

DEPARTMENT OF THE NAVY
NAVY-MARINE CORPS TRIAL JUDICIARY
EUROPE, AFRICA, AND SOUTHWEST ASIA CIRCUIT
PSC 817 BOX 8
FPO AE 09622-0008

5810
3 Apr 14

From: Circuit Military Judge

Subj: EUROPE, AFRICA, AND SOUTHWEST ASIA JUDICIAL CIRCUIT RULES
OF PRACTICE

Ref: (a) R.C.M. 108, Manual for Courts-Martial (2012 Edition)
(b) R.C.M. 801(b), Manual for Courts-Martial (2012
Edition)
(c) Navy-Marine Corps Trial Judiciary Standard Operating
Procedures Manual dtd 2 Aug 11
(d) JAGINST 5813.4 (series)(Navy-Marine Corps Trial
Judiciary)
(e) JAGINST 5803.1C, dtd 9 Nov 04 (Professional
Conduct of Attorneys Practicing Under the Cognizance
and Supervision of the Judge Advocate General)

Encl: (1) Europe, Africa, and Southwest Asia Circuit Rules of
Practice dtd 3 Apr 14

1. **Purpose**: To prescribe local rules of practice consistent
with references (a) through (d) for the Europe, Africa, and
Southwest Asia (EURAFSWA) Judicial Circuit of the Navy-Marine
Corps Trial Judiciary (NMCTJ).

2. **Cancellation**: All previously promulgated EURAFSWA Circuit
Rules of Practice are hereby cancelled.

3. **Background**: The references authorize, and the sound
administration of military justice requires, local circuit rules
of practice to further implement Appendix B of reference (c),
the NMCTJ Uniform Rules of Practice. The local rules of
practice contained in enclosure (1) are intended to amplify the
NMCTJ Uniform Rules of Practice and to facilitate the smooth and
orderly trial of courts-martial within the EURAFSWA Judicial
Circuit. To the extent these local court rules are inconsistent
with the references, case law, statutes, or the Manual for
Courts-Martial, those authorities shall control.

Subj: EUROPE, AFRICA, AND SOUTHWEST ASIA CIRCUIT RULES OF PRACTICE

4. **Action:**

a. Military judges presiding over cases within this Circuit shall ensure enforcement of the rules contained in enclosure (1).

b. Counsel practicing in the EURAFSWA Judicial Circuit shall become familiar with, and comply with, the references and enclosure (1).

(1) Commanding officers, officers in charge, regional and senior trial and defense counsel, and military justice officers shall ensure dissemination of, and compliance with the rules in enclosure (1) by counsel and all other participants in courts-martial within the EURAFSWA Judicial Circuit.

(2) Military defense counsel shall ensure that the NMCTJ Uniform Rules of Practice, reference (e), and enclosure (1) are provided to civilian counsel retained in courts-martial in the EURAFSWA Judicial Circuit. Detailed trial counsel shall ensure the same with respect to any independent civilian counsel appearing on behalf of victims/complaining witnesses in courts-martial in the EURAFSWA Judicial Circuit.

c. Trial practitioners within the EURAFSWA Judicial Circuit are encouraged to recommend improvements to the enclosed local rules of practice. Written recommendations may be submitted to the Circuit Military Judge.

5. **Effective Date:** These rules shall become effective immediately and shall remain effective until cancelled or otherwise modified by this or higher authority.

J. K. WAITS
CAPT, JAGC, USN
Circuit Military Judge

Distribution:

Commanding Officer, U.S. RLSO EURAFSWA
Commanding Officer, DSO North
Chief of Staff, Victims' Legal Counsel Program
Chief Judge, NMCTJ (Code 52)
OJAG (Code 00PA)

NAVY-MARINE CORPS TRIAL JUDICIARY

**EUROPE, AFRICA, AND SOUTHWEST ASIA
JUDICIAL CIRCUIT**

RULES OF PRACTICE

Revised: 3 April 2014

TABLE OF CONTENTS

Preamble1

Rule 1: Applicability1

Rule 2: Purpose2

Rule 3: Construction2

Rule 4: Referred Charges2

Rule 5: Civilian Counsel2

Rule 6: Docketing3

The Docketing Process (Table 1)7

Rule 7: Personally Identifiable Information8

Rule 8: Conferences and Communications with Military Judge8

Rule 9: Discovery9

Rule 10: Motions9

Rule 11: Continuances10

Rule 12: Situs10

Rule 13: Courtroom Security11

Rule 14: Uniforms/Attire11

Rule 15: Spectators12

Rule 16: Punctuality and Presence12

Rule 17: Bailiff13

Rule 18: Guards14

Rule 19: Court Reporters14

Rule 20: Entry and Departure of Military Judge14

Rule 21: Members14

| | |
|---|----|
| <i>Rule 22: Voir Dire</i> | 15 |
| <i>Rule 23: Prohibited Items in Courtroom</i> | 16 |
| <i>Rule 24: Counsel Decorum</i> | 16 |
| <i>Rule 25: Counsel Conduct</i> | 17 |
| <i>Rule 26: Witnesses</i> | 18 |
| <i>Rule 27: Objections</i> | 19 |
| <i>Rule 28: Exhibits</i> | 19 |
| <i>Rule 29: Video Teleconferencing</i> | 21 |
| <i>Rule 30: Instructions</i> | 22 |
| <i>Rule 31: Court Filings/Document Size/Type Font</i> | 22 |
| <i>Rule 32: Pretrial Agreements</i> | 23 |
| <i>Rule 33: Independent Legal Counsel</i> | 23 |
| <i>List of Attachments:</i> | 25 |

PREAMBLE

These circuit court rules of practice (hereinafter "EURAFSWA Circuit Court Rules") supplement the Uniform Rules of Practice for the U.S. Navy-Marine Corps Trial Judiciary (hereinafter "Uniform Rules of Practice") and are designed to promote a common understanding of the procedures for the practice of military criminal law in courts-martial within the Europe, Africa, and Southwest Asia (EURAFSWA) Judicial Circuit.

