

DEPARTMENT OF THE NAVY
CIRCUIT MILITARY JUDGE
SOUTHERN CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
BLDG. 4, BOX 107, RANGER ST.
NAS JACKSONVILLE, FL 32212-0107

SOUTHCIRINST 5810.1D
CMJ/JVG
6 OCT 06

SOUTHERN CIRCUIT, NAVY-MARINE CORPS TRIAL JUDICIARY INSTRUCTION
5810.1D

Subj: SOUTHERN CIRCUIT COURT RULES

Ref: (a) Uniform Rules of Practice before Navy-Marine Corps
Courts-Martial (Encl (1) to NAVMARTRIJUDINST 5810.5B)

Encl: (1) Southern Circuit Court Rules
(2) Standardized Courtroom Technology Protocol
("Smart Courtroom")

1. Purpose. To establish uniform rules for court-martial practice within the Southern Circuit, in amplification of reference (a)
2. Applicability. The Southern Circuit Court Rules set forth in enclosure (1) and reference (a) shall apply to all general and special courts-martial tried within the Southern Circuit.
3. Cancellation. All Southern Circuit Court Rules previously promulgated are hereby canceled.
4. Action. The Southern Circuit Court Rules are a guide for naval service courts-martial participants practicing in the Southern Circuit.
 - a. All rules set forth in reference (a) and enclosure (1) shall be followed by military and civilian counsel trying general and special courts-martial in the Southern Circuit.
 - b. The Circuit Military Judge and military judges in charge of each branch office within the Southern Circuit shall ensure that copies of reference (a) and enclosures (1) and (2) are provided to the Commanding Officers of Regional Legal Service Offices, Naval Legal Service Offices, Marine Law Center OICs/SJAs, and the Marine Regional and Senior Defense Counsel in the circuit for further distribution to all military counsel

Subj: SOUTHERN CIRCUIT COURT RULES

under their command. Military defense counsel will furnish civilian counsel with copies of these Rules and the Navy and Marine Corps Trial Judiciary Uniform Rules of Practice.

J. K. WAITS

Distribution:

Chief Judge

CO, RLSO Southeast

OIC RLSO SE Det, Mayport, FL

OIC RLSO SE Det, Pensacola, FL

OIC RLSO SE Det, Guantanamo

CO, NLSO Southeast

OIC, NLSO SE Det, Kings Bay, GA

OIC, NLSO SE Det, Mayport, FL

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OIC, NLSO Central Det, Fort Worth, TX

OIC, NLSO Central Det, Corpus Christi, TX

OIC, NLSO Central Det, Gulfport, MS

OIC, NLSO Central Det, New Orleans, LA

OIC, NLSO Central Det, Millington, TN

SJA, Marine Corps Air Station, Beaufort, SC

SJA, Marine Corps Logistics Base, Albany, GA

SJA, Marine Corps Recruit Depot/Eastern Recruiting Region, Parris Island, SC

RDC, Eastern Region, Marine Corps Base Camp Lejeune, NC

SOUTHERN CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
COURT RULES

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Preamble

These rules (hereinafter "Southern Circuit Court Rules") shall govern all general and special courts-martial tried within the Southern Circuit and are intended to supplement the Navy-Marine Corps Trial Judiciary Uniform Rules of Practice (hereinafter "Uniform Rules of Practice") promulgated by Navy-Marine Corps Trial Judiciary Instruction (NAVMARTRIJUDINST 5810.5B). Consistent with requirements of law and standards of professional ethics, military judges presiding in cases tried within the Southern Judicial Circuit may modify or suspend any of these rules in the interest of justice.

Rule 1 - Uniform Rules of Practice

All counsel practicing before general and special courts-martial in the Southern Judicial Circuit shall adhere to the requirements of the Uniform Rules of Practice and the Circuit Rules.

Rule 2 - Civilian Counsel

When civilian counsel have been retained in a case, military defense counsel will furnish civilian counsel with copies of the Circuit Rules and the Uniform Rules of Practice. The civilian counsel will immediately file a notice of appearance in the form specified in Tab A in accordance with Rule 6.1 of the Uniform Rules of Practice. Military defense counsel shall assist in ensuring that a copy of the notice of appearance is immediately served on the court and government counsel.

Rule 3 - Compliance with Circuit Rules and Court Orders

a. All counsel, military and civilian, are required to comply with the Uniform Rules of Practice, the Circuit Rules, as well as with court orders issued by the presiding military judge. Counsel who fail to comply with such rules or orders may be required to explain such noncompliance on the record or in writing. Any written response may be appended to the record of trial as an appellate exhibit.

b. With regard to noncompliance by military counsel, the presiding military judge may forward information about the matter to the counsel's commanding officer and, in cases of repeated or deliberate noncompliance, to appropriate ethics officials, military and civilian.

c. With regard to deliberate or repeated noncompliance by civilian counsel, the presiding military judge may forward

information about the matter, via the Circuit Military Judge, to the counsel's state or federal bar, or both.

d. In addition, if circumstances warrant, the Circuit Military Judge, with concurrence of the Chief Judge, may recommend to the Judge Advocate General that counsel be barred or suspended from practicing before Navy and Marine Corps courts-martial.

Rule 4 - Detailing Of Military Judges

a. Generally, the sub jurisdictions of the Southern Circuit are as follows:

(1) For cases originating within the concurrent geographical area of responsibility of the Southern Circuit and Naval Legal Service Office (NLSO) Central, the military judge at Naval Air Station Pensacola [Southern Circuit (West)], is presumed to be presiding authority over the case once charges have been referred to court-martial.

(2) For all other cases, the office of Circuit Military Judge at Naval Air Station, Jacksonville, [Southern Circuit (East)] is presumed to be the presiding authority over the case once charges have been referred to court-martial.

b. Each military judge within this Circuit has full authority to detail himself or herself to courts-martial at which he or she is certified to preside, subject to guidelines and limitations set forth by the Circuit Military Judge and the Chief Judge, Navy-Marine Corps Trial Judiciary.

c. Cases involving National Security as defined in paragraph 0126 of the JAG Manual shall be detailed by the Chief Judge, Navy-Marine Corps Trial Judiciary. 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.

Rule 5 - Docketing

a. **General.**

(1) The "Docket" is the Court's published calendar of cases that are pending action.

(2) There are two components to the Docket; the Short Range (Hard) Docket, and the Long Range (Soft) Docket. The Hard Docket refers to the Court's schedule for the current calendar week. The

Soft Docket refers to court sessions scheduled for the outlying weeks that are initially established through case management orders.

(3) The Docket will normally be published each Thursday by 1200. Once published, court sessions on the Hard Docket for the next week may not be changed without the express consent of the presiding military judge. The only exception to this rule is if the charges have been withdrawn by the convening authority.

(4) Cases are placed on the Hard Docket by either one of two methods:

- (a) The trial counsel submits a Docket Request (Tab B),
- or
- (b) Either party files a Motion for Arraignment (Tab C).

b. Court Documents.

(1) Docket Request

(a) The preferred method for notifying the court of referred charges and docketing a court session is through submission of a Docket Request. A sample Docket Request is provided at Tab B.

(b) Docket Requests will be submitted for the following types of court sessions:

- i. Arraignments,
- ii. Article 39(a) sessions,
- iii. Trial Dates, and
- iv. Post-trial Article 39(a) sessions

(2) Motion for Arraignment. The alternative method for docketing a case for an arraignment when the parties cannot agree to a proposed trial schedule is through filing a Motion for Arraignment. A sample Motion for Arraignment is provided at Tab C.

(3) Case Management Order

(a) The document that establishes milestone dates for the timely progression of a case is called the Case Management Order. A sample Case Management Order is provided at Tab D. The Case Management Order is not the mechanism for requesting a court session on the Hard Docket - numerous factors can effect whether or not milestone dates are met. The Hard Docket sets the specific time and date for the next court session in a particular case and

those dates are normally placed on the Hard Docket by submitting a Docket Request.

