NAVMARTRIJUDICTINST 5813.4H, 15 July 2012) (series) and govern all courts-martial convened in the Central Judicial Circuit. These CJCs are promulgated by the Circuit Military Judge for the Central Judicial Circuit under Rule for Courts-Martial 108 and 801(b) and pursuant to the authority delegated in the Uniform Rules. They are designed to promote a common understanding of the procedure for the practice of military criminal law in courts-martial within the Central Judicial Circuit. These rules are effective 8 February 2013. All previously published rules are hereby cancelled.

Rule 1: Applicability

Uniform

Rule 1.1: These Uniform rules apply to the trial of all general and special courts-martial in which the accused is a member of the naval service. Counsel, as officers of the court, court reporters, clerks of court, and bailiffs are required to follow these and any local rules.

CJC 1.1: These CJCs apply to all Navy-Marine Corps courts-martial tried under the cognizance of the Circuit Military Judge of the Central Judicial Circuit. As noted above, they supplement and incorporate the Uniform Rules of Practice.

Uniform

Rule 1.2: All parties to the court-martial must comply with these Uniform Rules. In the case of noncompliance with these rules or local rules, or orders of the court, the military judge may, as appropriate, issue an admonishment on the record, issue appropriate court orders, issue a report to a military counsel's commanding officer or officer-in-charge, or forward information about the matter to a civilian or military counsel's bar. In addition, the court may forward a complaint for processing in accordance with R.C.M. 109, proceed with action for contempt under R.C.M. 809 and Article 48 of the Uniform Code of Military Justice, or fashion any other appropriate remedy.

CJC 1.2: All counsel practicing within the Central Judicial Circuit will familiarize themselves with both the Uniform Rules of Practice and these CJCs. Counsel must certify to the court at

their first appearance that they have read and will comply with both sets of rules. All military counsel assigned within the Central Judicial Circuit will report to the Circuit Military Judge or her designee for a briefing prior to their first appearance in court.

Rule 2: Purpose

Uniform

Rule 2.1: These Uniform Rules are intended to facilitate the orderly administration of military justice.

CJC 2.1: These CJs are intended to facilitate the orderly and just disposition of courts-martial and to provide for more efficient application of judicial and legal resources throughout the circuit. Operating within our adversarial system, the goal of a trial is the fair, impartial, and expeditious administration of justice. A trial should have an efficient presentation of evidence and argument to the trier of fact in an appropriate setting. Counsel shall strive to conduct an exemplary trial. In an exemplary trial, trial time is regarded as precious. The members are rarely sent out for extensive arguments of counsel on points of law, as these are thought out, presented to the court, and decided upon well ahead of the arrival of the members each day. Counsel frame their opening statements by properly balancing fact and emotion. Direct examination educates the members about the essential facts and circumstances of the case. Exhibits are handled professionally, expeditiously, and marked in advance. Demonstrative evidence is planned, prepared, and tested in advance of trial. Objections are ruled on without excessive argument, counsel address the court vice each other, and do not vie for the last word. Cross-examination by counsel is focused and succinct, and reflects that the counsel questioning the witness has fully investigated the issues; giving everyone the sense that counsel knows exactly where they are going. Closing arguments stick to the evidence received and do not invite objection. Counsel are well prepared with requests for rulings and instructions and present authority when requesting deviation from the Military Judges' Benchbook.

Rule 3: Construction

Uniform

Rule 3.1: These Uniform Rules will be construed to ensure simplicity, fairness, and efficiency in the timely disposition of courts-martial.

CJC 3.1: Non-compliance shall neither create a right in, nor remedy for either party to the court-martial. Adherence to these rules directly reflects on the professionalism of those individuals involved. The arbiters of these rules will be the military judges of the Central Judicial Circuit and where any conflict arises, the Circuit Military Judge.

a. Throughout these CJs the following definitions will apply:

(1) "Filing" of a pleading, notice, or document with the court means that a true and complete copy of the pleading, notice, or document in question is delivered to the detailed military judge and clerk of court. Counsel are cautioned that a

detailed military judge in any given court-martial may not be stationed where a court-martial was convened or the *situs* of trial. Detailed counsel and detailed military judges may be separated by substantial time and distance. Counsel should plan and coordinate accordingly. Counsel are responsible for ensuring that the detailed military judge receives filings in a timely manner via an approved means as described within these *Circuit Rules*.

(2) "Service" upon opposing counsel means that a true and complete copy of a filed pleading or document is delivered to opposing counsel.

(3) "Notice" is established when the transmitting attorney establishes that the receiving attorney has, in fact, received the pleading, document, or information transmitted. For the purpose of this definition, "receiving attorney" means the lead counsel in the case, whether military or civilian. If the lead counsel is unavailable, however, notice is deemed to be established by the receipt of the pleading, document, or information by any counsel detailed to the case or assigned as individual military counsel.

(4) "Timeliness" of filing, service and notice vis-à-vis time zones shall be determined by the detailed military judge as required and when appropriate in any particular case.

- b. Original documents. All original documents should be retained and physically entered into the record of trial at the next session of the court-martial in question. Counsel are solely responsible for ensuring the Clerk of Court or detailed court reporter is served with all original documents.
- c. Method of filing, service, and notice:
- (1) Physical service: Proof of physical delivery to the judge or attorney in question will establish filing, service, and/or notice as appropriate.
 - (2) Electronic transmissions: In lieu of physical delivery, each filing or matter to be served may be transmitted electronically to the military judge or counsel concerned. Proof that an electronic document was received and opened by the receiving military judge or receiving counsel will constitute proof of filing or service of the document in question, and will constitute proof of notice as to that document, except as to any portion of the pleading or document that was not transmitted electronically. Electronic transmission and receipt will constitute filing and service, and can be substituted for physical service to the extent that the electronic filing or matter to be served corresponds to the original of the filing or matter to be served. Originals will be entered into the record of trial at the next session of the court-martial and working hard copies for the military judge of substantial motions and enclosures should be provided to the Clerk of Court within 24 hours of any electronic submission (or on the next work day if filed over a weekend or holiday).

- (3) Fax transmissions: Fax transmissions cannot be assumed to be delivered to the judge or counsel in question. In order to satisfy filing, service, and/or notice requirements for faxed documents, the transmitting attorney must verify by voice or other means that the addressee did in fact receive the faxed document.

Uniform

Rule 3.2: If any rule herein conflicts with case law, statute, the Manual for Courts-Martial, any constitutional provision, or any service regulation, then that rule must be read in accordance with the law.

CJC 3.2: Consistent with law and ethical standards, the detailed military judge may modify or suspend any of these CJs when required by the facts of a case or in the interests of justice.

Rule 4: Referred Charges

Uniform

Rule 4.1: After the referral of charges, the trial counsel will provide the responsible judicial circuit with a copy of those charges, along with the appropriate convening order, as soon as possible.

CJC 4.1: After referral of charges, trial counsel will provide the Clerk of Court with a copy of those charges, along with the applicable convening order, **as soon as possible, but not later than five calendar days after referral.**

CJC 4.1.a: Defense counsel will examine the personal data on the charge sheet, determine its accuracy, and notify the trial counsel and the military judge of any necessary corrections, additions, or deletions as soon after service of the charges as possible or at arraignment. However, nothing in this rule is intended to preclude defense strategy for future motions.

CJC 4.1.b: All authorized changes to the charge sheet must be initialed and dated by the trial counsel or other representative of the convening authority. See R.C.M. 603.

Uniform

Rule 4.2: Trial counsel must immediately notify the Clerk of Court and the assigned military judge if referred charges have been withdrawn.