Rule 1: APPLICABILITY

Rule 1.1: These rules apply to all general and special courts-martial tried within the EURAFSWA Judicial Circuit in which the accused is a member of the naval service.

Rule 1.2: Counsel, as officers of the Court, shall follow these rules, unless doing so would deprive their respective client of effective representation or would interfere with the exercise of an accused's right to due process. All trial participants will follow these rules as applicable. Consistent with requirements of law and standards of professional ethics, military judges presiding over cases in the EURAFSWA Judicial Circuit may modify or suspend any of these rules in the interest of justice.

Rule 1.3: Counsel who fail to comply with these rules or orders of the Court may be required to explain the reasons for noncompliance on the record, or in writing for inclusion in the record of trial as an appellate exhibit. In addition, the military judge may, as appropriate: admonish counsel on the record; issue a court order or grant a continuance; proceed with action for contempt under R.C.M. 809 and Article 48 of the Uniform Code of Military Justice (UCMJ); or fashion any other appropriate remedy. The military judge may forward information about the matter to a military counsel's superiors, state bar, the Judge Advocate General of the Navy, Staff Judge Advocate to the Commandant of the Marine Corps, or other professional organization of which counsel is a member. With respect to civilian counsel, the military judge may forward information about the matter to the counsel's state bar and forward a complaint for processing in accordance with Rule for Court-Martial (R.C.M.) 109.

Rule 1.4: All counsel appearing within the EURAFSWA Judicial Circuit shall familiarize themselves with these rules prior to their first appearance in court.

Rule 2: PURPOSE

Rule 2: These rules are intended to facilitate the just, impartial, and orderly administration of military justice within the adversarial system of courts-martial in the EURAFSWA Judicial Circuit.

Rule 3: CONSTRUCTION

Rule 3.1: These rules are constructed to ensure simplicity in procedure, fairness in administration, efficiency of operation, and the timely disposition of courts-martial. Noncompliance shall create neither any right, nor any remedy, for any party to a court-martial. Adherence to these rules directly reflects on the professionalism of those individuals involved in the court-martial process. The arbiter of these rules in any case will be the military judge properly detailed to the case within the EURAFSWA Judicial Circuit and where any conflict arises, the Circuit Military Judge.

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 the rule must be read in accordance with that conflicting authority.

Rule 4: REFERRED CHARGES

Rule 4.1: After referral of charges, the trial counsel will provide the Circuit Military Judge a copy of the charge sheet, along with the convening order, as soon as possible, but in no event later than ten (10) days after referral, even in the absence of a simultaneously filed docket request or motion for arraignment.

Rule 4.2: The trial counsel shall examine the personal data on the charge sheet and make any necessary corrections, additions or deletions. All changes to the charge sheet shall be initialed and dated by the trial counsel or other representative of the convening authority.

Rule 5: CIVILIAN COUNSEL

Rule 5.1: If an accused retains civilian defense counsel, detailed defense counsel shall furnish civilian defense counsel with a copy of these Rules. If civilian counsel is retained as independent legal counsel (LC) by a victim/complaining witness

in a case, detailed trial counsel shall furnish LC with a copy of these Rules. All civilian counsel shall submit written notice of representation, using Attachment (1) and file it with the Clerk of Court, with copies to all participants in the trial. The written notice of representation shall be inserted into the record of trial as an appellate exhibit at the first session of court at which civilian counsel makes an appearance. The notice must contain the following: name of the accused, and in the case of LC, the name of the person represented; counsel's name, office address, telephone numbers, e-mail address; and jurisdiction(s) where the counsel is presently admitted to practice and in good standing. Additionally, the notice shall include a statement as to whether the civilian attorney is, or has ever been, decertified from practice in Navy-Marine Corps courts-martial by the Judge Advocate General of the Navy, and acknowledgement of familiarity with the Uniform Rules of Practice and these Rules.

Rule 5.2: Detailed defense counsel shall inform civilian defense counsel and detailed trial counsel shall inform civilian LC of reference (e), JAGINST 5803.1 (series) (*Professional Conduct of Attorneys Practicing under the Cognizance and Supervision of the Judge Advocate General*).

Rule 5.3: Once civilian defense counsel notifies the military judge of representation, he or she may not withdraw from such representation without the permission of the military judge.

Rule 5.4: Once civilian defense counsel notifies the Court of representation, he or she must be present at all scheduled UCMJ Article 39(a) sessions. If civilian defense counsel will be absent from any session of court, including any Article 39(a) session, that defense counsel shall notify the Court in writing in accordance with Rule 16.4.

Rule 6: DOCKETING

Rule 6.1: The "Docket" is the designated electronic calendar containing the scheduled sessions of cases that are pending before the Court. Counsel and military justice support personnel with a need to know may request "read" authorization for the Court's electronic docket from the Court Clerk. Only the Circuit Military Judge and the Court Clerk shall have "write" authorization for the Court's Docket.

Rule 6.2: Once a charge has been referred, it is both the trial and defense counsel's responsibility to make good faith efforts to establish a mutually agreed upon trial schedule as early as possible. Personal discussions between trial and defense counsel to that end are expected to occur without the Court having to intervene.