(b) Both parties will endeavor to establish a mutually agreeable schedule for the Case Management Order. In cases where the parties cannot agree, both parties will draft their own desired schedules and be prepared to explain, during an R.C.M. 802 conference prior to arraignment, the necessity for their proposed schedule. The military judge will resolve any conflicts.

(c) The Case Management Order will be made an Appellate Exhibit at the time of arraignment.

(4) Notice of Referred Charges. If neither a Docket Request nor a Motion for Arraignment is submitted or filed within ten (10) working days after charges have been referred, then the trial counsel must inform the Court of the existence of the charges. A sample Notice of Referred Charges is provided at Tab E. The submission of a Docket Request or filing of a Motion for Arraignment within ten working days from the referral date satisfies the notice requirement.

c. The Docketing Process.

(1) Once a charge has been referred, it is both the trial and defense counsels' 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 are expected to occur before the Court intervenes.

(2) The procedure for docketing a case in the Southern 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 the detailed defense counsel.

(c) Upon service of referred charges, the trial counsel contacts the defense counsel within three (3) working days to negotiate a mutually agreeable proposed trial schedule. Once trial counsel have contacted defense counsel and provided them their contact information, defense counsel are required to respond to trial counsel's attempts to initiate a dialogue.

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

(e) If parties agree to a trial schedule, the trial counsel submits a Docket Request.

(f) In order to conserve judicial resources, i.e. 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.

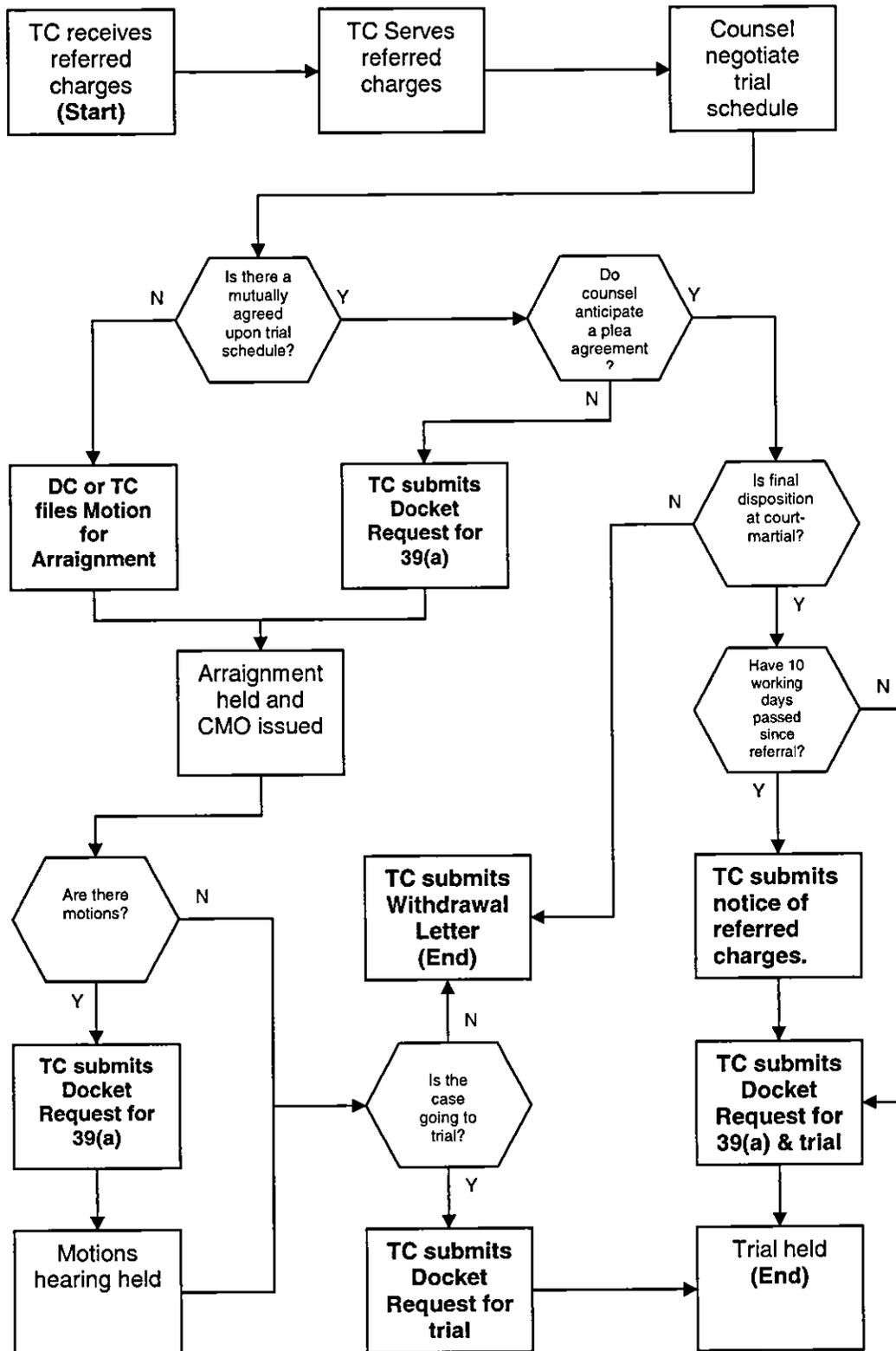
(g) If counsel are unable to reach a mutually agreed upon trial schedule within seven (7) working days from the date referred charges are served on the defense, the party desiring the earliest docket date will file a Motion for Arraignment. The nonmoving party will have two (2) working days to endorse and file their response to the moving party's motion. The local Senior Military Judge will then take appropriate action to docket the case.

(h) All subsequent court sessions will be placed on the Hard Docket via a Docket Request or as otherwise set forth under Rule 5.f.

(3) Court sessions scheduled by Case Management Orders are not automatically scheduled on the Hard Docket, but must be the subject of a Docket Request.

(4) The docketing process is summarized in Table 1.

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The Docketing Process

Table 1

d. Continuances.

(1) Once docketed for a particular date, scheduled pretrial hearings and trials will not be changed unless reasonable cause exists and the interests of justice would be served.

(2) Unit deployments, availability of experts and other witnesses, and case preparation time should be considered prior to docketing the case for motions or trial.

(3) The presiding judge will be advised at the earliest opportunity when unexpected circumstances arise that counsel believe may interfere with a docketed court session.

(4) A request for a continuance, not made during a session of court, shall be made by written motion. The proponent shall state the basis for the continuance request and a proposed new date.

e. Withdrawn and Dismissed Charges. When referred charges in cases pending before the court are withdrawn and/or dismissed by the convening authority, the trial counsel will provide written notice to the presiding military judge. Such notice must be a copy of any written action taken in whatever form.

f. "Walk-ins". Cases in which charges are referred and pleas have been negotiated, but has not yet been docketed, and both counsel desire to have the case expeditiously adjudicated - i.e., prior to the next publication of the Docket, will be heard on a *very limited basis*. All requests for "walk-ins" must be made by either the Marine Law Center Officer-in-Charge or the Commanding Officer of the Regional Legal Service Office and be addressed to the Circuit Military Judge or the local Military Judge.

g. Required Attachments. Unless previously provided, the following documents must be submitted when requesting a docket date:

- (1) Docket Requests for arraignments require the following:
 - (a) A copy of the referred charges,
 - (b) A copy of the convening order, and
 - (c) A proposed case management order.

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- (2) Docket Requests for trials in which the anticipated pleas are "guilty," require the following:
 - (a) A copy of the referred charges,
 - (b) A copy of the convening order;
 - (c) A copy of the memorandum portion of the pre-trial agreement, and
 - (d) A copy of the stipulation of fact (if one is to be offered).

