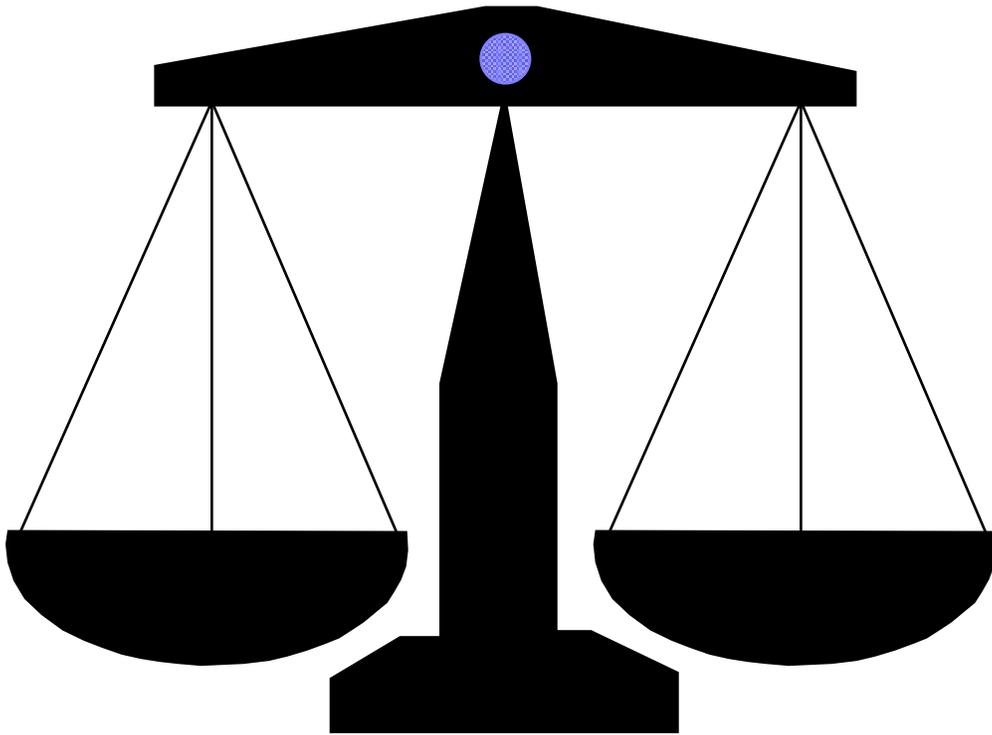


RULES OF COURT



WESTERN JUDICIAL CIRCUIT

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**Rules of Practice
Before Navy-Marine Corps Courts-Martial
Western Judicial Circuit**

PREAMBLE

These local rules (hereinafter referred to as the *Circuit Rules* (WJCR)) supplement the Uniform Rules of Practice before Navy-Marine Corps Courts-Martial (hereinafter referred to as the *Uniform Rules*), found in the Navy-Marine Corps Trial Judiciary Standard Operating Procedures Manual (NAVMARTRIJUDACTINST 5813.4). These *Circuit Rules* are promulgated by the Circuit Military Judge for the Western Judicial Circuit under Rules for Courts-Martial 108 and 801(b), and pursuant to authority delegated in the *Uniform Rules* and the professional standards established in the *Rules of Professional Conduct*. The *Uniform Rules* are republished within these *Circuit Rules* with the *Circuit Rules* inserted in appropriate numerical sequence.

The Western Judicial Circuit shall be comprised of regional districts; Northwest District, Southwest District and Sierra District. Other districts may be created by the Circuit Military Judge as conditions and case management dictates. Each district shall have a Senior Military Judge assigned by the Circuit Military Judge. The designated Senior Military Judge shall be responsible for the administration and coordination of judicial resources and activities within their assigned district. Areas of responsibility for the districts are as follows:

Northwest District: Alaska, Washington, Oregon, Idaho, Montana, and Wyoming

Southwest District: Arizona, New Mexico, Nevada, California, Colorado, and Utah (except those areas designated as within the Sierra District)

Sierra District: All Marine Corps bases, air stations, camps, depots and logistics bases within the Southwest District

RULE 1: APPLICABILITY

Rule 1.1: These Uniform rules apply to the trial of general and special courts-martial in which the accused is a member of the naval service. The military judge's branch of service is irrelevant. Counsel, as officers of the court, court reporters, clerks of court, and bailiffs are expected to follow these and local rules.

