

Rules of Practice
Before the Southwest Judicial Circuit
Navy-Marine Corps Trial Judiciary

PREAMBLE

The Southwest Judicial Circuit Rules of Practice (the Local Rules) supplement the Navy-Marine Corps Trial Judiciary Uniform Rules of Practice (the Uniform Rules) and the rules governing the *Professional Conduct of Attorneys Practicing under the Cognizance and Supervision of the Judge Advocate General*, JAGINST 5803.1 series (the Rules of Professional Conduct).

The Local Rules are promulgated by the Circuit Military Judge for the Southwest Judicial Circuit under RULES FOR COURTS-MARTIAL (R.C.M.) 108 and 801, pursuant to authority delegated in the Uniform Rules, and govern all Navy-Marine Corps general and special courts-martial tried in the Southwest Judicial Circuit. They are designed to promote a common understanding of the procedure for the litigation of general and special courts-martial within the circuit.

The Local Rules shall be interpreted to complement the Uniform Rules and the Rules of Professional Conduct, and shall not be interpreted to supersede either.

Rule 1: APPLICABILITY

Rule 1.3: Prior to their first appearance on the record, all counsel must familiarize themselves with both the Uniform Rules and the Local Rules.

Rule 2: PURPOSE

Rule 2.1: The Local Rules are intended to promote an orderly and just disposition of courts-martial and to provide for more efficient application of judicial and legal resources within the Southwest Circuit.

Rule 3: CONSTRUCTION

No Local Rules.

Rule 4: REFERRED CHARGES

Rule 4.1.1: *Motion for Docketing.* Within seven (7) days of receipt of referred charges, the trial counsel and the defense counsel will submit to the court a Motion for Docketing (see Attachment (1)). The Motion for Docketing will include a copy of the charge sheet and the convening order and must be filed with the Clerk of the Court. The Motion for Docketing can be made by consent or opposed with alternative dates.

Rule 4.2.1: *Withdrawal of charges.* If a case is withdrawn, trial counsel will submit proper

documentation of the withdrawal to the court as soon as practicable. Proper documentation consists of a certificate of withdrawal signed by the trial counsel, a withdrawal letter signed by the convening authority, or a copy of the charge sheet that reflects the withdrawal action. Cases will not be removed from the docket, and counsel will be expected to appear as scheduled, until such written notification of withdrawal is received by the Court.

Rule 4.3: *High-visibility cases.* In any case involving a national security-designation, anticipated media interest, or other high-visibility matter, trial counsel should inform the Circuit Military Judge as soon as practicable after referral of charges.

Rule 5: CIVILIAN DEFENSE COUNSEL

Rule 5.1.1: Military defense counsel shall furnish civilian defense counsel with a copy of the Local Rules prior to the first appearance in court.

Rule 6: DOCKETING/TRIAL MANAGEMENT ORDERS

Rule 6.1.1: The Docketing Judge, as designated by the Circuit Military Judge, is responsible for managing the docket. The Clerk of the Court is the Docketing Judge's primary point of contact for all docketing issues. The Clerk of the Court is responsible for all administrative functions associated with the circuit and will be treated with respect by all persons who have business to conduct with the Court.

Rule 6.1.2: No case will be docketed with the court until the Clerk of the Court has received a Motion for Docketing (see Attachment (1)). Once a Motion for Docketing has been granted by the Docketing Judge, the Clerk of the Court will docket the case electronically.

Rule 6.1.3: The Southwest Circuit docket can be accessed electronically at:

https://portal.secnav.navy.mil/orgs/JAG/52/Judicial_Circuits/SOUTHWEST/SitePages/Home.aspx

All counsel must request access to the Southwest Circuit docket from the Clerk of the Court prior to the first appearance in court. All counsel must notify the Clerk of the Court promptly prior to any transfer or change of duties requiring removal of access to the docket.

Rule 6.3.1: The parties will provide the court a proposed trial management order prior to arraignment.

Rule 7: PERSONALLY IDENTIFIABLE INFORMATION (PII)

No Local Rules.

Rule 8: CONFERENCES & COMMUNICATIONS WITH THE MILITARY JUDGE

No Local Rules.

Rule 9: DISCOVERY

Rule 9.3: *Special discovery rule for expert testimony.* Ten (10) days prior to the commencement of trial, a party shall provide notice if it intends to offer expert testimony at trial. Notice shall include a summary of the expert’s expected testimony, including the expert’s qualifications, the expert’s opinions, if any, and the basis for those opinions. Notice shall be served on all opposing parties and the Court.

Rule 10: MOTIONS

Rule 10.1.1: *Definitions.* All motions must be filed with the court and served on opposing counsel. “Filing” means that a true and complete copy of the pleading, notice, or document in question is delivered to the Clerk of the Court. “Service” upon opposing counsel means that a true and complete copy of a pleading, notice, or document is delivered to opposing counsel.

Rule 10.2.1: *Proof of service.* Proof of physical delivery to the Clerk of the Court and opposing counsel will establish filing or service as appropriate. In lieu of physical delivery, each matter to be filed or served may be transmitted electronically to the Clerk of the Court or opposing counsel. Proof that an electronic document was received by the Clerk of the Court or opposing counsel will constitute proof of filing or service of the document in question and will be presumptive proof of notice as to that document. Such electronic transmission and receipt will constitute filing and service, and may be substituted for physical service.

Rule 10.2.2: All original motions, including attachments, should be retained and physically entered into the record at the next session of court. Counsel are solely responsible for ensuring the cognizant court reporter is provided all original documents.

Rule 11: CONTINUANCES

Rule 11.1: *Reserve military judges.* In cases where a reserve military judge has been detailed, all continuance requests will be submitted to both the Circuit Military Judge and the reserve military judge. The reserve military judge shall consult with the Circuit Military Judge prior to ruling on the continuance request.