- (3) Motions for Arraignment require the following:
 - (a) A copy of the referred charges,
 - (b) A copy of the convening order,
 - (c) A proposed case management order.

- (4) Walk-in Requests require the following:
 - (a) A copy of the referred charges,
 - (b) A copy of the convening order;
 - (c) A copy of the memorandum portion of the pre-trial agreement, and
 - (d) A copy of the stipulation of fact (if one is to be offered).

h. Deadlines.

- (1) The Docket will be published by 1200 each Thursday.

- (2) Docket Requests are due no later than 1600 on the Tuesday preceding publication of the next week's Docket. Requests submitted after 1600 on Tuesday will not be placed on the following week's Hard Docket.

- (3) Motions for Arraignment, when necessary, shall be filed with the Court within seven working days after referred charges have been served on the accused and the defense counsel. A copy of the motion shall be served on opposing counsel at the same time. The nonmoving party has two working days to endorse and file their response to the moving party's motion. The local Senior Military Judge will then take appropriate action to docket the case.

- (4) Notice of Referred Charges shall be filed on the tenth day after charges have been referred if neither a Docket Request nor a Motion for Arraignment have been submitted or filed.

- (5) Notice of withdrawn charges shall be filed with the Court within five (5) working days of the withdrawal.

(6) Request for a "Walk-in" shall be made as soon as possible in order to give the military judge time to prepare for the providence inquiry.

Rule 6 - Filing, Service, and Notice

a. Definitions:

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

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

(3) **"Notice"** to opposing counsel means that a true and complete copy of a pleading, document or other information discoverable under the Rules of Courts-Martial has been delivered to opposing counsel.

b. Original documents: Original documents should be retained and physically entered into the record at the next session of the court-martial in question.

c. Method of Filing, Service, and Notice:

(1) **Physical service:** Proof of physical delivery to the military judge or attorney in question will establish filing, service and/or notice as appropriate.

(2) **Electronic transmissions:** When an item is served by electronic mail to the presiding military judge or counsel, a physical copy shall also be delivered to the electronic addressees. Receipt by the presiding military judge, with an indication that a copy was simultaneously sent to opposing counsel, will be prima facie evidence 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 which was not transmitted electronically.

(3) **Fax transmissions:** Fax transmissions cannot be assumed to be delivered to the presiding military judge or opposing counsel. 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 faxed document was in fact received by the addressee. Fax transmissions may satisfy the

appropriate filing, service and/or notice requirement only if appropriate verification of receipt is obtained.

Rule 7 - Motions and Responses

Unless otherwise ordered by the presiding military judge, counsel shall notify the court and opposing counsel of intention to file motions as soon as possible after such intent is formed. Motions shall be filed with the court and served on opposing counsel in accordance with the Case Management Order. In cases in which no Case Management Order has been issued, filing and service of motions will occur no later than the sixth (6th) working day prior to the established motions hearing date. Answers shall be filed and served no later than the third (3rd) working day prior to the date set for motions. Examples of the proper format for motions are found in attachments (3) and (4) to the Uniform Rules of Practice. Motions and responses not filed in accordance with this rule may result in continuance, or other appropriate relief, being ordered by the presiding military judge. In addition, if circumstances warrant, the presiding military judge may invoke the procedures contained in Rule 3, infra, and may issue any other order permissible by law and regulation. When filing motions and responses, only a copy should be filed with the court; the original pleadings should be submitted for the record at the next session of the court-martial.

Rule 8 - Essential Findings

Unless otherwise directed by the presiding military judge, when motions are filed which will require essential findings by the military judge, each side shall attach proposed findings to their brief.

Rule 9 - Document Size

All documents filed with the court shall be on 8.5 inch x 11-inch paper.

Rule 10 - Witness Requests

All requests for production of and action on requests for witnesses shall be done in accordance with R.C.M. 703. Unless otherwise directed by the presiding military judge, requests for locally-available witnesses shall be submitted in accordance with the case management order, or if a case management order has not been issued in the case, no later than five (5) working days prior to trial and requests for all other witnesses shall be submitted no later than ten (10) working days prior to trial.

Rule 11 - Real and Demonstrative Evidence and Aids

a. Unless otherwise directed by the presiding military judge, demonstrative evidence or aids such as charts and diagrams shall be provided to opposing counsel prior to the trial on the merits. In members cases, the admissibility and propriety of the use of demonstrative aids will be determined at an Article 39(a) session prior to the proponent's attempt to display them in the courtroom.

b. Counsel offering real evidence, demonstrative evidence, or oversized documents will have available at the time of such use, an accurate image of the item suitable for inclusion in the record of trial. In the case of real evidence, the image shall contain a written description of the item's physical characteristics sufficient to permit appellate review.

Rule 12 - Recorded Evidence (Video or Audio)

If counsel anticipate using video or audio reproduction equipment to present evidence, written notice shall be provided to the presiding military judge three (3) working days prior to trial. The presiding military judge may issue orders regarding handling and use of such evidence. Unless otherwise permitted by the presiding military judge, the procedures set forth in Rule 33.6 of the Uniform Rules of Practice shall be followed.

Rule 13 - Case Citations in Arguments

If cases will be cited in the course of argument before the presiding military judge, a list of cases, not already cited in counsel's brief, will be delivered to the military judge and opposing counsel prior to argument and, upon direction of the military judge, may be appended to the record as an appellate exhibit.

Rule 14 - Courtroom Security

Counsel will promptly advise the presiding military judge of security and safety concerns involved in any trial. This will normally be accomplished in a conference held pursuant to R.C.M. 802, but may also be done in writing, with a copy being served on opposing counsel. In circumstances involving immediate concern for safety and security, communication may be ex parte, with later notice to opposing counsel. The presiding military judge may impose requirements for security as necessary.

Rule 15 - Bailiffs, Parties, Witnesses, Uniforms, Prohibited Items

a. Unless otherwise directed by the presiding military judge, government counsel will ensure that a bailiff is available for every case. The government counsel shall ensure that the bailiff is provided with a copy of The Bailiff's Handbook (attachment (5) to the Uniform Rules of practice.

b. Government counsel will inform command authorities that the accused must report to the trial site not later than thirty (30) minutes prior to the time scheduled for commencement of trial. If the accused has not arrived by that time, government counsel will inform the presiding military judge and will take immediate follow-up action.

c. All parties to the trial will be expected to be present in court and ready to begin or continue with the trial at the time set for trial or upon the expiration of a recess. 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 without defense counsel present during recesses or other breaks in the trial.**

d. Government counsel and defense counsel will coordinate time of arrival of witnesses with the presiding military judge. Unless otherwise permitted by the military judge, counsel are expected to have their witnesses readily available to the courtroom when needed. Unless otherwise directed by the military judge, witnesses will be excused upon completion of their testimony. Government and defense counsel are responsible for ensuring that their respective witnesses are in the proper uniform/attire.

e. Unless permitted by the presiding military judge, if more than one (1) counsel represents the government or the defense, only one of the counsel shall examine a witness or address the court on any issue or motion.

f. Uniform Requirements:

(1) In all courts-martial, naval officer and enlisted participants will appear in the service dress uniform prescribed by the area coordinator for the uniform period. Marine officer and enlisted participants shall appear in the Service "C" uniform. Marine accused have the option of appearing in their Service "A" uniform. Civilian witnesses are to wear appropriate civilian attire.