Rule 6.3: The procedure for docketing a case in the EURAFSWA Judicial Circuit is as follows:

(a) The trial counsel receives referred charges.

(b) The trial counsel expeditiously serves a copy of the referred charges and convening order on the accused and detailed defense counsel.

(c) Upon service of referred charges, the trial counsel contacts the defense counsel within three (3) calendar days to negotiate a mutually agreeable proposed trial schedule.

(d) Negotiations over scheduling will take no longer than seven (7) calendar days from the date the trial counsel serves the referred charges on detailed defense counsel.

(e) The Trial Management Order (TMO) is the document that establishes milestone dates for the timely progression of a case. When the parties agree to a trial schedule, the parties shall reduce their agreement to writing in a proposed TMO in the format of Attachment (2) and the trial counsel shall submit it along with a docket request for arraignment using a Pretrial Information Report (PTIR), Attachment (3).

(f) In order to conserve counsel and judicial resources and to avoid needless court sessions, counsel are encouraged to request trial on the day of arraignment when both trial and defense counsel reasonably anticipate a case will be resolved by a plea agreement.

(g) If counsel are unable to reach a mutually agreed upon trial schedule within seven (7) calendar days from the date referred charges are served on defense counsel, the party desiring the earliest docket date will file a Motion for Arraignment in the format of Attachment (4). The nonmoving party will have two (2) working days to endorse and file its response to the moving party's motion. The Circuit Military

Judge will then take appropriate action to docket the arraignment. Prior to the arraignment, counsel will schedule a conference pursuant to R.C.M. 802 with the Circuit Military Judge to resolve a TMO.

(h) Notice of Referred Charges. If neither a docket request for arraignment (PTIR) nor a Motion for Arraignment is submitted or filed within ten (10) calendar days after charges have been referred, then the trial counsel must inform the Court of the charges utilizing the format of Attachment (5). The submission of a docket request for arraignment (PTIR) or the filing of a Motion for Arraignment within ten (10) calendar days from the referral date satisfies this notice requirement.

(i) The approved TMO will be made an appellate exhibit at the arraignment. If LC are not present at the arraignment, trial counsel is responsible for providing the TMO to LC upon recess of the arraignment or otherwise, whenever LC files a notice of appearance in a case.

Rule 6.4: A PTIR (Attachment (3)) shall be submitted for all sessions of court including arraignments, Article 39(a) sessions (e.g., motions hearings), and trials by 1600 (CET) on Tuesday of the week prior to the requested session of court. THIS REQUIREMENT INCLUDES SESSIONS OF COURT PREVIOUSLY DOCKETED PURSUANT TO THE TMO as confirmation to the Court that the case is proceeding as ordered. If a previously docketed session is no longer necessary, a NEGATIVE PTIR with an explanation shall be submitted.

Rule 6.5: Required Documents. Unless previously provided, the following documents must be submitted when submitting a docket request:

(1) Docket requests for arraignment (PTIR) and Motions for Arraignment:

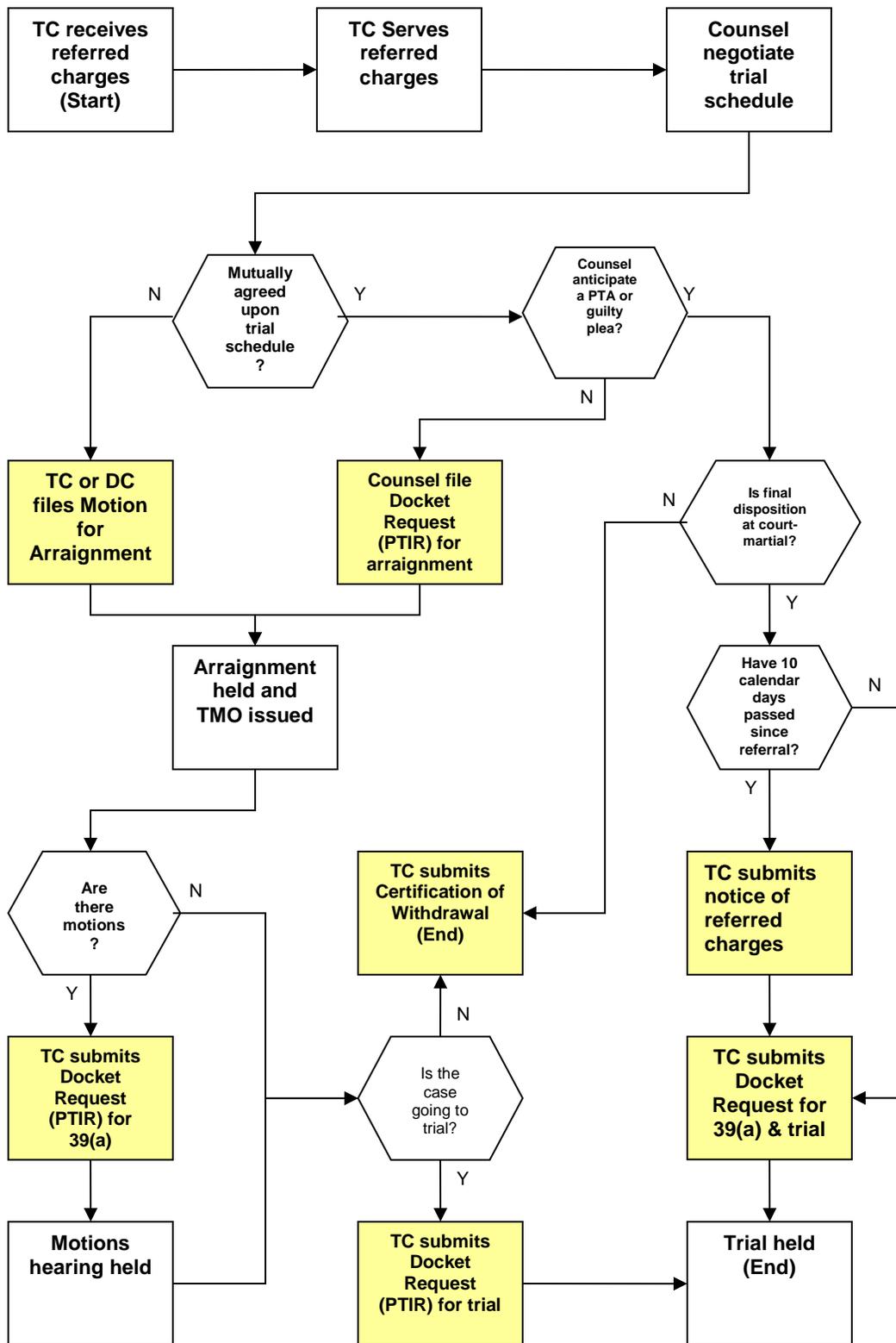
- (a) A proposed TMO;
- (b) A copy of the referred charges;
- (c) A copy of the convening order;
- (d) Copies of relevant portions of any written military orders or directives to include cover page, signature page, punitive language and any state or federal statutes alleged to have been violated; and
- (e) Proposed elements for novel, state, or federal