WJCR 1.1a: These *Circuit Rules* apply to all Navy-Marine Corps courts martial tried under the cognizance of the

Circuit Military Judge of the Western Judicial Circuit. Senior Military Judges may promulgate District Rules to address local needs and situations. All District Rules shall be interpreted to complement the *Circuit Rules*, *Uniform Rules*, and the *Rules of Professional Conduct* but shall not supercede the *Circuit Rules*, *Uniform Rules*, or the *Rules of Professional Conduct*.

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

WJCR 1.2a: Detailed defense counsel shall furnish a copy of the *Circuit Rules* and *Uniform Rules* to all military counsel detailed or approved from outside the Circuit and to all civilian counsel appearing in a case, immediately after such counsel is retained or made available. Civilian counsel will certify compliance with Rule 5 of the *Uniform Rules*.

RULE 2: PURPOSE

Rule 2: These *Uniform Rules* are intended to facilitate the orderly administration of military justice.

WJCR 2.1: These *Circuit 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.

RULE 3: CONSTRUCTION

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

Rule 3.2: If any rule herein conflicts with case law, statute, the Manual for Courts-Martial, any constitutional provision, or any service regulation, then that rule shall have no effect.

WJCR 3.3: a. Definitions:

(1) "Filing" of a pleading, notice or document with the court means that a true and complete copy of the pleading, notice or document in question is delivered to the detailed military judge. Counsel are cautioned that a detailed military judge in any given court-martial may not be within the District where such court-martial was convened or the situs of trial. Detailed counsel and detailed military judges may be separated by substantial time and distance. Counsel should plan and coordinate accordingly. Counsel are responsible for ensuring that the detailed military judge receives filings in a timely manner via an approved means as described within these *Circuit Rules*.

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

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

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

b. Original documents: Original documents should be retained and physically entered into the record at the next session of the court-martial in question. Counsel are solely responsible for ensuring the cognizant Clerk of Court or detailed court reporter is served with all original documents.

c. Method of filing, service, and notice:

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

(2) Electronic transmissions: In lieu of physical delivery, each filing or matter to be served may be transmitted electronically to the detailed military judge or counsel concerned. Proof that an electronic document was received and opened by the receiving military judge or receiving counsel will constitute presumptive proof of filing or service of the document in question, and will constitute presumptive proof of notice as to that document, except as to any portion of the pleading or document which was not transmitted electronically. Such electronic transmission and receipt will constitute filing and service, and may be substituted for physical service to the extent that the electronic filing or matter to be served corresponds to the original of the filing or matter to be served. Originals shall be entered into the record of trial at the next session of the court-martial.

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

WJCR 3.4: Failure to comply with these *Circuit Rules* does not provide any rights or remedies to the accused and the rules shall be applied and interpreted in that light.

WJCR 3.5: Consistent with law and ethical standards, the detailed military judge assigned to a specific case may modify or suspend any of these *Circuit Rules* or local *District Rules* relative to that specific case when required by the facts of a case or in the interests of justice.

RULE 4: REFERRED CHARGES

Rule 4: After the referral of charges, the trial counsel shall provide the responsible judicial circuit with a copy of those charges, along with the appropriate convening order, as soon as possible.

WJCR 4.1: Following referral, detailed trial counsel will immediately notify the Senior Military Judge for the local district or, if detailed, the detailed military judge and defense counsel if an alternative disposition of the charges will or is likely to occur. When a docketed case is withdrawn, dismissed or otherwise disposed of by the convening authority,

trial counsel shall immediately notify the detailed military judge and defense counsel. Trial counsel will immediately forward documentation of withdrawal or dismissal of referred charges to the judge and defense counsel upon receipt of such from the convening authority.