(2) The word "participants" as used in this rule includes: the presiding military judge, counsel, the accused, members, the court reporter, the bailiff, and witnesses.

g. Relaxation of Uniform Requirements. In order to accommodate special circumstances such as poor climate control in the courtroom or unusually hot or cold weather patterns, these rules for uniforms at courts-martial may be modified by the presiding military judge without further permission of the Circuit Military Judge. The presiding military judge may alter these uniform requirements to permit wearing of the uniform of the day in military judge alone special courts-martial, for Article 39 (a) sessions, when unscheduled Article 39 (a) sessions arise, or when appropriate due to trial location or other local circumstances.

h. 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.

i. Weapons and objects that can be used as weapons will not be permitted in the courtroom without specific permission of the military judge. This restriction applies to firearms carried by witnesses who are law enforcement officers/agents.

Rule 16 - Trial By Members

a. **Questionnaires.** Government counsel shall obtain questionnaires from all members. Tab F is the approved members questionnaire for the Southern Circuit. In appropriate cases, supplemental questionnaires may be utilized after 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 case management order. The questionnaires will be marked as appellate exhibits and attached to the record of trial.

b. **Conformed Charges** (Cleansed Charge Sheet). Upon notice of a members trial, the government counsel is responsible for the preparation of a set of conformed charges. After approval by the presiding military judge, the government counsel will ensure that one (1) copy of the conformed charges, the convening order, all amending orders, and a copy of each respective member's own questionnaire are placed at each member's position in the courtroom.

c. **Calling Members to Courtroom.** Government counsel shall coordinate the time of the members' arrival with the presiding military judge. Trial counsel shall place a seating chart in the deliberation room prior to assembly to assist members in making an orderly entry to the member's gallery at the inception of the trial.

d. **Voir Dire Questions.** At the option of the presiding military judge, counsel may be required to submit proposed voir dire questions to the court prior to the date of trial.

e. **Witness Lists.** Pursuant to the Case Management Order, counsel for both sides will provide the presiding military judge with a written list containing the full name and unit (military witness) or city and state of residence (civilian witness) of all prospective witnesses. Ranks and rates will be provided for all military witnesses. No witness whose name appears on any witness list may be excused by either side without the express permission of the presiding military judge.

f. **Instructions.** Counsel should be prepared to submit pertinent instructions. If either counsel proposes an instruction not contained in The Navy-Marine Corps Trial Guide or in the Military Judges' Benchbook (DA Pam 27-9), such instruction and any authority therefor or shall be submitted in writing to the court with a copy served on opposing counsel.

g. **Personal Data.** The personal data concerning the accused listed on page one of the charge sheet will be verified by counsel for each side prior to trial. Additionally, the date of birth of the accused and the duration of any pretrial restraint will be noted on page 1 of the charge sheet. Counsel are encouraged to prepare an appropriate "Personal Data Sheet" for each accused as a appropriate method of placing this information before the sentencing authority in each case.

h. **Supplies for Members.** Prior to any session of court, government counsel will ensure that there are appropriate supplies for each member, to include pens, pencils, note paper, question forms and blank ballot paper.

i. **Question by Member Form.** Tab E will be used for questions by members. Government counsel will ensure that sufficient forms are readily available.

j. **Copies of Exhibits for Publication.** At the option of the presiding military judge, multiple copies of exhibits may be prepared for publication to the members in court. These must be

true copies of the exhibits as admitted. If such a procedure is employed, counsel for each side will review the copies prior to publication to members and advise the presiding military judge on the record that they have done so.

k. **Waiting and Deliberation Areas.** Prior to arrival of members and witnesses, government counsel will inspect waiting and deliberation rooms and adjacent areas, and remove any written or other material which may be related in any way to issues in the case.

Rule 17 - Custody of Evidence

Upon completion of each session of court, trial counsel will ensure that all exhibits are placed in custody of the court reporter or evidence custodian, as appropriate.

Rule 18 - Records of Trial

Trial counsel will carefully examine each record of trial and cause changes to be made which are necessary to report the proceedings accurately. Except when unreasonable delay will result, trial counsel will permit defense counsel, upon request, to examine each record before authentication. If the record is forwarded to the military judge before the defense has examined the record, the government counsel will attach a letter explaining why such examination by the defense counsel will cause unreasonable delay. When examining the record, defense counsel may not make changes to the record, but may propose changes to the military judge or government counsel by written memorandum.

Rule 19 - Distribution of Circuit Rules

The Circuit Military Judge and the military judge sitting at Southern Circuit (West) will ensure that copies of these Rules and the Uniform Rules of Practice are provided to the Commanding Officers of the appropriate Naval Legal Service Offices, Regional Legal Service Offices, Marine Law Center OICs/SJAs, and Marine Regional and Senior Defense Counsel for further distribution to all military counsel under their command.

EFFECTIVE DATE: 6 OCTOBER 2006

**SOUTHERN CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
(GENERAL) (SPECIAL) COURT-MARTIAL**

UNITED STATES)	
)	CIVILIAN DEFENSE
v.)	COUNSEL NOTICE OF
)	APPEARANCE
LAST, FIRST, MI)	
RATE/RANK)	
U.S. Marine Corps/Navy)	
)	Date: _____

1. Pursuant to Rule 6.1 of the Navy-Marine Corps Trial Judiciary Uniform Rules of Practice (Uniform Rules) and Rule 2 of the Southern Circuit Rules of Practice (Circuit Rules), I, ATTORNEY'S FULL NAME, hereby provide notice of my appearance on behalf of CLIENT'S RANK, FULL NAME. My office address, phone numbers, and e-mail address are: ADDRESS, PHONE NUMBER (office and fax) & E-MAIL ADDRESS. I am an active member in good standing licensed to practice in the following jurisdictions: LIST BAR ADMISSIONS.

2. I understand that practice in the Southern Circuit requires me to be familiar with the Uniform and Circuit rules. Additionally, I am aware of the standards of professional conduct required of counsel practicing in Navy-Marine Corps courts-martial as contained in JAG Instruction 5803.1B with Change 1. I certify that I am not now, nor have I ever been, de-certified or suspended from practice in Navy-Marine Corps courts-martial by the Judge Advocate General of the Navy.

COUNSEL NAME
Attorney At Law

Tab A

Certificate of Service

I hereby attest that a copy of the foregoing notice of appearance was served on the court and opposing counsel personally and/or by facsimile on _____, 20____.

Counsel Name

**SOUTHERN CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
(GENERAL) (SPECIAL) COURT-MARTIAL**

UNITED STATES)	
)	
v.)	Motion for Arraignment
)	
LAST, FIRST, MI)	
Rate/Rank, Service)	
)	

1. The ACCUSED / UNITED STATES respectfully moves to arraign the captioned case on:

_____ at _____
(Day) (Month) (Year) (Location)

Factors: Speedy trial; the oldest charge was preferred on:

(Day) (Month) (Year)

The accused was placed into pretrial confinement on:

(Day) (Month) (Year)

Civilian Counsel

Other:

2. A copy of the charge sheet and convening order are included as Attachments (1) and (2).
3. A case management order is included as Attachment (3).

 Date Defense Counsel / Trial Counsel

COUNSEL FOR THE UNITED STATES / ACCUSED, in response to the above motion:

DOES NOT OPPOSE the proposed arraignment date.

OPPOSES the proposed arraignment date and suggests the alternative date:

(Day) (Month) (Year)

 Date Trial Counsel / Defense Counsel

IT IS HEREBY ORDERED, all parties shall appear before the Court at _____
 on _____ for arraignment at _____
(Time) (Day) (Month) (Year)

(Location)

 Date Military Judge

CASE MANAGEMENT ORDER
IN THE CASE OF
UNITED STATES V. _____

	<u>Milestone</u>	<u>Date</u>
1	IMC Request or Civilian Defense Counsel Notice Of Appearance Due:	_____
2	Discovery Request Due:	_____
3	MRE 304, 404(b), 412 Or 413 Notice Due:	_____
4	Notice of Special/Affirmative Defense Due:	_____
5	Defense Witness & Expert Requests Due:	_____
6	Government Witness & Expert Response Due:	_____
7	Motions Due:	_____
8	Motions Responses Due:	_____
9	Motions Hearing Date: (Docket Request Required)	_____
10	Notice of Forum Selection Due:	_____
11	Notice of Pleas Due:	_____
12	Government and Defense Witness Lists Due:	_____
13	Completed Members' Questionnaires Due:	_____
14	Proposed Voir Dire Due:	_____
15	Trial Date(s): (Docket Request Required)	_____

 Trial Counsel

 Detailed Defense
 Counsel

 Civilian Defense
 Counsel

So ordered on this _____ day of _____.