offenses alleged.

(2) Docket Requests for trials in which the anticipated pleas are guilty:

- (a) A copy of the referred charges;
- (b) A copy of the convening order;
- (c) A copy of Part I (offer) of the memorandum portion of the pre-trial agreement (if any);
- (d) A copy of the stipulation of fact (if one is to be offered);
- (e) Copies of relevant portions of any written military orders or directives to include cover page, signature page, punitive language and any state or federal statutes alleged to have been violated; and
- (f) Proposed elements for novel, state, or federal offenses alleged.

Rule 6.6: If any referred case provided to the Court, by whatever means, is withdrawn by the convening authority, trial counsel shall immediately submit to the Circuit Military Judge, with a copy to the Clerk of Court, a certification of withdrawal in the format of Attachment (6), a copy of a withdrawal letter signed by the convening authority, or a copy of the annotated original charge sheet evincing withdrawal of the charges. The docketing process in the EURAFSWA Judicial Circuit is summarized in Table 1.



The Docketing Process
 Table 1

Rule 7: PERSONALLY IDENTIFIABLE INFORMATION (PII)

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

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 transmitted. PII must be likewise be redacted in all documents, pleadings, discovery, and evidence offered in court.

Rule 7.3: PII and the names of 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, alleged victim(s) will only be identified by their initials, and rank if a service member.

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 5211.5 (series).

Rule 8: CONFERENCES AND COMMUNICATIONS WITH THE MILITARY JUDGE

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. Conferences may be held before or during trial in person, telephonically, by video teleconference (VTC) or by e-mail. They are used to inform the military judge of unusual issues that are likely to affect the duration, progress, or disposition of a case, and to expeditiously resolve matters on which the parties can agree. Such conferences shall not be used to litigate or decide contested issues. Counsel shall include all other counsel detailed to the case and any civilian counsel as a "copy to" addressee on all case-related electronic communications with the military judge, including those that are administrative in nature. Counsel shall include the applicable case name in the subject line of all e-mail communications with the Court and make the Clerk of Court a "copy to" addressee.

Rule 8.2: *Ex parte* communications with a military judge, except for those related to routine administrative matters, are prohibited. "Routine administrative matters" include docketing and logistical matters pertaining to the time, location, and

length of court sessions. The prohibition against *ex parte* communications extends to electronic mail.

Rule 9: DISCOVERY

Rule 9.1: Counsel shall promptly comply with military law regarding discovery. Counsel shall not make frivolous discovery requests or fail to make diligent efforts to comply with lawful and proper discovery requests by opposing counsel. Gamesmanship in the discovery process will not be tolerated.

Rule 9.2: Notwithstanding the policy of "open discovery" in the military, discovery requests should be as specific as possible to avoid confusion and to expedite the exchange of legally discoverable materials in a timely fashion to avoid delaying trials.

Rule 9.3: Trial counsel shall provide the charge sheet, papers accompanying the charges, convening and amending order(s), and statements in accordance with RCM 701(a)(1) to defense counsel immediately upon service of charges.

Rule 10: MOTIONS

Rule 10.1: Motions and responses thereto shall be submitted no later than the deadlines ordered by the military judge in the format prescribed by the Uniform Rules of Practice.

Rule 10.2: Motions and any attachments filed with the Court will be served on opposing counsel, and will include a certificate of service. Service may be accomplished by electronic means. However, transmitting counsel shall ensure that such documents are actually received by the Court and opposing counsel. Whenever motions are filed with the Court, the original document shall be filed with the court reporter by the submitting counsel for inclusion in the record of trial.

Rule 10.3: Documentary evidence submitted with motions shall be marked numerically as attachments and every page shall be paginated.

Rule 10.4: Proposed essential findings of fact and conclusions of law in the format of Attachment (7) shall be filed in conjunction with motions and responses to motions, unless otherwise directed by the court. The original proposed essential findings of fact and conclusions of law shall be

attached to the motion or response to which it pertains as part of an appellate exhibit provided to the court reporter.

Rule 10.5: Should counsel desire to file any motion or response beyond a court ordered trial milestone, counsel shall submit a request to the Court, including an affidavit of good cause detailing why counsel requires additional time. Absent a finding of good cause, late motions and/or responses will not be entertained by the court.