CJC 4.2: Trial counsel and defense counsel shall make every effort to inform the detailed military judge of plea bargain specifics (i.e., only Part I of the Pretrial Agreement) at the earliest time practical following conclusion of negotiations and acceptance by counsel, the accused and the convening authority.

CJC 4.3: Trial counsel will notify the detailed military judge and defense counsel at least three days before trial of any charges or specifications on which evidence will not be presented.

CJC 4.4: The Circuit Military Judge is responsible for detailing all military judges to all Navy-Marine Corps courts-martial within the Central Judicial Circuit except for those cases that fall within the purview of the Chief Judge, Navy-Marine Corps Trial Judiciary. Cases involving National Security, as defined in the Manual of the Judge Advocate General, JAGINST 5800.7D (series) shall be detailed by the Chief Trial Judge in accordance with NAVMARTRIJUDICINST 5500.2 (series). Government counsel will ensure that the Circuit Military Judge is immediately advised of the existence of all such cases. Notice shall include the name of the accused, the convening authority, and the allegations. Cases likely to generate press interest or are otherwise potentially high visibility cases as well as those involving security concerns shall also be brought to the Circuit Military Judge's attention as soon as practicable following referral.

Rule 5: Civilian Counsel

Uniform

Rule 5.1: If an accused retains civilian counsel, detailed defense counsel must furnish civilian counsel with a copy of all pertinent rules of court. Prior to appearing in Court, civilian counsel must cause to be served on the clerk of court a written notice of appearance. This notice will be in the form of a pleading and must contain the following: name of the accused, counsel's name, office address, telephone numbers, and jurisdiction(s) where the counsel is presently admitted to practice. The filing of any pleading relative to a case that contains the signature of counsel constitutes notice of appearance of such counsel.

CJC 5.1: If an accused retains civilian counsel, detailed defense counsel shall furnish civilian counsel with a copy of these CJC's as well as the Uniform Rules. Civilian counsel will cause to be served on the Clerk of Court a written notice of appearance (*attachment 1*). Detailed defense counsel will promptly provide a copy of the notice of appearance to the trial counsel and court reporter prior to the first session of court. The notice must be in the form of a pleading and must contain the following: Name of the accused, counsel's name, office address, telephone/fax numbers, and electronic mail address; and jurisdiction(s) where the counsel is presently admitted to practice and in good standing. Additionally, the notice must acknowledge familiarity with these rules.

Uniform

Rule 5.2: Detailed defense counsel must inform the civilian counsel of the rules of JAGINST 5803.1C (series) (Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General).

Uniform

Rule 5.3: Once civilian counsel notifies the clerk of court or the military judge of representation of the accused on the referred charges he or she may not withdraw from such representation, without the permission of the military judge.

Rule 6: Central Circuit Docketing Procedures

Uniform

Rule 6.1: The circuit judge of each judicial circuit will establish and promulgate docketing procedures for cases within their circuit. These procedures must contain features that ensure positive control over the docketing and processing of courts-martial.

CJC 6.1: Upon receipt of a newly referred case, the Senior Trial Counsel (STC) shall ensure immediate delivery of the charge sheet and convening order to the Clerk of Court, with a copy to the Senior Defense Counsel (SDC). See also **CJC Rule 4.1**. Forwarding of copies of charge sheets may be done physically or electronically, either by scanning or facsimile transmission. Only cases with referred charges will be entered on the docket. All courts-martial will be placed on the docket by order of the Circuit Military Judge, using the following procedures.

Uniform

Rule 6.2: The circuit military judge will publish, on a weekly basis, the circuit docket in accordance with OJAG standard operating procedures.

CJC 6.2: The Motion for Docketing/Case Management Order (MFD/CMO) (*attachment 2*) is a combined document that consists of three parts. Part One addresses Government proposed trial dates and deadlines, including in-court sessions of arraignment, Article 39(a) sessions, and trial. Part Two addresses Defense concerns with the proposed dates. Part Three is the Court's ruling on the proposed dates. Please note that *attachment 2* provides date guidelines. This document does NOT substitute for the Pretrial Information Report (PTIR) (*attachment 3*) described in Rule 6.6, which is required three working days before the first scheduled session of trial.

CJC 6.2.a: Electronic Docket Location. To access the Central Judicial Circuit Docket, you need to be in your email/Microsoft Outlook. Click on "Shortcuts" (arrow at bottom left), Click on "Add New Shortcut", then "Public Folder", "All Public Folders", "USN", "DONAA(SECNAV)", "Norfolk", "Central Judicial Circuit", "Docket", then OK. This shortcut displays the current short and long range Central Circuit docket. The Clerk of Court also posts the weekly docket with courtroom assignments on the 3rd deck white board by 1700 each Friday.

CJC 6.2.b: General Courts-Martial. Not later than **five working days** after delivery of the charge sheet and convening order to the Clerk of Court, a MFD/CMO shall be forwarded by the trial counsel to the Circuit Judge via the defense counsel and Clerk of the Court. Defense

counsel will complete the docket request and forward the original to the Clerk of Court within **two working days** of receipt from trial counsel. Upon receipt, the Clerk of Court will discuss with the Circuit Judge who will assign the trial judge. The trial judge will sign the MFD/CMO and the Clerk will then scan the signed MFD/CMO to counsel. The Clerk will add the trial dates and military judge to the electronic docket. If counsel are unable to agree on court dates, then the MFD/CMO should so state, but it should be forwarded with the proposed arraignment date in accordance with the above timelines. General Courts-Martial trial dates should be targeted for 60-90 days from arraignment.

CJC 6.2.c: Special Courts-Martial. Not later than **ten working days** after delivery of the charge sheet and convening order to the Clerk of Court, a MFD/CMO shall be forwarded by the trial counsel to the Circuit Judge via the defense counsel and Clerk of the Court. Defense counsel will complete the docket request and forward the original to the Clerk of Court within **two working days** of receipt from trial counsel. Upon receipt, the Clerk of Court will discuss with the Circuit Judge, who will assign the trial judge. The trial judge will sign the CMO and the Clerk will then scan the signed MFD/CMO to counsel. The Clerk will add the trial dates and military judge to the electronic docket. If counsel are unable to agree on court dates, then the MFD/CMO should so state, but it should be forwarded with the proposed arraignment date in accordance with the above timelines. Special Courts-Martial trial dates should be targeted for 45-60 days from arraignment.

CJC 6.2.d: Selecting Dates. Before requesting a docket date, counsel are encouraged to ascertain all parties' and witnesses' availability on the particular date requested. Counsel are also encouraged to evaluate their cases and to request realistic docket dates on which the parties will be prepared to present the matter being docketed, whether an arraignment, motion hearing, disposition of a guilty plea, a contested trial, or any other matter. Counsel should request the preparation time and hearing date that they need, based on their evaluation of their respective cases, and if opposed, counsel should be prepared to justify the date requested, and then be ready to proceed on the docketed date. When requesting a date or dates on the docket, counsel are reminded that they should verify whether a trial judge is, in fact, available on the requested date. If no judge is available, counsel should be prepared to justify their need to docket the case on those particular dates, understanding that the trial judiciary will provide a judge from other resources, whether another circuit or the reserve judiciary. Counsel should pay close attention to suggested target dates set for the sample case in attachment 2. For example, the goal should be at least 3 calendar days between motions and responses, 7 calendar days between motion responses and the Article 39(a) session, and 7 calendar days between forum selection and the date members' questionnaires are due.