 Military Judge

**SOUTHERN CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
(GENERAL) (SPECIAL) COURT-MARTIAL**

(date)

From: Government Counsel
To: Military Judge

Subj: NOTIFICATION OF REFERRAL OF CHARGES ICO U.S. v.
(Accused's Rate/Rank, full name and service)

Encl: (1) Charge sheet
(2) Convening order
(3) Other

1. Notice is hereby provided that the government has received referred charges in the following case:

Accused's Name/Rate: _____
Accused's parent command: _____
Type of case (GCM/SPCM) _____

2. Detailed defense counsel:

(Rank, Name, Service of DC) has been detailed defense counsel in this case

The name of detailed defense counsel is not yet known. Government counsel hereby certifies to the court that an appropriate request has been forwarded to the cognizant NLSO requesting that a military defense counsel be detailed. Government counsel will advise the court of the name of detailed defense counsel as soon as known.

/s/

(Rank, Name, Service of Government
Counsel)

Copy to:
(Cognizant NLSO activity)

Tab E

QUESTIONNAIRE FOR PROSPECTIVE COURT-MARTIAL MEMBERS

PRELIMINARY INSTRUCTIONS:

PURPOSE OF THIS QUESTIONNAIRE: This questionnaire is designed to obtain information regarding your qualifications to sit: as a member (juror) in a military court-martial. Its purpose is to provide information to the court and the attorneys regarding your ability to sit as a fair and impartial member in this case. By using a questionnaire, the jury selection process on the first day of trial will be shortened substantially.

COMPLETING THE QUESTIONNAIRE: As you answer the questions, remember that there are no "right" or "wrong" answers, only complete and incomplete answers. Answers that are complete and answered honestly and as fully as possible are far more helpful than incomplete answers because they shorten the time it takes to select a panel. Failure to disclose any of the requested information could interfere with the service member's and the Government's right to a fair trial. Therefore, do not presume that any information requested is unimportant. If you do not understand a question, simply write the words "I do not understand."

Write only on the front side of each page. If you need additional space for an answer, there are blank pages at the end of the questionnaire for that purpose. Write "see additional page" on your answer. On the additional page(s), be sure to include the question number to which you are responding.

PRIVACY OF YOUR ANSWERS: You must not discuss the questions or your answers with anyone, including any other prospective member, the Convening Authority or your own Commanding Officer. If anyone tries to discuss the questionnaire or the case with you, please notify the presiding military judge at the first session of the court-martial.

The questionnaire is not intended to embarrass you. Your responses on the questionnaire will reduce substantially the need to ask these questions or similar questions in open court during the member selection process. The answers you give here will become part of the trial record.

Your answers must be completed in BLACK OR BLUE INK ONLY. Thank you for your patience and cooperation.

BASIC INFORMATION:

Member Name: _____

1. Age _____

2. Gender Female: Male:

3. Ethnicity African-American Asian/Pacific Islander
 Caucasian Hispanic/Latino
 Other (Describe) _____

4. Rank/Rate/Service _____

5. Date of Rank/Rate _____

6. For Officers Only a. Source of Commission _____

b. Any prior enlisted service? Yes No

c. If Yes, number of years _____

d. Rate and/or highest grade attained _____

7. Years of Active Duty _____

8. Served in the any other branch? Yes No

a. Branch of service _____

b. Rank _____

c. Dates of prior service _____

9. Present Duty Station _____

Present billet or job assignment and duties (be specific) _____

Office telephone number _____

10. Summary of military career (last 10 years, plus any significant or unusual billets)

From/To	Command	Specific Assignment

FAMILY INFORMATION:

11. Marital status:

- Single and never married
- Single, but in a relationship with a significant other
- Currently married / Length of marriage _____
- Divorced

When divorced _____
Length of previous marriage _____

- Widowed
Length of marriage _____

12. If married or in a committed relationship, has your spouse or significant other ever served in the military?

N/A No Yes

If Yes: Branch of service _____

Rate/Rank _____

Dates of service _____

13. If married or in a committed relationship:

a. Is your spouse or significant other employed? Yes No

b. What is that person's occupation? _____

c. If that person is retired, unemployed or disabled, what was his/her occupation? _____

d. What is the highest level of education s/he completed _____

List degrees: _____

e. Has your spouse or significant other had any experience or contact with law enforcement or law enforcement authorities? Yes No

Please Describe: _____

f. Has your spouse or significant other had any experience or training in nursing, medicine, or psychology? Yes No

Please Describe: _____

g. Was your spouse or significant other previously:

Married? No Yes Divorced? No Yes
 Widowed? No Yes Separated? No Yes

h. What is your spouse's or significant other's:

Date of birth _____ Place of birth _____

i. What is your spouse's or significant other's race or ethnic background?

14. If you have children (including children who you do not live with) please provide the following information:

Gender	Age	Does child live with you?	Education Level	Occupation

15. Do you have grandchildren?

No Yes If Yes, do any live with you? No Yes

16. What are/were your parents' (and/or step-parents') occupations?
 (If retired or deceased, what did they do?)

Mother _____ Step-Mother _____
 Father _____ Step-Father _____

17. Do you have any brothers or sisters with whom you were raised? If YES, please provide the following information:

No Yes

Gender	Relationship to You	Occupation

MEDICAL INFORMATION

18. Do you have any medical or physical condition that might make it difficult for you to serve as a member?

No Yes

Please Describe: _____

19. Are you presently taking any form of medication?

No Yes

If yes, please list the medications you are taking, the reasons for taking them and how often you take them.

Medication	Reason for taking	How often taking

20. Do you have any problems or areas of concern at home or at work that might interfere with your duties as a member during trial?

No Yes

ORIGIN/LANGUAGE INFORMATION

21. Where were you born? _____

22. Where were you raised? _____

23. Is English your first language?
Yes No If not, what is your first language? _____

24. Do you speak any language other than English?
No Yes If yes, what other language(s)? _____

25. Do you have any difficulty:
a. Reading English? No Sometimes Yes
b. Understanding spoken English? No Sometimes Yes

OUTSIDE EMPLOYMENT INFORMATION

26. In addition to your military duties, have you held another job(s) within the past 5 years?

No Yes If Yes,

a. Where are/were you employed? _____

b. What are/were your duties? _____

c. When did you hold the position(s) _____

d. Does/did your additional job(s) involve management or supervisory duties?

No Yes

27. Have you ever worked in doctor's office, hospital, laboratory, research or testing facility or any other medical facility?

No Yes If yes, please describe:

- a. your duties _____
- b. when you were so employed _____
- c. how long you were so employed _____

EDUCATIONAL INFORMATION / EXPERIENCE

28. What is the highest level of education you completed?

- High School (Indicate grade) 10 11 12 GED
- Technical, Vocational or Business school
- College
- Post Graduate Work

29. If you have attended high school, technical or vocational school, college, or other education since high school, please identify the schools you have attended, your fields of study, and any degree(s) awarded:

School	Location	Dates attended	Field	Degree

EDUCATIONAL INFORMATION / EXPERIENCE (Cont.)

30. In addition to your military duties, are you currently:

- taking any college level classes Describe: _____
- taking any graduate level classes Describe: _____
- planning on taking any classes Describe: _____
- looking for work Describe: _____

31. What special training or skills do you have? (Please include any technical, medical, psychology or scientific training and special skills acquired on the job.)