Rule 10.6: All citations in written motions will follow the most current Blue Book format. Counsel will make their best effort to thoroughly research all relevant issues and provide the court with the most recent case law on point. Contrary authority on point must also be properly cited by counsel. If an appellate court decision is not cited by counsel in the written pleading, it will not be cited orally in court unless a copy of the case or citation has been previously provided to the judge and opposing counsel.

Rule 10.7: If the military judge rules adversely to the government on a significant matter and the government is contemplating an appeal pursuant to UCMJ, Article 62, trial counsel shall so inform the military judge and the military judge shall 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 Court with written notice of appeal.

Rule 11: CONTINUANCES

Rule 11.1: Continuance requests shall be made by written motion to the Court. If presented during an Article 39(a) session, they may be made orally. The motion shall state the specific reason(s) for the request and the next earliest possible hearing or trial date. Counsel must be prepared to fully justify each request for a continuance.

Rule 11.2: If the accused is in pretrial confinement, defense motions for continuances and concurrences in government motions for continuances must be signed by both the accused and defense counsel.

Rule 12: SITUS

Rule 12: Subject to R.C.M. 504(d)(1), the military judge shall designate the situs of the trial.

Rule 13: COURTROOM SECURITY

Rule 13.1: Ordinarily, the government is responsible for ensuring that the courtroom facility is in compliance with all applicable orders and directives governing courtroom security and safety requirements. The presiding military judge may prescribe additional rules to establish courtroom security as deemed necessary. Notwithstanding regular security requirements, counsel must immediately notify the presiding military judge of any unusual circumstances or potential threat to the accused, a party, a witness, or other trial participant that may necessitate implementation of additional precautions or security measures

Rule 13.2: The wearing or carrying of weapons in the courtroom is prohibited, except when specifically authorized by the military judge.

Rule 14: UNIFORMS/ATTIRE

Rule 14.1: Unless the military judge directs otherwise, the uniform for all military participants in courts-martial proceedings shall be the seasonal dress uniform of the individual's service. For naval personnel, seasonal uniform shifts are directed by Commander, Navy Region Europe, Africa, and Southwest Asia. Applicable Navy Working Uniform is the prescribed uniform for courts-martial held in Bahrain, at sea, or other operational settings. Civilians are to wear appropriate civilian attire.

Rule 14.2: The accused shall wear the appropriate insignia of grade and should wear any decorations, emblems, pins, or ribbons to which entitled. Exceptions require the prior approval of the military judge. The accused and defense counsel are responsible for ensuring that the accused is properly attired; however, upon request, the accused's commander shall render such assistance as may be necessary to ensure that this task is accomplished. When the accused is in pretrial confinement, the government is responsible for ensuring that the accused is in the appropriate uniform and properly attired.

Rule 14.3: Physical restraints shall not be imposed on the accused or any witness during open sessions of a court-martial unless prescribed by the military judge. No accused or witness in open court shall wear any tag or symbol which identifies him as being in custody. Neither the accused nor any other

participant shall appear at any session of a court-martial in a confinement uniform.

Rule 14.4: Brig chasers shall not appear in court, including the gallery, unless they have removed their covers, duty belts, and all other indications of their status as chasers.

Rule 15: SPECTATORS

Rule 15.1: The military judge is responsible for the control of court-martial spectators.

Rule 15.2: Court proceedings are open to the public; spectators are encouraged to attend any sessions of the court-martial, unless otherwise determined by the military judge.

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

Rule 15.4: It is improper for spectators to demonstrate agreement or disagreement with testimony, argument, rulings, or any other aspects of a trial verbally, through facial expressions, by shaking or nodding of the head, or by any other conduct. Spectators' appearance and attire must not distract from the dignity of the proceedings or create a disruption. Spectators who violate this rule may be excluded from the courtroom or, in aggravated cases, held in contempt. Counsel are responsible for advising clients, witnesses, and friends and family of the accused or counsel, of appropriate courtroom demeanor.

Rule 15.5: Counsel shall refrain from conferring with spectators or other non-participants across the bar while the court is in session. Counsel shall not pass notes across the bar without the permission of the military judge.

Rule 16: PUNCTUALITY AND PRESENCE

Rule 16.1: Punctuality in all court matters is required of all participants in every court-martial as a matter of preparation, professionalism, and the timely progression of proceedings. The military judge shall be notified promptly of any anticipated delays and the reasons therefor.

Rule 16.2: Trial counsel shall 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 that 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.

Rule 16.3: All counsel must remain within the courtroom at all times when the court-martial is in session, unless excused by the presiding military judge. The accused shall not remain in the courtroom during recesses or other breaks in the proceedings without at least one defense counsel or other defense support personnel present.

Rule 16.4: All defense counsel of record, military or civilian, shall be present at every scheduled session of court, including Article 39(a) sessions. If any defense counsel of record will not be present at a scheduled session, that counsel will file in advance a written and signed notice with the court. Such notice shall explain in detail the reason for counsel's absence, and the accused shall sign the notice, indicating that he or she was advised of counsel's absence, the reasons therefor, and that the accused affirmatively waives counsel's presence. The notice shall be attached to the record of trial as an appellate exhibit at the next session of court.

Rule 16.5: Each time the court convenes or reconvenes, the trial counsel shall ensure that the military judge has announced on the record the presence or absence of the parties (e.g., "All parties who were present when the court recessed/closed are again present (except) . . ."). If any party or the court reporter will be absent, added, or substituted, the military judge shall be so advised by the trial counsel prior to going on the record.