Rule 12: SITUS

No Local Rules.

Rule 13: COURTROOM SECURITY

Rule 13.1.1: Courtroom security in the Southwest Judicial Circuit is governed by JAG/COMNAVLEGVCCOMINST 55302 (series).

Rule 13.4.1: *Firearms.* If firearms are to be marked as exhibits, trial counsel will personally ensure that the firearms have been cleared before they are brought into the courtroom and that mechanical measures have been taken so that they cannot be fired.

Rule 14: UNIFORMS

Rule 14.1.1: *Court uniform.* During winter months, the prescribed uniform for military personnel is Service Dress Blue for Navy personnel and Service “B” for Marine personnel. During summer months, the prescribed uniform is Summer White (E-7 and above)/ Service Dress White (E-6 and below) for Navy personnel and Service “C” for Marine personnel. The date for the shift of seasonal uniforms shall be set by service guidelines or at the direction of the area uniform coordinator, as applicable. The presiding military judge retains the authority to modify the proper uniform to be worn by military personnel in a particular case. When considering what uniform will be worn by military personnel, the presiding 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. This rule applies equally to military personnel who are counsel, accused, and witnesses. It does not apply to spectators. However, spectators will appear in the gallery in appropriate uniform of the day or appropriate civilian attire.

Rule 14.1.2: Male civilian counsel will wear a conservative coat and tie, shirt and slacks. Female civilian counsel will wear appropriate conservative business attire.

Rule 15: SPECTATORS

No Local Rules.

Rule 16: PUNCTUALITY

No Local Rules.

Rule 17: BAILIFF

No Local Rules.

Rule 18: GUARDS

No Local Rules.

Rule 19: COURT REPORTERS

Rule 19.1.1: The trial counsel is responsible for keeping the court reporter apprised of the status of all docketed cases, to include, but not limited to: all anticipated delays, continuances, withdrawal of charges, changes of courtrooms or location, changes in anticipated pleas and forum, and the need for court reporter support in unscheduled hearings.

Rule 20: ENTRY AND DEPARTURE OF MILITARY JUDGE

No Local Rules.

Rule 21: ENTRY AND DEPARTURE OF MEMBERS

No Local Rules.

Rule 22: VOIR DIRE

No Local Rules.

Rule 23: PROHIBITED ITEMS IN THE COURTROOM

No Local Rules.

Rule 24: COUNSEL DECORUM

No Local Rules.

Rule 25: COUNSEL CONDUCT

No Local Rules.

Rule 26: WITNESSES

Rule 26.2.1: Witnesses will be instructed by counsel that they must not engage in the following activities in the courtroom: chew gum, use tobacco or use slang expressions or profanity (except as may be required in the presentation of the facts).

Rule 26.4.1: *Interpreters.* Not later than fourteen (14) days prior to trial, counsel who intend on using an interpreter during the trial will notify the presiding military judge and opposing counsel of the interpreter's identity and a brief summary of his/her qualifications. Any anticipated objection to the interpreter will be provided to the presiding military judge as soon as possible, but not later than seven (7) days prior to the date of the trial

Rule 27: OBJECTIONS

No Local Rules.

Rule 28: STIPULATIONS

No Local Rules.

Rule 29: OFFERS OF PROOF

No Local Rules.

Rule 30: JUDICIAL NOTICE

No Local Rules.

Rule 31: EXHIBITS

Rule 31.1.1: Unsworn statements offered pursuant to R.C. M. 1001A will be marked as an appellant exhibit (“AE”) followed by a Roman numeral as appropriate.

Rule 31.3.1: Counsel must obtain the express prior approval of the presiding military judge before using any form of electronic media in any session of court.

Rule 31.3.2: Any exhibits or evidence intended to be used during opening statement or argument must be approved for use by the presiding military judge. Counsel must ensure that electronic exhibits are properly duplicated as hard copy printouts for inclusion in the record of trial.

Rule 31.3.3: Counsel intending on using demonstrative aids, such as charts, diagrams, videotapes, audio tapes, or any other technological presentations during their opening statement, closing arguments, or during the presentation of the evidence must provide notice to the Court and opposing counsel not less than two (2) days prior to trial.

Rule 32: VIDEO TELECONFERENCE (VTC) REQUIREMENTS

Rule 32.2.1: During the use of VTC to conduct sessions of the court, two-way audio and visual transmissions (in color) shall be utilized. The remote VTC location must have telephonic connectivity and a means of receiving documents and other written material. Knowledgeable support personnel shall be available at both locations to assist with technical issues that may arise. The court reporter will transcribe the VTC witness' testimony in the same manner as a normal witness.

Rule 33: FINDINGS AND SENTENCING INSTRUCTIONS

No Local Rules.

Rule 34: RECORD OF TRIAL/APPELLATE RIGHTS

No Local Rules.

Rule 35: DOCUMENTS AND PLEADINGS

No Local Rules.

Rule 36: VICTIMS' LEGAL COUNSEL AND OTHER NON-PARTY COUNSEL

Rule 36.1.1: If an alleged victim retains civilian counsel, trial counsel shall furnish the civilian counsel with a copy of the Uniform and Local Rules. The civilian counsel's notice of appearance must acknowledge familiarity with these rules.

Rule 37: VICTIM'S RIGHT TO BE HEARD

No Local Rules.

Rule 38: APPOINTMENT OF A DESIGNEE FOR CERTAIN VICTIMS

No Local Rules.

Rule 39: CONTEMPT PROCEEDINGS

No Local Rules.

Rule 40: MODEL PRETRIAL AGREEMENT

No Local Rules.