32. Do you have any legal training or have you taken any law related courses?

No Yes If yes, please explain: _____

33. Have you ever served as a legal officer?

No Yes If yes, please indicate:

Period: _____
Command: _____

34. Have you ever attended the any training courses at or offered by Naval Justice School, Newport, Rhode Island, including the Legal Officer Course?

No Yes If yes, please provide the name of the course and the dates attended:

Dates: _____ Course: _____
Dates: _____ Course: _____
Dates: _____ Course: _____

35. Have you ever attended legal officer training given by an NLSO or TSO?

No Yes If yes, please provide the date and name of the course attended:

Dates: _____ Course: _____
Dates: _____ Course: _____
Dates: _____ Course: _____

EDUCATIONAL INFORMATION / EXPERIENCE (Cont.)

36. Have you ever attended the Naval Justice School Senior Officer Course?

No Yes If yes, please provide the dates attended: _____

37. Have you taken courses in psychology or psychiatry?

No Yes If so, please outline your education in these areas:

Dates: _____ Describe course: _____
Dates: _____ Describe course: _____
Dates: _____ Describe course: _____

38. Do you or any of your close friends or family members work in the field of mental health, social work, psychiatry or psychology?

No Yes If yes, please identify:

Relationship: _____ Occupation: _____
Relationship: _____ Occupation: _____
Relationship: _____ Occupation: _____

39. Have you or any of your close friends or family members ever had contact with a psychologist or psychiatrist?

No Yes If yes, please identify:

Relationship: _____ Occupation: _____
Relationship: _____ Occupation: _____
Relationship: _____ Occupation: _____

40. Do you have any specialized training in medicine, science or biology?

No Yes If yes, please describe: _____

LEGAL RELATED EXPERIENCE

41. Have you ever personally been involved in any way (i.e., witness, law enforcement, accused) with military law enforcement, court-martial, non-judicial punishment (Captain's Mast), administrative board or investigation?

No Yes If yes, please explain: _____

LEGAL RELATED EXPERIENCE (CONT'D)

42. Have you, or any member of your family, or any close friend ever been arrested?

No Yes

If yes, for each arrest, please identify your relationship to the person arrested, the charge(s), whether the person had a jury trial or judge-alone trial, and state the outcome?

Relationship: _____	Charge: _____	Type _____	Trial/Result: _____
Relationship: _____	Charge: _____	Type _____	Trial/Result: _____
Relationship: _____	Charge: _____	Type _____	Trial/Result: _____

43. Have you ever served as a member of a civilian jury? If Yes, please describe the nature of the case and when and where the trial was held:

No Yes

Nature of case: _____ When: _____ Location: _____
Verdict: _____ (do not state your vote)

Nature of case: _____ When: _____ Location: _____
Verdict: _____ (do not state your vote)

Nature of case: _____ When: _____ Location: _____
Verdict: _____ (do not state your vote)

44. Did you ever serve as the jury foreperson?

No Yes

45. Have you ever been in a courtroom or observed a trial when you were not serving as a juror?

No Yes

When: _____ For what purpose: _____
When: _____ For what purpose: _____

46. Have you, a close friend or family member ever been a victim of a crime?

No Yes

If yes, please answer the following:

a. Who and when? _____

b. What kind of crime(s)? _____

c. Did you, your friend or family member or anyone else report it to law enforcement authorities?

No Yes If no, why not? _____

d. Were you, your friend or family member (as the victim) interviewed by law enforcement officials?

No Yes If no, why not? _____

e. Was a suspect caught?

No Yes

f. Please rate the performance of the law enforcement officials:

Satisfactory Unsatisfactory

g. Did you testify in court?

No Yes

47. Have you or any family members or close friends ever sued or been sued in a civil action?

No Yes

If yes, please answer the following:

a. How many times? _____

b. Please explain the nature of the dispute: _____

48. Have you ever served as: (please mark all that apply)

a. A grand jury member (civilian criminal case)

Number of times? _____

b. A summary court-martial officer

Number of times? _____

c. An officer imposing non-judicial punishment

Number of times? _____

d. An administrative board member

Number of times? _____

e. A special court-martial member

Number of times? _____

f. An investigating officer for an Article 32 hearing

Number of times? _____

g. A general court-martial member

Number of times? _____

49. Have you or someone you know ever been wrongfully accused of a crime?

No Yes

If YES, please explain whether law enforcement authorities were involved and, if YES, please explain the circumstances.

50. Have you ever been suspected of committing a crime (other than a minor traffic violation)

No Yes

If yes, please explain whether law enforcement authorities were involved and, if YES, please explain the circumstances.

51. Have you ever been a witness to a crime?

No Yes If yes, please answer the following:

a. How many times? _____

b. What kind of crime(s)? _____

c. Did you report it to law enforcement?

No Yes If no, why not? _____

d. Were you interviewed by law enforcement?

No Yes

e. Did you testify in court?

No Yes

52. Do you know any lawyers who practice criminal law, whether as defense attorneys or prosecutors, military or civilian?

No Yes If so, please indicate whom you know and the nature of your contact with them.

53. Do you personally know anyone that works for: (please mark all that apply)

- | | | | | |
|---|----|--------------------------|-----|--------------------------|
| a. Regional Legal Service Office (former TSO) | No | <input type="checkbox"/> | Yes | <input type="checkbox"/> |
| b. Naval Criminal Investigative Service | No | <input type="checkbox"/> | Yes | <input type="checkbox"/> |
| c. Naval Legal Service Office | No | <input type="checkbox"/> | Yes | <input type="checkbox"/> |
| d. Any other federal, state or local law enforcement agency | No | <input type="checkbox"/> | Yes | <input type="checkbox"/> |
| e. Any public defender's or prosecutor's office | No | <input type="checkbox"/> | Yes | <input type="checkbox"/> |

MISCELLANEOUS PERSONAL INFORMATION

54. Is there anything concerning your religious preference, affiliation, or belief that makes it difficult for you to sit in judgment of another person?

No Yes Possibly

55. Do you currently, or have you during the past five years, done any volunteer work?

No Yes If YES, for what organization(s)?

56. Do you belong to or associate with any group(s) or organization(s) that have crime prevention or law enforcement as a primary goal?

No Yes If so, for what group(s) or organization(s)?

57. Do you think you might have difficulty judging someone who is charged with a crime?

Yes Probably Yes No Probably No

If your answer is anything but "No", please explain: _____

58. If you are selected to serve as a juror on this case would you be concerned about reactions to your verdict by yours friends, members of your command, your commanding officer or the convening authority? If YES, please check the appropriate box or boxes below.

- Friends
- Members of your command
- Your Commanding Officer?
- The Convening Authority?

MISCELLANEOUS PERSONAL INFORMATION

59. Is there any matter not covered by this questionnaire that you think the attorneys or military judge might want to know about you when considering you as a member in this case? If YES, please explain.

No Yes

PLEASE SIGN AND DATE BELOW

Signature

Date of Signing

PLEASE ATTACH EXTRA PAGES FOR ADDITIONAL EXPLANATION IF NEEDED AND NOTE CLEARLY THE QUESTION TO WHICH THE ADDITIONAL OR SUPPLEMENTAL MATERIAL APPLIES.

**SOUTHERN CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
TECHNOLOGY SUPPLEMENT
USE OF ELECTRONIC MEDIA**

These rules supplement the Rules of Court, Southern Judicial Circuit, to address the use of electronic media in courts-martial.