Rule 17: BAILIFF

Rule 17: A bailiff shall be present at every trial with members, or as directed by the military judge. Trial counsel shall ensure the bailiff is provided a copy of "The Bailiff's

Handbook," Attachment (1) of the Uniform Rules of Practice, and is thoroughly briefed as to the bailiff's responsibilities.

Rule 18: GUARDS

Rule 18: 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.

Rule 19: COURT REPORTERS

Rule 19.1: Trial counsel shall verify that the court reporter has been previously sworn. Reporters who have not been previously sworn shall notify trial counsel.

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

Rule 19.3: The trial counsel is responsible for keeping the court reporter section apprised of the status of all docketed cases, to include, but not limited to, all anticipated delays, continuances, withdrawal of charges, 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

Rule 20: All persons in the courtroom, except the court reporter, without regard to rank or grade, shall rise when the military judge enters the courtroom, and when the military judge calls the court into recess, closes the court for deliberation, or adjourns the court. When a bailiff is assigned, the bailiff is responsible for announcing "all rise" and in the absence of a bailiff the trial counsel shall announce "all rise".

Rule 21: MEMBERS

Rule 21.1: In all cases involving court members, the trial counsel shall obtain direction from the military judge as to when the members should arrive at the courtroom for a docketed trial. With advance permission of the military judge, some or all of the members may be placed on a standby call status.

Rule 21.2: The court reporter will prepare a members seating chart and place it in the deliberation room prior to assembly to assist the members in making an orderly entry to the member's gallery at the inception of the trial. The court reporter will also provide copies of the seating chart to the military judge and the parties.

Rule 21.3: All persons, other than the military judge and court reporter, shall rise when the members enter and leave the courtroom. When a bailiff is assigned, the bailiff is responsible for announcing "all rise" and in the absence of a bailiff, the trial counsel shall announce "all rise".

Rule 21.4: Counsel shall coordinate with each other and the military judge to avoid unnecessary "down time" for the members during trials.

Rule 22: VOIR DIRE

Rule 22.1: The military judge shall determine the procedure for conducting *voir dire* in accordance with R.C.M. 912(d).

Rule 22.2: Trial counsel shall obtain completed questionnaires from all detailed members using Attachment (8). If a member's questionnaire has been completed more than six months prior to his or her reporting for a court-martial, the member shall be advised to update the questionnaire or to complete a new questionnaire. In appropriate cases, supplemental questionnaires may be utilized upon approval of the presiding military judge. Copies of completed questionnaires will be provided to the presiding military judge and defense counsel prior to trial in accordance with the TMO. In addition, trial counsel shall ensure that detailed court members are provided a copy of Attachment (9), "*Serving as a Court Member*" prior to assembly.

Rule 22.3: In pretrial submissions of preliminary matters, counsel will provide the military judge with a written list of the full name and unit of all military witnesses, and the name and city and state of residence of all civilian witnesses. The list shall include witnesses anticipated for rebuttal, pre-sentencing, and witnesses whose testimony will be presented by stipulation or affidavit.

Rule 22.4: All proposed *voir dire* questions, either to be asked *en banc* or individually, will be submitted in writing in

accordance with the TMO. Upon request, the military judge may permit counsel to ask additional questions.

Rule 22.5: The military judge will conduct *en banc voir dire* of the members. In the discretion of the military judge, counsel may be permitted to question the members *en banc* and individually. *Voir dire* examination shall be limited to matters relevant to determining the member's fairness and impartiality and whether the member should be excused for cause. During *voir dire*, counsel shall not: (1) argue their case; (2) engage in efforts to indoctrinate or establish "rapport" with members; (3) question members concerning anticipated instructions or theories of law, or members' "understanding" of various legal principles yet to be explained to them; (4) ask members what kind of findings or sentence they might return under a hypothetical set of facts; or (5) seek a pre-commitment from members to a factual or legal proposition that is in issue.

Rule 23: PROHIBITED ITEMS IN COURTROOM

Rule 23.1: Eating, chewing gum, or using tobacco products is not permitted in the courtroom. Beverages may be consumed by trial participants (including members) and spectators in a covered container. Weapons and objects that may be used as weapons will not be permitted in the courtroom without specific authorization of the military judge.

Rule 23.2: Cell phones, computers, and other electronic devices will be turned off when in the courtroom. This rule applies to all trial participants and courtroom spectators. However, counsel are permitted to utilize a computer at counsel table.

Rule 23.3 Unless specifically authorized by the military judge, no portion of any proceeding may be recorded (audio or visual).

Rule 24: COUNSEL DECORUM

Rule 24.1: The decorum of counsel in the courtroom shall be such as to provide a dignified judicial atmosphere within a military setting.

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

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

Rule 24.4: Counsel shall refrain from undue familiarity among themselves or in relationship to the members, military judge, or witnesses while court is in session and when otherwise in the presence of the accused, members, or spectators.

Rule 24.5: Counsel should direct all statements and argument to the military judge or members, as applicable, while the court is in session and shall avoid colloquy or argument toward the opposing party, except for perfunctory matters of courtesy or coordination of the proceedings.

Rule 24.6: Counsel shall refrain from inappropriate physical reactions (head shaking, grimacing, etc.) and verbal reactions (mumbling, muttering, etc.) to statements and argument of opposing counsel and to rulings, orders, or other statements or direction by the military judge.

Rule 25: COUNSEL CONDUCT

Rule 25.1: Counsel shall not state or allude to any matter that counsel has no reasonable or good faith basis to believe is relevant to the case or that will not be supported by admissible evidence.