CJC 6.2.e: Docket Call. Docket Call/Scrub is held in Courtroom #1 every other Monday at 0815 (generally the 2nd and 4th Monday of each month, depending on Monday holidays). **Attendance by military counsel is mandatory.** Attendance by civilian counsel is encouraged. If a counsel with pending cases is unable to participate, then a supervisory or other counsel shall be present to address any docket questions regarding the absent counsel's cases. It is an informal session designed to verify the current status of previously docketed cases. It is not a session conducted under R.C.M. 802. The last working day before Docket Call, the Clerk of Court will send a reminder to all counsel asking that they review the docket prior to docket call and notify

the Clerk of Court of any known or requested changes. Docket Call is typically followed by counsel training on a variety of topics, but focusing primarily on the military rules of evidence.

CJC 6.2.f: Arraignment. Arraignments are typically on Monday mornings following docket call and training, though exceptions may be made by the Circuit Judge for good cause. Arraignments for pretrial confinement cases should occur within 14 calendar days of the Clerk's receipt of referral of charges and within 30 calendar days for all other cases.

CJC 6.3: If at any time before a scheduled trial date, counsel become aware of matters that might delay the trial or alter the trial date (e.g., change in forum or pleas, pretrial agreement obtained, witness ill or on emergency leave or deployed, accused unavailable, charge(s) withdrawn, etc.), they shall **immediately** inform the trial judge and the Clerk of Court.

CJC 6.4: In the event charges are withdrawn, or are withdrawn and dismissed (for example, as the result of an alternate administrative disposition), the trial counsel shall so annotate the original charge sheet and shall file a copy with the Clerk of Court within 48 hours of the convening authority's withdrawal action. In the event the convening authority has not delegated to trial counsel the authority to comply with this requirement, trial counsel shall, within 7 calendar days, file a letter from the convening authority indicating which referred charges are no longer pending before the court. Cases will not be removed from the docket, and counsel will be expected to appear as scheduled, until such written documentation is received by the court.

CJC 6.5: Normally, all courts-martial convene promptly at 0900. However, the trial military judge may direct otherwise. All parties to the trial shall be in the courtroom and ready to proceed at the scheduled convening time. Requests for exceptions must be submitted orally or in writing to the trial military judge prior to the scheduled convening time. Justification is required for any modification. The trial counsel is responsible for keeping the court reporter advised of all changes in starting times and should inform the military judge when all parties are present.

CJC 6.6: Pretrial Information Reports (PTIR). Detailed trial counsel shall submit a pretrial information report (*Attachment 3*) to defense counsel after a case is docketed and not later than seven working days prior to the initial session of trial. Upon receipt, defense counsel will complete and ensure delivery of the report to the Clerk of Court **at least five working days** before the first scheduled session of trial (unless otherwise ordered by the trial judge, including an earlier date). When applicable, trial counsel will include a statement of whether the prosecution will present evidence on any specification to which the accused intends to plead not guilty.

CJC 6.6.a: The PTIR serves to prepare the military judge for each session of court. In the initial PTIR, trial counsel must include copies of any military orders or directives alleged to have been violated, and copies of any federal or state statutes alleged to have been violated and applicable sections of the statutes pertaining to the maximum punishments. Prior to trial on the merits or guilty pleas, trial and defense counsel must each include proposed elements for any federal or state statutes alleged to have been violated, together with all applicable definitions. In guilty pleas, trial counsel will also submit PTA Part I and any stipulations of fact.

CJC 6.6.b: If, after submission of the pretrial information report, alterations occur in the anticipated pleas, forum choice, motions, or any matter that could impact on the trial length, the defense counsel will immediately submit an amended PTIR.

CJC 6.6.c: Trial counsel and defense counsel both must sign the PTIR. However, its submission should not be delayed for the lack of a signature. Accordingly, provided counsel have communicated with one another regarding the contents of the PTIR, one counsel may sign for the other with an explanation for the missing signature. This will serve to verify to the court that the non-signing counsel is aware of the contents and has authorized the other to sign on his or her behalf.

CJC 6.6.d: If a previously scheduled session of court no longer appears to be necessary, a PTIR is still required. The reason for requesting to cancel the session should be explained in part 2 of the PTIR. As an example, if an Article 39(a) session was scheduled to litigate motions, and no motions have been filed, counsel still must submit a PTIR for that session, but may indicate in the PTIR that neither party desires a session. Unless all charges have been withdrawn in writing, only the military judge has the authority to cancel or move any session of court.

CJC 6.7: The accused, via defense counsel, must enter forum and pleas on the date established by the court. Such entry must be either orally on the record, or in writing. If in writing, they will be entered on the record at the next session of court.

CJC 6.8: Counsel shall submit pretrial documentation addressing preliminary matters (commonly referred to by the applicable page number of the Navy-Marine Corps Trial Judiciary Trial Guide, currently page 59) in accordance with the court-established deadlines. Counsel who fails to submit such documents in a timely manner may, in the discretion of the military judge, forfeit the opportunity to conduct general voir dire of the members.

CJC 6.9: The Circuit Military Judge publishes the docket pursuant to the OJAG standard operating procedures. The Clerk of Court is the circuit's primary point of contact for all docketing issues. The Clerk of Court is the administrative assistant to the Circuit Military Judge, Central Judicial Circuit. The Clerk of Court is responsible for all administrative functions associated with the circuit and will be treated with the respect due the court when handling such matters, regardless of his/her rank.

CJC 6.10: The Circuit Military Judge or Clerk will normally publish the docket by noon each Friday. The docket is published through OJAG and distributed by the Clerk of Court to the field. Each Military Justice Officer, Senior Trial Counsel, Senior Defense Counsel, or other officer receiving the docket is responsible to ensure that the docket is distributed to all parties concerned with the scheduling of cases, including the court reporters. It is the responsibility of each counsel to be aware of each week's published docket.

CJC 6.11: Trial deadlines established at an Article 39(a) arraignment session, or by the use of a Motion for Docketing/Case Management Order, are not optional. Counsel will adhere to the deadlines and may be called upon to address, on the record, any failure to abide by them.

Rule 7: PII

Uniform

Rule 7.1: Use of Personally Identifying Information (PII) must be eliminated or minimized to the maximum extent possible in all pleadings and in all court documents.

Uniform

Rule 7.2: PII must be redacted in all documents, pleadings, discovery, etc. that are electronically transmitted. Unless encrypted, medical and psychiatric records must never be electronically transferred.

Uniform

Rule 7.3: PII and the names of all alleged victim(s), must be minimized to the maximum extent possible in all pleadings. With the exception of the charge sheet, and during court proceedings, all alleged victim(s), will only be identified by their initials, and rank if a service-member.

CJC 7.3: The first and last initials in capital letters will be used when identifying victims in pleadings. Where initials are duplicative, the middle initial will be used for both parties.

Uniform

Rule 7.4: All Marine judge advocates will comply with MARADMIN Active Number: 181/10 R 291951Z MAR 10 and all active duty Counsel will comply with SECNAVINST 5211.5E dtd 28 Dec 2005 (5211.5E series).

Rule 8: Conferences & Ex Parte Communications With The Military Judge

Uniform

Rule 8.1: Conferences between the military judge and trial and defense counsel are authorized by R.C.M. 802. The presence of the accused is neither required nor prohibited. Such conferences will not be used to litigate or decide contested issues. The military judge must summarize all R.C.M. 802 conferences for the record at the next 39(a) session of court.

CJC 8.1: In contested cases, counsel may seek, and the military judge will normally schedule, a trial management R.C.M. 802 conference approximately one week prior to trial on the merits.

Uniform

Rule 8.2: *Ex parte* communications with a military judge

concerning a case that is pending before that military judge are prohibited, except for routine administrative matters or as provided by law.