- WJCR 4.2:** Trial counsel and defense counsel shall make every effort to inform the detailed military judge of plea bargain specifics (i.e., only Part I of the Pretrial Agreement) at the earliest time practical following conclusion of negotiations and acceptance by counsel, the accused and the convening authority.
- WJCR 4.3:** Trial counsel will notify the detailed military judge and defense counsel at least three days before trial of any charges or specifications on which evidence will not be presented.
- WJCR 4.4:** The Circuit Military Judge, Western Judicial Circuit is responsible for detailing all military judges to all Navy-Marine Corps courts-martial within the Western Judicial Circuit except for those cases that fall within the purview of the Chief Judge, Navy-Marine Corps Trial Judiciary. Cases involving National Security, as defined in the Manual of the Judge Advocate General, JAGINST 5800.7D (series) shall be detailed by the Chief Trial Judge in accordance with NAVMARTRIJUDICINST 5500.2 (series). Government counsel or trial counsel will ensure that the Circuit Military Judge as well as the cognizant Senior Military Judge within a district is immediately advised of the existence of all such cases. Notice shall include the name of the accused, the convening authority, and the allegations. Cases likely to generate press interest or are otherwise potentially high visibility cases shall also be brought to the Circuit Military Judge's and Senior Judge's attention as soon as practicable following referral.
- WJCR 4.5:** The Circuit Military Judge may delegate authority to Senior Military Judges in the separate districts within the Western Judicial Circuit to detail themselves or subordinate military judges to cases within their assigned Districts. Depending on case complexity, relative workloads between Districts and military judges, case visibility, case subject matter or the paygrade of the accused, the Circuit Military Judge may assign a specific military judge to a particular case. The Circuit Military Judge will maintain a centralized, internet-accessible, real-time Circuit docket available to counsel and the general public to promote the widest dissemination of Circuit docketing information across the Circuit.

Rule 5: CIVILIAN COUNSEL

- Rule 5.1:** If an accused retains civilian counsel, detailed defense counsel shall furnish civilian counsel with a copy of all pertinent rules of court. Civilian counsel shall cause to be served on the clerk of court a written notice of appearance. This notice shall be in the form of a pleading and must contain the following: name of the accused, counsel's name, office address, telephone numbers, and jurisdiction(s) where the counsel is presently admitted to practice. The filing of any pleading relative to a case that contains the signature of counsel constitutes notice of appearance of such counsel.
- Rule 5.2:** Detailed defense counsel shall also inform the civilian counsel of the rules in JAGINST 5803.1C (Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General).
- Rule 5.3:** Once civilian counsel notifies the military judge of representation, he or she may not withdraw from such representation, after referral of charges, without the permission of the military judge.
- WJCR 5.3a** Civilian counsel shall submit written notice of representation as counsel of record for the accused to the Circuit Military Judge or local Senior Military Judge, using the format found at Attachment (1) of these *Circuit Rules*.

RULE 6: DOCKETING

- Rule 6.1:** The circuit judge of each judicial circuit shall establish and promulgate docketing procedures for cases within his or her circuit. These procedures shall contain features that ensure positive control over the docketing of courts-martial.
- WJCR 6.1a:** The Circuit Military Judge controls the docket and trial schedules for all referred courts-martial tried within the Circuit. Senior Military Judges are responsible for creating a district docket that takes into account the Motion for Docketing (MFD), Pretrial Information Report (PTIR), the availability of judges within their district, and appropriate courtroom space. Senior Military Judges will forward their district dockets to the Circuit Military Judge for consolidation, review, and approval not later than 1200 each Wednesday. The Circuit Military Judge shall normally approve, distribute, and publish the approved Circuit docket by 1630 each Wednesday, but not later than 1200 each Thursday, before the

following week. The approved Circuit docket for the next week will be distributed as required and will be published on the internet at the Western Judicial Circuit website and may be viewed at the "New Docket" link: www.pendleton.usmc.mil/base/judges/sjc.asp