1. Introduction. "Electronic media" is any form of graphic or other data display, any image, picture, moving image or picture, sound, or any combination of these media, which is presented to a court-martial through an electronic device, such as an image projector, a speaker, a "speaker-phone" telephone, or a video monitor combined with a computer, VCR, DVD or other electronic media player, and includes video-teleconference transmissions and computers employing similar software.

a. Properly used, electronic media can substantially enhance the ability of the prosecution to fairly represent the interests of the government and the defense to zealously represent anyone accused of a crime. Appropriate use facilitates both the quality of representation and the efficiency of courts-martial. As a result, the use of electronic media in the Southern Circuit is encouraged. At the same time, however, electronic media must be acknowledged as a powerful tool, the use of which must be subject to procedural rules that encourage superlative advocacy through technology while ensuring the dignity, efficiency, and fairness of courts-martial.

b. For example, if used during opening statements, material displayed must satisfy R.C.M. 913 (i.e., referencing only evidence counsel expect to be offered, and in good faith believe to be admissible, and a brief statement of the issues anticipated in the case). See R.C.M. 913 (Discussion). During trial, any material to be introduced into evidence and published by electronic means must first be properly admitted under the Military Rules of Evidence. If used during closing arguments, any matter displayed electronically should either have been admitted into evidence, or be a fair comment on the evidence admitted, such as an accurate summary of data or other similar demonstrative aid. Ultimately, use of electronic media will be subject to the objections of opposing counsel and will be within the discretion of the judge to admit or exclude consistent with applicable authority.

This supplement to the Southern Circuit Rules of Court is to be construed consistently with the Rules for Courts-Martial, the Military Rules of Evidence, applicable case law, the Navy-Marine

Corps Trial Judiciary Rules, and the other Southern Judicial Circuit Rules of Court.

2. Pre-Trial Requirements. This rule is a rule of notice and, if required by the judge in the interests of justice, of disclosure. It is not a rule of discovery and it does not provide any substantive rights to either the prosecution or to the defense to obtain the content of any electronic media not otherwise subject to the rules governing discovery.

a. Notice.

(1) Prior to Docketing. To ensure facilities (i.e., a properly equipped courtroom) and equipment are available (e.g., where portable equipment is needed), counsel shall provide notice of the intent to use electronic media via [docketing] memo at the time counsel request a trial date. The [docketing] memo shall be addressed to the opposing counsel, [and] the judge, [and the Court Clerk,] and it shall describe generally the technology and purpose desired for use (e.g., electronic media to display evidence, the presentation of remote live testimony, or otherwise to bring matters before the court-martial). No further elaboration is necessary in the [docketing] memo.

(2) After Docketing. If a case has already been docketed for trial when counsel determine use of electronic media is necessary or desired, [notice] [an amended docketing memo] must immediately be filed with opposing counsel and the court [including the Clerk]. Counsel are cautioned that delay in submitting notice to the court could result in facilities or equipment, including remote access to witnesses, being unavailable.

b. Judge Alone Cases.

(1) In guilty plea cases before a military judge alone, use of electronic media shall be discussed with the judge at a conference under R.C.M. 802 sufficiently in advance of trial to resolve logistics and other issues related to the use of electronic media, such as whether it consists of classified or contraband material.

(2) In cases contested before a military judge alone, in mixed plea cases where the electronic media relates to a plea of not guilty, in conditional guilty plea cases, or in the disposition of guilty pleas (military judge or members for sentencing) with the permission of the judge, counsel should follow the procedures for notice and disclosure in a contested members case.

c. Contested Members Cases.

(1) Notice. Unless previously provided by [docketing] memo, notice of intent to use electronic media must be provided to opposing counsel and to the presiding military judge at arraignment. Notice shall describe generally the technology and purpose desired for use of electronic media (such as ExhibitONE® or similar technology to display evidence, the presentation of remote live testimony, or otherwise to bring facts before the court-martial) and the notice shall indicate whether any exhibit is classified or of a contraband nature, such as pornography. No further elaboration is necessary at arraignment. Failure to provide notice at arraignment risks unavailability of needed facilities, equipment, or access to remote witnesses. Pretrial notice is not required for the use of electronic media for impeachment or in rebuttal; however, if notice of such an intention is not provided, counsel risk unavailability of necessary facilities, equipment, or access to remote witnesses unless already approved.

(2) Disclosure.

A. Where either party has provided notice of an intent to use electronic media, counsel should discuss the proposed use with the judge at a conference under R.C.M. 802. The judge shall, by entry of a Case Management Order (CMO) or otherwise, set the date on which disclosure, if any, of electronic media to the court or to opposing counsel is required. The judge may provide different disclosure dates in the CMO for different uses of electronic media and may direct descriptions or summaries of electronic media be disclosed in lieu of a copy in order to protect the value of the presentation. For example, the nature and origin of material to be introduced into evidence and published via electronic media may be required to be disclosed, if necessary, sufficiently in advance of trial to dispose of any objections or to provide any needed safeguards, such as for the use of contraband or classified information.

B. Where electronic media are intended for use in opening statement or closing argument, proponent counsel shall discuss such use with the judge at an R.C.M. 802 conference. Counsel are cautioned that such use of electronic media must comply with the Rules for Courts-Martial, Military Rules of Evidence, and case law applicable to opening statements and closing arguments. Counsel are highly encouraged to disclose the content of such electronic media to opposing counsel. In addition, counsel should submit any media intended for use in opening statement or closing argument to their supervisory

counsel for review prior to use. Disclosing the contents to supervisory counsel and to opposing counsel will help ensure such use of electronic media is properly within the governing rules and will minimize the potential for objections that would interrupt the presentation of counsel and require an Article 39(a), UCMJ, session at a critical point in the presentation of the proponent's case. As a precondition to using electronic media in opening statements or closing arguments, the judge may require disclosure of the nature of the presentation, or the contents thereof, to the judge and opposing counsel, if necessary in the interests of justice. Ordering disclosure of contents should ordinarily occur only so far in advance as is necessary to resolve any issue, giving the utmost consideration to protecting the value of the presentation from premature disclosure.

d. Motions. The content of electronic media proposed for use by either side during their respective cases in chief may be made the subject of a pretrial motion *in limine* by either counsel. Such a motion should be disposed of in accordance with the terms of the CMO setting the date for submission and hearing of pre-trial motions. Objections to electronic media that are not readily susceptible of resolution as a pre-trial matter, such as an objection to opening statements, refreshed recollection, impeachment, rebuttal, or closing argument, may be disposed of in the discretion of the judge.

e. Remote live testimony.

(1) Remote live testimony includes, but is not limited to, testimony by video-teleconference, closed circuit television, telephone, or other similar technology. To use remote live testimony, counsel must provide notice to opposing counsel and to the judge, using the docket or other notice procedures set forth in paragraph 2.a., b. or c. above.

(2) In a contested case, counsel requesting the use of remote live testimony during their case-in-chief must submit a written motion, at the time required by the applicable CMO, requesting such remote live testimony and setting out the justification therefor, pursuant to the governing case law and Rules for Court-Martial. See R.C.M. 914A (and 914B, when implemented). If opposed, counsel may submit briefs in support of their respective positions and request the matter be heard at an Article 39(a), UCMJ, session in accordance with the CMO. Counsel should carefully consider methods for ensuring the integrity of remote testimony. Such measures may include the appointment of an officer to be present at the site of the remote witness to administer the oath, and to ensure the integrity of

the testimony from intrusion by other personnel or reference material not otherwise permitted.

(3) Counsel requesting remote live testimony shall annotate their witness list to indicate which witnesses are expected to testify remotely.

3. Trial Procedure.

a. Admission and Publishing of Exhibits.

(1) Loading Media.

A. Counsel are encouraged to reserve and use courtroom facilities and electronic equipment for training, familiarization, moot courts, and other similar exercises. However, counsel should not pre-load any media into electronic devices in the courtroom for a trial until they have requested and received permission to do so from the judge. Permission to preload any evidence into courtroom electronic devices, and to connect laptops to electronic display media, should be requested pre-trial at an R.C.M. 802 conference.