Uniform

Rule 8.3: Routine administrative matters include, but are not limited to, docketing and logistic matters (e.g. pleas, forum, and number of, or difficulty with, witnesses that affect the time, location, and length of court sessions).

Uniform

Rule 8.4: Military judges may, at their discretion, conduct critiques or offer suggestions regarding counsels' performance in courts-martial to improve the administration of justice. At the discretion of the military judge, these sessions may be conducted *ex parte*, or jointly.

CJC 8.4: These sessions are commonly referred to as “bridging the gap” discussions. They are intended to provide insight into counsel performance, not to explain verdicts or sentences when the military judge is the trier of fact or sentencing authority.

Rule 9: Discovery

Uniform

Rule 9.1: Counsel will promptly comply with military law regarding discovery. Counsel must not make a frivolous discovery request or fail to make a diligent effort to comply with a legal and proper discovery request by an opposing party.

CJC 9.1: Discovery issues must be resolved expeditiously. Counsel will acknowledge and respond to discovery requests in a timely fashion, normally within five working days. When counsel are not able to respond fully to a discovery request within five working days, counsel will acknowledge the request and discover what is available and give notice of when remaining material is expected to become available. To prevent discovery issues from unnecessarily delaying trial, the military judge, at arraignment, may require both counsel to state on the record their compliance with discovery requirements.

Uniform

Rule 9.2: Notwithstanding "open discovery" in the military, discovery requests should be as specific as possible to avoid misunderstanding and to assist in quickly obtaining the desired information.

CJC 9.2: Gamesmanship in the discovery process will not be tolerated. Discovery requests should be answered promptly in writing. All counsel are expected to adhere to the spirit of

military discovery practice and shall promptly turn over all discoverable materials, including the identity of witnesses.

CJC 9.3: Upon notice to opposing counsel, a party may request an *in camera* review of potentially discoverable material from the court at any time.

Rule 10: Motions

Uniform

Rule 10.1: As early as possible, counsel will advise the military judge and opposing counsel of the general nature of any motions, along with applicable citations.

Uniform

Rule 10.2: When necessary and not otherwise prohibited by the military judge, motions and other documents may be filed with the court and served on opposing counsel by facsimile (fax) or electronic transmission. Transmitting counsel will ensure that such documents are actually received. Moreover, whenever a facsimile or electronic mail transmission is used to communicate with the court or with opposing counsel, the original document or copy, as appropriate, will be maintained by the originator and provided to the court reporter for inclusion in the record of trial.

Rule 10.3.A: Motions

Uniform

10.3.A.1: Each motion must include or be accompanied by a statement of the specific points of law and authority that support the motion, including, where appropriate, a concise statement of facts, which party bears the burden of production and persuasion, and whether oral argument is requested.

CJC 10.3.A.1: Motions must be submitted in accordance with the trial deadlines established by the military judge at the arraignment or as set out in an approved MFD/CMO. Unless the military judge directs otherwise, proponents of motions should file not less than 10 working days before the Article 39(a) session or trial date, with responses not later than 7 working days before the pretrial Article 39(a) session **by close of business that day (1700)**. All motions and responses must be filed in the general format contained in *attachment 4* and contain the following information:

- (1) A statement of the nature of the motion;
- (2) A summary of the facts supporting the motion;
- (3) A brief discussion of the points of law supporting the motion, including citation of authority as well as argument and conclusions;
- (4) A statement of any evidence to be offered in support of the motion, (e.g., a description or copy of real evidence including photographs, names of witnesses, summaries of expected testimony, etc), a statement of which party bears the burden of production and persuasion, and a request, if any, for the production of a witness for an Article 39(a) motion session;
- (5) A statement of the relief requested, including drafts of any proposed orders; and
- (6) A statement whether oral argument is desired.

Uniform

10.3.A.2: Within 7 days of the date of service or at such other time as the Court may direct, the opposing counsel must serve and file a memorandum of points and authorities in opposition to the motion. If such a response is not filed within the prescribed time, the Court may treat the motion as conceded.

CJC 10.3.A.2: Answers to motions will comply with the same requirements as motions, except they will be filed with the detailed military judge as soon as possible or as directed by pretrial order (see *attachment 2 – MFD/CMO for motion timeline guidelines*). See also **CJC 6.2.c**.

Uniform

10.3.A.3: Each motion that requires an order must be accompanied by a proposed order.

Uniform

10.3.A.4: Within 5 days after service of the motion in opposition, or at such other time as the Court may direct, the moving party may serve and file a response.

Uniform

Rule 10.4: When essential findings are required on a motion, the military judge must enter those findings on the record contemporaneously with the ruling.

CJC 10.4: Many litigated pretrial motions required the trial judge to make essential findings of fact. Therefore, counsel will prepare proposed findings of fact and conclusions of law to

accompany each motion, unless otherwise directed by court order. Motions to compel discovery and witnesses generally will not require proposed findings of fact/conclusions of law. Otherwise, proposed findings of fact and conclusions of law must be submitted and timely filed with each motion and response.

CJC 10.4.a: Litigation of motions will involve presentation of legal and competent evidence; i.e., testimony, documentary evidence, stipulations, judicial notice, etc. Facts must be established upon which the military judge may make essential findings. Ordinarily, mere averments of counsel or statements of facts contained within motions are not sufficient to establish facts.

CJC 10.4.b: If the motion involves only a dispute between the parties as to the law or an ultimate question of fact, and does not involve the underlying facts, counsel should endeavor to enter into, and prepare, prior to trial, stipulations of fact or of testimony covering those matters.

Uniform

Rule 10.5: If the military judge rules adversely to the government on a significant matter, and the government is contemplating an appeal, the military judge must state on the record the time of the ruling, the time the 72-hour period will run, and how and where the government may provide the military judge with written notice of appeal.

Uniform

Rule 10.6: Unless good cause is shown, no motions will be considered on the day of trial.

CJC 10.6: It is the responsibility of counsel to ensure prompt delivery of all motions and/or responses as well as all supporting documents by the appropriate filing date and to confirm receipt by the judiciary. Hard copy of substantial motions/enclosures for the military judge is expected within 24 hours of electronic filing.

Rule 11: Continuances

Uniform

Rule 11.1: Continuance requests must be made by written motion outside of court or, if presented during an Article 39(a) session, they may be oral. The motion must state the specific reason for the request and the earliest possible trial date. Counsel must be prepared to fully justify each continuance request.

Uniform

Rule 11.2: All motions to continue must include the number of

previous continuances and who sought the continuances, whether opposing counsel consents, the trial date, and dates counsel and witnesses are available for trial. The proposed order must contain language for both granting and denying the motion, a box to check if the motion is granted or denied, and a place for the new trial date. If the motion is made after the last Article 39(a) session before trial, the motion will not be granted except under extraordinary circumstances where there is no alternative means of preventing a substantial injustice.

CJC 11.2: In cases where a Reserve Military Judge has been detailed, all continuance requests will be submitted to both the Circuit Military Judge and the detailed Reserve Military Judge. Absent specific delegation to the Reserve Military Judge, the Circuit Military Judge will rule on the continuance requests.

CJC 11.2.a: Counsel do not set trial dates. The detailed military judge has sole responsibility to set or change trial dates. *See* Rule 6. If a continuance is requested and both counsel agree to the requested delay, the detailed military judge may grant the request without an Article 39(a) session or R.C.M. 802 conference in his or her sole discretion.

Uniform

Rule 11.3: If the accused is in pretrial confinement, defense motions for continuances and concurrences in government motions for continuances must be signed by the accused and defense counsel.

Rule 12: Situs

Uniform

Rule 12.1: Subject to R.C.M. 504(d)(1), the military judge shall designate the situs of the trial.