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

Rule 25.3: Counsel, in presenting a matter to the court-martial, in addition to citing supporting legal authority, shall disclose controlling legal authority known to counsel to be directly contrary to his or her position that is not disclosed by opposing counsel.

Rule 25.4: Counsel shall 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. Counsel may however argue any position or conclusion supported by the evidence adduced at trial, including justifiable inferences.

Rule 25.5: Counsel shall not intentionally or habitually violate any established rule of military procedure, military evidence, or these Rules.

Rule 26: WITNESSES

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

Rule 26.2: Counsel shall ensure that their witnesses understand the physical arrangements of the courtroom, where they should go, and how they should conduct themselves. Witnesses shall be instructed by counsel concerning appropriate attire and decorum to include that, when testifying, 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 case. Witnesses shall be told not to engage court members or the military judge in casual conversation.

Rule 26.3: Counsel shall ensure that their respective witnesses will be immediately available when called to testify. This includes informing the witness of the time, location, and attire 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 shall 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. No witness whose name appears on a witness list may be excused by either side without the express permission of the presiding military judge.

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

Rule 26.5: Live, in-person testimony from witnesses is the expected norm (in the absence of a stipulation of expected testimony) during trial on the merits. Absent objection, remote or telephonic testimony may be allowed in the discretion of the

military judge upon a showing of necessity. Failure to timely litigate denials of witness requests is not considered good cause for requesting telephonic testimony at trial. Nothing in this rule shall be construed to limit or alter the military judge's discretion or responsibilities under M.R.E. 611. No later than five days prior to any trial, counsel shall notify the military judge and the court reporter that witnesses will testify by remote means (VTC, telephonic, closed circuit, etc.) so that necessary rulings and logistical arrangements may be made. See Rule 29 for further guidance on remote testimony.

Rule 27: OBJECTIONS

Rule 27.1: Counsel shall initially state only the nature and basis of an objection, without further elaboration.

Rule 27.2: Counsel shall not present argument on an objection without the permission of the military judge.

Rule 27.3: Argument on objections shall be direct and succinct. Citation of specific authority is desired.

Rule 27.4: An objection or argument for the purpose of making a speech, recapitulating testimony, or attempting to guide a witness is prohibited.

Rule 27.5: 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: EXHIBITS

Rule 28.1: Appellate exhibits will be numbered consecutively with Roman numerals at the direction of the military judge.

Rule 28.2: Prosecution exhibits will be numbered consecutively with Arabic numerals, and defense exhibits will be identified by capital letters.

Rule 28.3: Exhibits shall be marked by the court reporter, not the counsel, in the anticipated order of presentation prior to trial or during recesses.

Rule 28.4: Prosecution and Defense exhibits intended to be introduced at trial should be marked consecutively as "Prosecution/Defense Exhibit __ for identification" and each

page of each exhibit must be paginated (e.g., 1 of 3, 2 of 3, etc.)

Rule 28.5: In formulating questions to witnesses concerning an exhibit, counsel will refer to the exhibit by its exhibit number or letter, and page number, if applicable.

Rule 28.6: If an exhibit or item of real evidence is not compatible for inclusion in the record of trial, proffering counsel should prepare a substitution before trial and shall ask the court's permission to make the substitution at the first available opportunity after the exhibit or evidence has been introduced in court. Such substitution for an item of real evidence shall include photo(s), and if not evident from the photo(s), also, an accurate and detailed description stating the exhibit's size, shape, weight, substance, color, serial number, model, brand name, and any other physical or relevant identifying characteristic(s).

Rule 28.7: All audio recordings and those video recordings that contain audio portions shall be transcribed by the party offering such a recording prior to trial, unless otherwise permitted by the military judge. If a portion is inaudible, the transcript shall so state. A copy of the transcript shall be served on opposing counsel prior to trial in sufficient time to allow for ascertaining the accuracy of the transcript. The recording or a copy thereof shall be made available to opposing counsel upon request. The transcript and recording shall be marked as exhibits and offered to the court simultaneously. However, depositions conducted in accordance with R.C.M. 702, may be recorded for transcription as part of the record of trial while played in court.

Rule 28.8: The proponent of documentary or photographic evidence shall provide a copy of the original exhibit for the military judge at or before trial.

Rule 28.9: All exhibits and demonstrative aids, including those that are computer generated/projected, intended for use during opening statements or closing arguments, must first be shown to opposing counsel and approved for use by the military judge at least one day prior to their intended use in court. Counsel are strongly advised to diligently practice the use of such exhibits, particularly computer generated exhibits, prior to any session of court, to avoid problems at trial. Further, counsel

must ensure that hard copies of exhibits and demonstrative aids are provided for inclusion in the record of trial.

Rule 29: VIDEO TELECONFERENCING

Rule 29.1: Consistent with the Rules for Courts-Martial and applicable DoN Instructions, video teleconference (VTC) technology may be used to conduct Article 39(a) sessions for arraignments, motions, and any other administrative sessions.

Rule 29.2: The trial counsel will ensure that all VTC sites meet the necessary security requirements.

Rule 29.3: 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(b).

Rule 29.4: Motions for remote testimony over the objection of an opposing party will be made in accordance with the TMO. If the issue arises after motions deadlines have passed, the proponent of the remote testimony shall request an Article 39(a) session immediately to resolve the issue before trial.

Rule 29.5: When a military judge has authorized VTC testimony, the below safeguards will be employed. The detailed military judge may deviate from these procedures based upon the exigencies of the situation.

Rule 29.6: Two-way audio and visual transmissions shall be provided and color transmissions should be used. The VTC locations must have convenient telephonic and computer connectivity or other means of transmitting documentary material. A VTC technician or knowledgeable support person shall be available at all VTC locations. The court reporter/transcriber will transcribe VTC witness' testimony in the same manner as an in-person witness.