B. Classified information or exhibits of a contraband nature may ONLY be loaded and displayed on electronic devices previously cleared to contain and exhibit such items. Permission to use such devices must be obtained from the judge at a pretrial conference under R.C.M. 802.

(2) Offering/Admitting Evidence Electronically.

The procedures for the use of electronic media in a members trial should be the subject of discussion with the judge at a conference under R.C.M. 802. The preferred method of admitting evidence electronically will ordinarily be to pre-admit the evidence, and the electronic media display thereof, at an Article 39(a), UCMJ, session.

(3) Publishing Pre-Admitted Evidence. Counsel may not operate the electronic media control panel to activate the monitors of the court-martial members without the permission of the judge. When electronic exhibits have been admitted into evidence at an Article 39(a) session, counsel will ordinarily be given permission to publish/display those exhibits at counsel's discretion. Under these circumstances, once the court-martial is called to order, counsel should request permission to activate the members' monitors and publish/display the enumerated item of previously admitted evidence. Once authorized by the judge to do so, counsel may activate the members' monitors. If a series of

exhibits are being published, counsel may request and be permitted to publish/display the series without seeking permission for each item individually.

(4) Evidence Not Pre-Admitted.

A. Counsel may not operate the electronic media control panel to activate the monitors of the court-martial members without the permission of the judge.

B. When electronic exhibits have not been previously admitted into evidence outside the members' presence, such as when used to refresh recollection or to impeach, counsel shall use standard evidentiary procedures to use or offer that evidence at trial. Counsel should initially request to activate only the monitors of the witness and may do so only upon a grant of permission by the judge. If an exhibit is not admitted into evidence when use of the exhibit is completed, counsel shall turn off the monitors of the witness, orally informing the record.

C. If an electronic exhibit used to refresh or impeach is admitted into evidence, counsel should request to activate the members' monitors and to publish the item or items of evidence to the members.

(5) Electronic Imaging.

A. Counsel may publish documentary and other items of admitted evidence by use of visual presentation equipment (e.g., ELMO), after requesting and receiving permission from the judge.

B. In switching between items of evidence on the visual presentation equipment, counsel shall ensure the image being used is "frozen" on the monitors or that the members' monitors are turned off prior to removing a published item. Members' monitors should remain off, or the image of the last item of evidence published should remain frozen on their monitors, until the next item of admitted evidence is in place to be published electronically. This practice will result in a smooth transition from one item of evidence to the next and will minimize the potential for error in publishing the next item. As in the case of other electronic items of evidence, counsel may request and be granted permission to publish a series of admitted items without seeking permission for each item individually.

(6) Witness Monitors. Counsel may activate the monitor of a witness at the appropriate time in their questioning, after first requesting and being granted permission

of the judge. Members' monitors may not be activated until the proponent counsel has requested and been granted permission by the judge to publish an item of evidence by electronic means.

b. Remote Live Testimony. Before beginning any remote live testimony, proponent counsel shall request an Article 39(a), UCMJ, session during which the remote witness will be properly placed before the remote camera or telephone and a sound check completed. The receiving monitor will then be turned off or the telephone placed on "hold." Once the members are present, proponent counsel should request to call the witness for remote live testimony. Upon receiving permission, proponent counsel may activate the receiving monitor or telephone and the remote witness will be sworn and testify.

c. If technical problems are encountered, such as loss of the phone connection or other transmission signal, proponent counsel should request a recess in order to resolve the problem.

4. Preservation of Evidence for the Record

a. Electronic Media Not Admitted as Evidence.

When electronic media are used at trial but are not admitted into evidence, such as a PowerPoint opening statement or closing argument, or an item used to refresh recollection, or otherwise, the media should be printed, labeled as an Appellate Exhibit, and included in the record of trial.

b. Real Evidence. When items of real evidence are published to the court by use of visual presentation equipment (e.g., ELMO), proponent counsel shall prepare an accurate color photograph of such exhibit and move to substitute that photograph for the original exhibit in the record of trial.

c. Annotations to an Exhibit.

(1) Oral Descriptions. All annotations made to an exhibit by a witness using the touch-screen monitor should be clearly described for the record by the witness or counsel. If a witness uses multiple colors, print fonts, symbols, or the like to annotate a document, an oral description of each convention used shall be provided by the witness or by counsel.

(2) Annotated Exhibits.

A. Whenever a witness uses the touch-

screen monitor to make annotations on an exhibit that was previously admitted into evidence, the annotations shall be preserved for the record separately from the original exhibit, which shall remain unaltered. There is no need, however, to separately preserve an unmodified exhibit that is neither intended nor offered as evidence until the witness modifies it.

B. At the conclusion of a witness annotating an exhibit, the proponent counsel will request admission into evidence of the annotated exhibit as a separate prosecution or defense exhibit marked next in order as an appendix to the original exhibit. For example, if a map is admitted and marked as "PE-1," the annotated version should be marked as "PE-1(a) for ID." A subsequent annotation of the same exhibit should be marked "PE-1(b) for ID" (if it is intended to be a separate exhibit, such as when a later annotation would obliterate a previous one). The opposing counsel should use a similar marking convention. For example, if the defense counsel modifies PE-1(a) during cross examination, the modified version should be marked DE-1 for ID. A second modification altering DE-1 for ID should be marked DE-1(a) for ID. Counsel need not mark and capture for the record each mark made on an exhibit as a new exhibit. However, counsel must take care that exhibits are separately captured and saved for the record each time a new mark would alter or obliterate a preceding marking and when control of the exhibit changes for purposes of moving the item into evidence (i.e., from prosecution [PE] to defense [DE] or the reverse).

C. Upon admission into evidence by the judge, the proponent counsel shall request that the electronic media exhibit be "saved" as annotated, marked as the appropriate exhibit number, and that a printed copy be substituted in the record of trial.

D. If the offered exhibit is not admitted into evidence, the court reporter shall save the exhibit electronically and print a copy to be appended to the record, marked as the exhibit numbered "for ID."

(3) Corrections. If a witness needs to make a correction to an annotation, counsel shall first request permission of the judge to make the necessary correction.

(4) "Clear All" Function. When counsel has completed questioning a witness using ExhibitONE or similar electronic media, counsel must request permission to verify with the court reporter that all witness annotations on the touch-screen have been preserved for the record. Upon such

confirmation by the court reporter, counsel must then request permission from the judge to activate the "clear all" function. Only the judge may authorize counsel to hit the "clear all" button to remove markings from the touch-screen monitor.

d. Audio-Video and Remote Live Testimony.

Evidence published in an audio or audio-video medium, or remote live testimony, shall be recorded during its presentation in court and transcribed verbatim, subject to the requirements of R.C.M 1103 regarding verbatim transcripts. Proponent counsel will provide the court reporter any electronic file used, which shall be saved in the court reporter's electronic file of the case and forwarded with the printed record of trial. If cassettes (audio or video) or CDs are admitted into evidence, these must be labeled with the caption of the matter, the date, the prosecution or defense exhibit number, and shall be forwarded as part of the original record of trial.

5. Use of Electronic Media in Deliberations.

a. When the court members retire to deliberate, a printed copy of all previously admitted and published exhibits will ordinarily be provided to the senior member to take into the deliberation room. If an original exhibit was admitted electronically, the printed copy shall be an exact duplicate of the original, including color.

b. If members of the court request to see or hear evidence admitted in an audio or audio-video medium, the judge will assemble the members in open court and replay the desired audio or audio-video evidence, if determined to be appropriate. Ordinarily, remote live testimony should be treated as any other witness testimony and, if replayed, only the audio track should be used. If testimony has been provided using a videotaped deposition, any replay of that testimony shall only be of the audio track, just as if the witness had testified personally in court. Any replay of audio or audio-video media is a matter subject to objection by either the government or the defense and it remains in the discretion of the judge.