Rule 13: Courtroom Security

Uniform

Rule 13.1: The presiding military judge may prescribe rules in any case to establish courtroom security as necessary.

CJC 13.1: Local courtroom security in the Central Circuit is generally governed by separate instructions applicable per JAG/Commander, Naval Legal Service Command Instruction (COMNAVLEGSVCCOMINST) 5530.2C (series) and as implemented by local instructions.

Uniform

Rule 13.2: The government is responsible for ensuring that the courtroom facility is in compliance with all applicable orders and directives governing courtroom safety requirements. Notwithstanding such orders and directives, counsel must inform the military judge whenever they believe extra precautions and/or security measures should be implemented.

CJC 13.2: In any case where the detailed military judge determines a security concern exists, or where a high security risk or potential risk is present, the trial counsel will ensure a courtroom security officer is appointed and a courtroom security plan is developed. The detailed military judge may delay the trial until satisfied that the court-martial may proceed in a safe manner. If any unusual circumstances develop while court is in session, counsel must immediately notify the military judge by calling for an "Article 39(Zulu)" (code for courtroom security incident). Trial counsel will ensure that bailiffs and security personnel are trained to recognize the significance of a request for an "Article 39 (Zulu)".

Uniform

Rule 13.3: The circuit judge will annually review the security plan with the courtroom facilities within the circuit with the government representative responsible for courtroom security at each installation.

Uniform

Rule 13.4: The wearing or carrying of weapons in the courtroom is prohibited, except when authorized by the detailed military judge.

CJC 13.4: If firearms are to be marked as exhibits, trial counsel will personally ensure that the firearms have been cleared before they are brought in the courtroom and cannot be fired.

Rule 14: Uniforms

Uniform

Rule 14.1: The military judge will designate the proper uniform and civilian attire to be worn by all persons required to be present. However, when court is convened in a courtroom facility or non-operational setting, all parties, counsel, and the court will appear in the Uniform of the Day. Utility uniforms will not be designated as courtroom uniforms unless the court is convened at sea or in an operational setting.

CJC 14.1: The uniform for all sessions of court will be determined by the military judge. *See* R.C.M. 801. In the winter months, the prescribed uniform is service “B” for Marines and Service Dress Blue for Navy (or Service equivalent). In summer months, the prescribed uniform is service “C” for Marines and Summer Whites for Navy (or Service equivalent). Marines may be required to wear Service “A” at the military judge’s discretion. Navy personnel, at the military judge’s discretion may wear the khaki uniform or service uniform. Seasonal uniform shifts will be conducted in accordance with guidance established by Commander, Navy Region Mid-Atlantic. In all cases, when determining which uniform will be worn, the military judge will give careful consideration to the seriousness with which the proceedings are viewed, customs and traditions of the naval service, as well as the potential for publicity.

CJC 14.1.a: Male civilian counsel will wear conservative coat and tie, shirt, and slacks. Female civilian counsel will wear appropriate conservative business clothing.

CJC 14.1.b: Bailiffs will be exempt from the seasonal uniform requirements as for safety reasons, they will not wear any uniform that requires a neckerchief, nor will they wear a four-in-hand tie (“clip-on” ties are permitted). When special or unforeseen circumstances warrant, the military judge may permit the accused or witnesses to appear before the court-martial in a clean, neat working uniform (e.g., NWU or fatigues).

Uniform

Rule 14.2: The accused must wear the insignia of grade and may wear any decorations, emblems, or ribbons to which entitled. The accused and defense counsel are responsible for ensuring that the accused is properly attired; however, upon request, the accused’s commander must render such assistance as may be necessary to ensure proper uniform. When the accused is in pretrial confinement, the Government is responsible for ensuring the accused is in the appropriate uniform. Confinement uniforms are not appropriate courtroom attire.

CJC 14.2: In all general and special courts-martial, defense counsel will prepare for inclusion in the record, a record of awards marked as a Defense exhibit. This appellate exhibit will normally be prepared for arraignment.

Uniform

Rule 14.3: Physical restraints will not be imposed on the accused or any witness during open sessions of the court-martial unless prescribed by the military judge. No accused or witness in open court will wear any tag or symbol that identifies them as being in custody.

Rule 15: Spectators

Uniform

Rule 15.1: The military judge is responsible for the control of court-martial spectators and the courtroom security in general. The military judge may issue such orders as deemed just, to ensure a fair trial.

Uniform

Rule 15.2: Spectators are encouraged to attend any sessions of the court-martial, unless otherwise determined by the military judge. See R.C.M. 806.

CJC 15.2: Spectators may enter or leave the courtroom while the court-martial is in session, provided that their activity is not disruptive to the proceedings (*attachment 5*).

CJC 15.2.a: Counsel who become aware of media presence at trial shall inform the military judge as soon as possible. Trial counsel will coordinate with the bailiff to ensure that no video or audio recording devices are brought into the courtroom. Trial counsel shall coordinate with the cognizant Public Affairs Officer or Staff Judge Advocate regarding any media presence or interest.

Uniform

Rule 15.3: Counsel will ensure that the military judge is advised if there is a likelihood that any spectator is to be called as a witness.

Uniform

Rule 15.4: Spectators are forbidden to demonstrate agreement or disagreement, either verbally or by non-verbal conduct (e.g. shaking or nodding of head), with testimony or other trial procedures. Spectators who violate this rule may be excluded from the courtroom or, in aggravated cases, held in contempt. Counsel are responsible for advising their clients, their witnesses, and friends of the accused and counsel, of the decorum required in the courtroom.

CJC 15.4: Counsel will refrain from conferring with spectators or other non-participants across the bar while the court is in session. Counsel shall not normally pass or receive notes across the bar. Supervisory attorneys shall not try to communicate with counsel across the bar while court is in session.

Rule 16: Punctuality and Consideration For Members' Time

Uniform

Rule 16.1: Punctuality in all court matters is required of all parties and reflects preparation and professionalism. When a party is unavoidably late, or proceedings will be delayed, the judge will be notified immediately and provided an explanation.

Note: It is better to be 15 minutes early than one minute late.

CJC 16.1: Trial counsel will notify the accused's command of the place, date, and time of trial, that the presence of the accused is required, and that appropriate transportation to the situs of the trial should be arranged. Generally, trial counsel is responsible for ensuring the timely presence of an accused who is in pretrial confinement or other restraint. However, after the accused arrives at the place of trial, defense counsel is responsible for the timely presence of an accused at all required court sessions. Defense counsel is also responsible for the timely presence of an accused that is not in pretrial restraint.

CJC 16.2: Counsel should coordinate with all parties and the military judge to avoid “down time” for the members. When a case is to be tried before a court with members, trial counsel must ensure that the members are notified of the time, place, and uniform for the trial. Reporting times for court members will be scheduled to minimize waiting time for members. Members may be placed on standby or “on call” as deemed necessary by the detailed military judge.

Rule 17: Bailiff

Uniform

Rule 17.1: If practicable, a bailiff will be present at every court-martial. Trial counsel must ensure bailiffs are provided a copy of attachment (1) and are thoroughly briefed on their duties.

CJC 17.1: A bailiff will be present at every trial with members or as directed by the military judge. Trial counsel will ensure the bailiff is provided a copy of *attachment 6* and is thoroughly briefed as to the bailiff's responsibilities.

CJC 17.2: The bailiff will not be a witness. The bailiff will not be the unit escort or guard for the accused. If the detailed military judge excuses the presence of a bailiff, the trial counsel will perform the bailiff's duties.