Rule 29.7: Counsel calling a VTC witness shall establish for the record, the presence of any person (e.g., spectator(s), technical support personnel, etc.) at the remote location in addition to the witness, that there is no verbal or non-verbal communication between the VTC witness and any other person during the testimony, and that the witness does not have access to papers, exhibits, or other materials while testifying, unless authorized by the military judge.

Rule 29.8: The VTC witness will be seated, except when sworn, and the image projected to the trial location will be a full torso frontal image to the extent possible. If able, a monitor will be placed so the VTC witness will see the court proceedings as if he or she were sitting on the witness stand. Like any other witness, the VTC witness will hear all objections and Article 39a sessions unless otherwise directed by the military judge.

Rule 30: INSTRUCTIONS

Rule 30.1: Trial counsel shall make appropriate recommendations as to specific routine instructions that the military judge will provide to the members in order to ensure that no required instructions are inadvertently omitted. Trial counsel shall draft and submit in writing to the military judge proposed instructions for any novel specification, or any specification assimilating state or federal law. Defense counsel may, but are not required to make appropriate recommendations as to specific routine instructions that the military judge will provide to the members. Proposed instructions should be initially included in each party's pretrial submissions of preliminary matters.

Rule 30.2: Requests for special instructions, modifications of standard instructions, judicial notice, or a summarization of the evidence shall be submitted in writing to the military judge and opposing counsel initially in the pretrial submissions of preliminary matters.

Rule 31: COURT FILINGS/DOCUMENT SIZE/TYPE FONT

Rule 31.1: All filings with the Court shall conform to the Uniform Rules of Practice. They shall be signed, dated and filed in MS Word format on white 8.5 X11 inch paper with one inch margins using Courier New or Times New Roman 12 point font.

Rule 31.2: All filings with the Court shall be accomplished via electronic means, with the signed original provided to the Court Clerk, with all attachments, and all pages numbered. All filings with the Court shall indicate the date served on opposing counsel. Unsigned filings will not be accepted by the Court. It is the responsibility of the counsel making the filing to ensure the foregoing requirements for electronic filing are met. Original documents provided to the court reporter will be marked and appended to the record of trial at the next successive session of court. Facsimile (FAX)

transmissions are not authorized for filings or any other communications with the court.

Rule 32: PRETRIAL AGREEMENTS

Rule 32: Counsel shall utilize the most current standard pretrial agreement promulgated by the Office of the Judge Advocate General, Criminal Law Division (OJAG Code 20). Counsel shall not deviate from the standard pretrial agreement provisions, particularly to include paragraph numbering. Any provision of a pretrial agreement not included in the standard pretrial agreement shall be included in the "specially negotiated terms" portion of the pretrial agreement between the parties.

Rule 33: INDEPENDENT LEGAL COUNSEL

Rule 33.1: Independent legal counsel (LC) representing alleged victims/complaining witnesses may be heard before the Court to a limited extent as allowed by applicable law, subject to rulings and direction of the military judge. See R.C.M. 103(16).

Rule 33.2: All LC are subject to all applicable rules of ethics and procedure. Military LC will be attired in the appropriate uniform for military participants in courts-martial and civilian LC will wear appropriate civilian attire pursuant to Rule 14.1 of these Rules.

Rule 33.3: The MJ has the discretion to allow LCs to be heard in court or by telephone or VTC. When appearing in court, LC should be seated behind the bar except when addressing the court. Legal Counsel may only be heard in UCMJ Article 39(a) sessions. The LC will come forward at the appropriate time(s) and will only address the court from the podium. It is within the military judge's discretion to hear from the LC on each distinct issue separately or to have the LC address all issues at one time. The right to be heard can be accommodated orally on the record, by telephone or VTC, or by the court requiring written submissions. Within the discretion of the military judge, LC may be seated at a third table inside the court well during motions to quash government subpoenas or other protracted or complex hearings.

Rule 33.4: Legal Counsel may file such motions and other papers with the court as deemed proper in their client's interests in

the format prescribed by the court. Copies of all filings must be served on all counsel participating in the case.

Rule 33.5: Ordinarily, LC may have an interest in hearings regarding M.R.E. 412, 513 and 514. As such, LC must be served by trial and defense counsel with copies of pleadings pertaining to these issues within 24 hours of said filings. LCs must file motions and responses to motions of the parties in accordance with the TMO.

Rule 33.6: Like the parties, LC may move pursuant to M.R.E. 513 or 514 to close the court proceedings. The military judge may grant this motion in his or her discretion, applying the mandate of R.C.M. 806 that, except under unusual circumstances, courts-martial shall be open to the public.

Rule 33.7: In cases in which LC has filed a Notice of Appearance, trial counsel must provide the LC with a copy of the TMO in accordance with Rule 6.3(i). If new sessions of court are docketed outside the TMO, trial counsel shall notify LC at least seven days prior to any such session, unless, for good cause shown, the military judge permits a different time for such notice. Trial counsel must also ensure rulings on motions involving non-parties are immediately provided to the LC, particularly when an LC does not appear at a session of court at which such rulings are made.

Attachments:

- (1) Civilian Counsel Notice of Appearance
- (2) Trial Management Order
- (3) Pretrial Information Report (PTIR)
- (4) Motion for Arraignment
- (5) Notice of Referral of Charges
- (6) Certification of Withdrawal of Charges
- (7) Proposed Ruling on Motions Format
- (8) Questionnaire for Prospective Court-Martial Member
- (9) Information on Serving as a Court-Martial Member