CJC 17.3: The bailiff shall be senior to an accused in rank and grade, except in officer cases where the bailiff may be the same rank as the accused, or unless otherwise determined by the military judge.

Rule 18: Guards

Uniform

Rule 18.1: When appropriate, a guard or guards will be detailed to ensure proper custody of the accused and to assist the court in preserving order and decorum.

CJC 18.1: All issues concerning guards/brig chasers or courtroom security will be resolved by the detailed military judge on a case by case basis. Unless directed otherwise, guards shall not sit in such close proximity to the accused so as to imply that the accused is a physical threat to any witness, court member, or spectator. See also Rule 14.

CJC 18.2: Counsel will immediately notify the detailed military judge of any matters that may affect courtroom security. If matters arise during the course of a trial, counsel will immediately ask for a recess or call for an "Article 39(Zulu)" and advise the military judge. See also Rule 13.

Rule 19: Court Reporters

Uniform

Rule 19.1: Trial counsel must ensure that the court reporter has been sworn.

Uniform

Rule 19.2: Each time the court convenes or reconvenes, the reporter will note in the record the presence or absence of the parties and the time at which the court convenes or reconvenes. The court reporter must note the time at which recesses are taken and the time of adjournment.

Uniform

Rule 19.3: Court reporters must ensure that the name and rank of all military parties to the trial and the name and address of civilian counsel are properly noted in the record of trial.

Uniform

Rule 19.4: Court reporters will maintain a complete list of all exhibits marked and those admitted.

CJC 19.4: Court reporters shall maintain vigilance to ensure counsel to not stray so far from a microphone that they degrade the courtroom recording capability. In the event counsel's position impairs verbatim recording of a counsel's questions or comments, the court reporter shall immediately notify the trial judge, who will interrupt counsel and direct their repositioning in proper proximity to a microphone.

CJC 19.4.a: The trial counsel is responsible for keeping the court reporters apprised of the status of all docketed cases, to include, but not limited to: all anticipated delays; continuances; withdrawal of charges; changes of courtrooms and/or location; changes in the anticipated pleas and forum; and the need for court reporter support in unscheduled hearings.

Rule 20: Entry and Departure of Military Judge

Uniform

Rule 20.1: All persons in the courtroom, except the court reporter, without regard to rank or grade, must rise when the military judge enters or leaves the courtroom.

Rule 21: Entry and Departure of Members

Uniform

Rule 21.1: All persons, other than the military judge and court reporter, must rise when the members enter and leave the courtroom.

Rule 22: Voir Dire

Uniform

Rule 22.1: In accordance with R.C.M. 912(d), the military judge determines the procedure for conducting voir dire. Voir dire examination shall be limited to matters relevant to determining whether to remove a member for cause and to determine the member's fairness and impartiality. The military judge shall ensure that the privacy of the prospective members is reasonably protected. All group voir dire questions must be submitted in writing to the judge prior to trial.

CJC 22.1: The military judge determines the procedure for conducting voir dire. See R.C.M. 912(d). All questions to be asked *en banc* will be submitted for approval in writing on the date designated by the military judge per the MFD/CMO, or in the absence of such date, at least 5 days prior to assembly. Copies of proposed voir dire questions must be served on opposing counsel. Upon specific request, the military judge may permit counsel to ask additional questions.

CJC 22.1.a: The military judge will ordinarily conduct the initial voir dire of the members. Counsel may then be permitted to ask previously approved questions that have not been asked during the initial voir dire by the military judge. All questions must be relevant to determining

the qualifications of the members to sit on the court-martial. Where necessary, and in the discretion of the military judge, counsel may be permitted to question the members individually. However *see* CJC 6.13 for possible sanctions for not submitting proposed voir dire questions to the court in accordance with trial deadlines.

CJC 22.1.b: During voir dire, counsel will not: (1) argue the case; (2) question members concerning anticipated instructions or theories of law, or members' understanding of various legal principles yet to be explained to them; (3) ask members what kind of findings or sentence they might return under a hypothetical set of facts; (4) engage in efforts to establish rapport with members; or (5) seek a pre-commitment from a member to a factual or legal proposition that is in issue.

Uniform

Rule 22.2: The member's questionnaires shall be phrased and organized so as to facilitate an accurate screening and shall request only that information essential for: (1) determining whether a person meets the Article 25 criteria for eligibility and (2) providing basic background information ordinarily sought during voir dire examination.

CJC 22.2: The trial counsel is responsible for ensuring that all court members complete the Central Judicial Circuit Court-Martial Members Questionnaire, *attachment 7 or 7A*, on the date designated by the military judge, or in the absence of such date, by assembly. A member may desire to retain the original and provide a copy for court use, and then update the copy as necessary for subsequent trials.

Uniform

Rule 22.3: Before voir dire, counsel will provide the military judge with a joint list of the full name and unit or city and state of residence of all witnesses. The list must include witnesses whose testimony will be presented by stipulation.

CJC 22.3: All challenges, whether peremptory or for cause, must be addressed to the military judge at an Article 39(a) session.

Rule 23: Prohibited Items in Courtroom

Uniform

Rule 23.1: Eating, chewing gum, or using tobacco products are not permitted in the courtroom. Weapons and objects that may be used as weapons, including potential exhibits, are not permitted in the courtroom without specific authorization of the military judge.

CJC 23.1: Use of tobacco products and eating are not permitted in the courtroom. Leave of court is required to permit drinking in the courtroom of any beverage other than water. All beverages must be consumed from covered containers. See *attachment 5*.

Uniform

Rule 23.2: Unless specifically authorized by the military judge, and except for the equipment required by the court reporter, NO ELECTRONIC DEVICES CAPABLE OF video and/or audio recording (e.g. LAP TOPS/CELL PHONES/TABLETS/ etc..) are permitted in the courtroom.

Uniform

Rule 23.3: Cellular or mobile telephones are not permitted in the courtroom unless otherwise permitted by the military judge.

Rule 24: Counsel Decorum

Uniform

Rule 24.1: Counsels' decorum in the courtroom must be conducive to a dignified judicial atmosphere.

CJC 24.1: Counsel are officers of the court and shall exercise such decorum appropriate to a judicial atmosphere within a military setting. Counsel will refrain from undue familiarity between themselves or in relationship to the members, military judge, or witnesses while court is in session and when in the presence of the accused.

Uniform

Rule 24.2: Counsel will stand when addressing the bench or members and when examining a witness, unless otherwise authorized by the military judge.

CJC 24.2: Counsel will direct all argument and responsive statements to the military judge or members, as applicable, and will avoid colloquy or argument towards the other party, except for perfunctory matters of courtesy.

Uniform

Rule 24.3: Unless specifically authorized by the military judge, only one counsel per side may question a witness, address the court on a motion or issue, or make opening statements or closing arguments.

CJC 24.3: Counsel will address the members during opening statement and closing argument from a respectful distance, but are not limited to counsel table or the podium. Counsel will address and refer to the accused and all witnesses, except children, by their surname, e.g. Petty

Officer Smith, Staff Sergeant Black, Mr. Green, Special Agent Johnson; refer to all military members, including those with professional degrees, by their military rank, *e.g.*, Commander Gray, not Dr. Gray. Military chaplains are the exception and may be referred to as “Chaplain Thomas”.

CJC 24.3.a: Except during the examination of a witness, counsel may, without prior permission, approach the bench or court reporter to provide or retrieve evidence.

CJC 24.3.b: During sessions of the court, no counsel will leave the courtroom without permission of the military judge.

CJC 24.3.c: When one counsel is addressing the court or examining a witness, the opposing counsel shall remain seated at the counsel table, unless standing to make an objection.

CJC 24.3.d: Unless specifically authorized by the military judge, only one counsel per side may question a witness, address the court on a motion or issue, or make opening statement or closing argument.

Rule 25: Counsel Conduct

Uniform

Rule 25.1: Counsel must not, during trial, state or allude to any matter that counsel has no reasonable basis to believe is relevant to the case or that is not supported by admissible evidence.

Uniform

Rule 25.2: Counsel must not, during trial, assert any personal knowledge of the facts in issue, except if testifying as a witness.

CJC 25.2: Counsel will not, during trial, assert any personal opinion as to the justness of a cause, the credibility of a witness, or the guilt or innocence of an accused; but counsel may argue, based on analysis of the evidence, for any position or conclusion supported by the evidence and any allowable inferences.

Uniform

Rule 25.3: Counsel, in presenting a matter to the court-martial, must disclose legal authority in the controlling jurisdiction known to counsel to be directly contrary to their position and which is not disclosed by opposing counsel.

CJC 25.3: Counsel shall not intentionally or habitually violate any established rule of military procedure, military evidence, the Uniform Rules of Practice and the Central Circuit Rules of Practice.

CJC 25.3.a: Counsel shall not knowingly disobey a standing order or ruling of a court-martial, but may take appropriate good faith action to test the validity of such a rule or ruling. When in doubt, ask for an Article 39(a) session.

CJC 25.3.b: Each time the court convenes or reconvenes, the trial counsel will ensure that the military judge is advised of all changes to, or absences of, any parties and announces such on the record.

CJC 25.3.c: Counsel will follow along in the trial guide to ensure that the military judge makes no unintentional omissions. Should counsel believe that a military judge has made such an omission, he or she must bring it to the judge's attention immediately upon its discovery.

Rule 26: Witnesses

Uniform

Rule 26.1: Trial counsel must swear each witness called to testify and will ensure that the military witness' name, grade, and military organization, or civilian witness' name and city and state of residence are announced in court.

CJC 26.1: Live, in-person testimony from witnesses is expected (in the absence of a stipulation of expected testimony) during all phases of the trial. In the event either counsel desires to use an alternative to live, in-person testimony (e.g., telephonic testimony or video teleconferencing), counsel must request permission to do so in advance of the session and note the request on the PTIR. This rule applies equally to testimony on the merits and testimony on sentencing. Nothing in this CJC will be construed to limit or alter the military judge's discretion or responsibilities under M.R.E. 611.

Uniform

Rule 26.2: Counsel must ensure that their witnesses understand the physical arrangements of the courtroom, where they should go, and how they must conduct themselves.

CJC 26.2: Witnesses will be instructed by counsel that they must not chew gum or tobacco, wear dark glasses, or use slang expressions or profanity (except as may be required in the presentation of the facts). Witnesses must be told not to engage court members or the military judge in casual conversation.

CJC 26.2.a: Military witnesses do not salute the military judge, president of the court, or the members.

CJC 26.2.b: Unsworn statements will not be made from the witness stand. They will be made from the counsel table or at another location authorized by the military judge.

Uniform

Rule 26.3: Counsel must ensure that their witnesses will be immediately available when called to testify.

CJC 26.3: Counsel will ensure that their respective witnesses will be immediately available when called to testify. This includes informing the witness of the time, location, and uniform for court, as well as making any arrangements necessary to allow a civilian witness to come aboard the base. The fact that the government has agreed to, or has been ordered to, produce a witness on behalf of the defense, does not relieve the defense counsel of these requirements for defense witnesses. Counsel will coordinate with each other and the military judge to reduce, whenever practicable, the amount of time a witness is required to wait prior to testifying; however, availability is always more important than convenience.

CJC 26.3.a: Witnesses ordinarily will not be present in court during trial. Counsel are responsible for ensuring their witnesses are aware of and comply with this rule. The detailed military judge may permit a witness to remain in the courtroom after the witness has testified, or otherwise, upon a showing of good cause. This rule is not to be construed as limiting M.R.E. 615.

Uniform

Rule 26.4: Counsel will question witnesses from a reasonable distance. Before approaching the witness, counsel must obtain permission of the military judge. Counsel should not position themselves so as to block the view of the military judge, members, or counsel.

CJC 26.4: Witnesses will not be crowded, shouted at, ridiculed, humiliated, or otherwise abused.

CJC 26.4.a: To the greatest extent practicable, trial counsel will ensure that separate waiting areas for government and defense witnesses are provided.

CJC 26.4.b: No later than five business days prior to trial, counsel who intend on using an interpreter will notify the detailed military judge and opposing counsel of the interpreter's identity and provide a brief summary of his/her qualifications. Any anticipated objection to the proposed interpreter will be provided to the detailed military judge as soon as possible but no later than two business days prior to the date of trial.

CJC 26.4.c: Counsel will provide their witnesses with information and assistance concerning the availability of services such as transportation, parking, childcare, lodging, and courtroom translators or interpreters.

Rule 27: Objections

Uniform

Rule 27.1: Counsel must succinctly state the nature and

basis of an objection. After the military judge rules on an objection, counsel may only make comment or further argument with permission from the military judge.

CJC 27.1: Counsel shall not present argument on an objection without the permission of the military judge. Argument on objections shall be direct and succinct. Citation of specific authority is desired.

CJC 27.1.a: An objection or argument for the purpose of making a speech, recapitulating testimony, or attempting to guide a witness is prohibited.

CJC 27.1.b: After the military judge rules on an objection, counsel may only make comment or further argument with the express permission of the military judge.

Rule 28: Stipulations

Uniform

Rule 28.1: If a motion, or any other issue, involves only a dispute between the parties as to the law or any ultimate question of fact, and does not involve the underlying facts, counsel will consider entering into stipulations of fact or of testimony covering those matters.

Uniform

Rule 28.2: Stipulations must be in writing, and will be prepared prior to trial. Oral stipulations, when permitted by the military judge, must be read into the record and agreed to by counsel and the accused.

Uniform

Rule 28.3: Stipulations may be made for the limited purpose of obtaining a ruling on a motion or other pleading.

Uniform

Rule 28.4: Written stipulations of fact will be marked as a trial exhibit and, in a members trial, read to the members. Stipulations of fact may be taken into the deliberation room by the members. Written stipulations of expected testimony must be marked as appellate exhibits and, in a members trial, read to the members. Stipulations of testimony may not be taken into the deliberation room.

Rule 29: Offers of Proof

Uniform

Rule 29.1: When offers of proof are expected to be presented on motions or objections, counsel should inform opposing counsel and attempt to reach agreement on the content of the offer of proof before presentation.

Uniform

Rule 29.2: Absent a stipulation, an offer of proof is not evidence upon which a finding of fact may be based.

Rule 30: Judicial Notice

Uniform

Rule 30.1: Counsel will advise the military judge and opposing counsel, as soon as possible and preferably before trial, of any intended requests for judicial notice.

CJC 30.1: Prior to trial, the trial counsel will have marked as appellate exhibits readable copies of all directives, regulations and state or federal statutes alleged to have been violated. Trial counsel will also provide advance copies to the defense counsel and to the military judge. *See CJC 6.1.c.* Ordinarily requests for judicial notice will be included with each parties' page 59 matters if not sooner.

Rule 31: Exhibits

Uniform

Rule 31.1: Prosecution exhibits will be identified by Arabic numerals. Defense exhibits will be identified by capital letters. Appellate exhibits will be identified by Roman numerals.

CJC 31.1: In formulating questions to witnesses concerning an exhibit, counsel will refer to the exhibit by its exhibit number or letter.

CJC 31.1.a: Exhibits will be marked by the court reporter, not the counsel, in the anticipated order of presentation before the trial is scheduled to commence or during recesses.

CJC 31.1.b: The proponent of documentary or photographic evidence will arrange to have a copy of the original exhibit on the date of trial for each member of the court as well as a copy for the military judge.

Uniform

Rule 31.2: If an exhibit is not compatible for inclusion in the

record of trial, counsel will prepare an appropriate substitute for inclusion in the record.

CJC 31.2: Use of electronic media is encouraged. However, counsel must obtain the express, prior approval of the military judge before using any form of electronic media in any session of court. Counsel using electronic media are directed to Uniform Rule 31.4 and *attachment 8* of these rules.

CJC 31.2.a: Any exhibits (including computer generated exhibits or any other exhibits or demonstrative aids prepared prior to trial) or evidence intended for use during argument or opening statement, must first be shown to opposing counsel and then be approved for use by the military judge. Counsel are advised to diligently practice the use of such exhibits, particularly computer generated exhibits, prior to any session of court. Further, counsel must ensure computer-generated exhibits are properly duplicated by hard-copy print-outs for inclusion in the record of trial.

CJC 31.2.b: Counsel intending on using demonstrative aids, such as charts, diagrams, videotapes, audiotapes or any other technological presentations during their opening arguments, closing arguments or cases-in-chief must provide notice to the detailed military judge and opposing counsel no less than two days prior to trial.

Uniform

Rule 31.3: All audio recordings and video recordings that contain audio portions must be transcribed before trial, by the party offering such a recording, unless authorized by the military judge. If a portion is inaudible, the transcript shall so state. A copy of the transcript will be served on opposing counsel before trial in sufficient time to allow for ascertaining the accuracy of the transcript. The recording or a copy thereof will be made available to opposing counsel upon request. The transcript and recording shall be marked as exhibits.

CJC 31.3: In all cases tried in the Central Judicial Circuit, a pretrial transcription of audio recordings or video recordings with an audio portion that counsel intend to offer into evidence at trial shall not be required, unless otherwise directed by the presiding military judge.

Uniform

Rule 31.4: For those circuits in which electronic media, or so-called "smart courtroom" technology, is installed, additional rules or protocols may be necessary for the handling and presentation of exhibits. Attachment 2 contains a proposed set of rules that may be used or modified to accomplish the circuit's needs.

Rule 32: VTC REQUIREMENTS

Uniform

Rule 32.1: Consistent with the Rules for Courts-Martial and applicable DoN instructions, Video Teleconferencing (VTC) may be used to conduct Article 39(a) sessions for arraignments, motions practice and any other administrative sessions.

CJC 32.1: Requests for remote testimony over the objection of the opposing party will be made as soon as the potential need for remote testimony is discovered.

CJC 32.1.a: When the military judge has authorized VTC testimony over the objection of one of the parties, the safeguards set forth in CJC 32.2 and 32.3 will be employed. The detailed military judge may deviate from these procedures based upon the exigencies of the situation.

Uniform

Rule 32.2: The Government will ensure that all sites meet the necessary security requirements.

CJC 32.2: Two-way audio and visual transmissions shall be provided and color transmission should be used. The VTC locations must have telephonic connectivity and access to a fax machine or other means of receiving documents/written material. A VTC technician or knowledgeable support personnel will be available at both locations. The court reporter will transcribe the VTC witness's testimony in the same manner as a normal witness.

Uniform

Rule 32.3: VTC sessions are open to the public at the site designated by the presiding military judge consistent with the 6th Amendment, R.C.M. 504(d)(1) and R.C.M. 804.

CJC 32.3: If counsel for both sides are not present at the site where the witness is testifying a bailiff, preferably a judge advocate, will be detailed at the witness's remote location. The remote site bailiff will identify on the record those present at the remote location and note if any spectators are present. The remote site bailiff will ensure that the VTC witness is seated far enough away from any spectators so that the spectators cannot communicate with the VTC witness. During the VTC witness's testimony, the remote site bailiff will ensure that there is no non-verbal communications between the VTC witness and any spectators. The remote site bailiff will also ensure that the VTC witness has no access to papers, exhibits, or the like while testifying unless authorized by the military judge. The detailed military judge may deviate from these procedures based upon the exigencies of the situation.

Rule 33: Findings and Instructions

Uniform

Rule 33.1: Trial and defense counsel will make appropriate

recommendations as to specific instructions for the military judge to provide to the members. Requests for special instructions, modifications to standard instructions, or a summarization of the evidence, must be submitted in writing and in a timely manner to the military judge and opposing counsel.

Rule 34: Record of Trial

Uniform

Rule 34.1: A complete and accurate record of the proceedings is required to protect the rights of all parties. During the course of the trial, counsel must ensure that uncommon names, places, and things are spelled out on the record, that witnesses respond verbally, and that descriptions of size, distance, and location are clear.

Uniform

Rule 34.2: At the conclusion of the trial, defense counsel will indicate whether civilian counsel or military counsel will examine the record, who will respond to the staff judge advocate's recommendations, and who will represent the accused in post-trial matters. The accused must include such decisions in the written acknowledgement of appellate rights.

Uniform

Rule 34.3: Whenever practicable, trial counsel must read and make corrections to the record of trial. Corrections by trial counsel should be initialed and dated before it is submitted to the military judge for authentication.

Uniform

Rule 34.4: The trial counsel must ensure that the record of trial is prepared in a timely and accurate manner. Pursuant to R.C.M. 1103(i)(1)(B), the trial counsel must permit the defense to review the record except when unreasonable delay will result, before it is submitted to the judge for authentication.

CJC 34.4: The preferred method of submitting a record of trial to the military judge for authentication is to do so electronically using a MS WORD format. Prior to submitting an electronic record, trial and if time allows, defense, counsel shall first insert changes using the "track change" tool. The court reporter will preserve the original transcript in the event a

transcription error arises during appellate review. The military judge will “accept” or “reject” the proposed changes in addition to other required corrections, including the insertion of “comments” as needed to task follow-up clarification. The reviewing military judge may initially authenticate a record of trial via email to the court reporter, who will then provide the original authentication page for signature upon final military judge review of the entire hard copy record, to include exhibits.

Rule 35: Documents and Pleadings

Uniform

Rule 35.1: All electronic filings must be signed and filed in MS Word format. All documents and pleading filed with the court will be on white 8.5 inch by 11 inch white paper.

Uniform

Rule 35.2: All motions will be filed in the form attached as attachment (3) to these rules. Line numbers will be used on all pleadings.

Uniform

Rule 35.3: All pleadings filed must have one inch margins and use Courier New or Times New Roman 12 point font.

CJC 35.3: The substantive portions of all documents should be double spaced. Headings and signature blocks for example may be single spaced.

Rule 36: Pretrial Agreements

CJC 36.1: Pretrial agreements may be used in a myriad of ways to accomplish a variety of ends, and are encouraged by the court. See R.C.M. 705. However, as problems may arise with many of the issues potentially negotiated, the use of a standardized pretrial agreement format whenever possible assists the court in assuring all required issues are fully covered and explained in an efficient manner. Counsel are reminded that it is incumbent upon them to ensure the provisions of any pretrial agreement meet the requirements of the law and the needs of those party to the agreement.

Attachments:

- (1) Civilian Counsel Notice of Appearance
- (2) Motion for Docketing/Case Management Order
- (3) Pretrial Information Report
- (4) Sample Motion Template
- (5) Courtroom Decorum for Spectators
- (6) Bailiff Handbook
- (7) Member’s Questionnaire (Long Form)
- (7A) Member’s Questionnaire (Short Form)

(8) Technology Supplement