- WJCR 6.1b:** The District Senior Judge will establish the method of docketing cases within each District, in compliance with the intent of Rule 6.1. However, the preferred method of docketing cases within the Western Judicial Circuit is by mutual agreement of both parties with subsequent approval by the local Senior Military Judge, or if applicable, the detailed military judge. It is the responsibility of each counsel involved in this docketing process to make a good faith effort to find the earliest mutually agreeable trial schedule. Personal discussions between counsel are expected. When required by the detailed military judge, counsel should be prepared to support on the record their actions with regard to docketing.
- WJCR 6.1c:** The normal course of events in the docketing of a case for trial in the Western Judicial Circuit begins immediately after the Trial Counsel receives referred charges. The trial counsel expeditiously serves a copy of the referred charges and convening order on the accused, defense counsel and local Senior Military Judge. Within three (3) working days of receipt of referred charges, the trial counsel contacts the defense counsel and they attempt to negotiate a mutually agreeable proposed trial schedule. Negotiations on scheduling will take no longer than seven (7) working days from the date the trial counsel receives the referred charges. If successful, this mutually agreeable proposed trial schedule is reduced to a writing titled "Motion For Docketing," endorsed by both counsel, and submitted to the local Senior Military Judge for approval. A Motion for Docketing (MFD) typically identifies important milestone dates in the normal course of a trial such as dates for: witness requests; motions filing and answers; Article 39a sessions for arraignment and to litigate motions; proposed voir dire and instructions; and trial dates. Once approved by the military judge, the mutually agreed upon MFD becomes a Pre-Trial Court Order and is henceforth the trial schedule for that particular case. The period of time between the date the mutually agreed upon MFD is approved by the military judge and the day of the first Article 39a session is considered judicially approved excludable delay for purposes of R.C.M. 707. As all approved MFD's are court orders, they should be attached to the record as an Appellate Exhibit at the first session of

court. A sample format for a MFD can be found as Attachment (2) to these *Circuit Rules*.

- WJCR 6.1d:** If counsel are unable to reach a mutually agreeable trial schedule within seven (7) days from the date the trial counsel receives referred charges, the trial counsel will submit via the defense counsel a MFD with proposed milestone dates and will request in the MFD an initial Article 39a session to have the military judge establish the trial schedule. Defense counsel will have two (2) working days to endorse and return to the Trial Counsel any MFD submitted under this provision. The local Senior Military Judge will then take appropriate action to docket the case for trial. Such action may include holding a conference pursuant to R.C.M. 802, establishing a date for an Article 39a session to set a trial schedule, conducting the Article 39a session, or directing other action as the Senior Military Judge deems appropriate to establish a trial schedule.
- WJCR 6.1e:** In all cases, a Pre-Trial Information Report (PTIR) will be prepared by the trial counsel and submitted, via the defense counsel, to the local Senior Military Judge not less than five working (5) days prior to the first Article 39a session. The PTIR is a document that counsel use to orient and inform the judiciary of what issues are to be addressed at the first Article 39a session. Sample formats for PTIRs can be found at Attachment (3) of these *Circuit Rules*. When preparing a PTIR, counsel are encouraged to provide more, rather than less, information and not to be hamstrung by format.
- WJCR 6.1f:** In some cases, it may be appropriate to submit a combined PTIR and MFD (PTIR/MFD) using the PTIR format. Typically, this situation arises during the seven (7) day period following the trial counsel's receipt of referred charges, and when a pre-trial agreement has been negotiated and signed, and when both trial and defense counsel want to docket the case for a military judge alone guilty plea as part of the next regularly published Circuit Docket. In such cases, the PTIR should clearly indicate that it serves as a mutual MFD, or PTIR/MFD.
- WJCR 6.1g:** Any PTIR for a guilty plea that involves a violation of a written order shall contain a copy of the applicable order provision and the language making the subject order punitive. A copy of the applicable statute will be provided in all cases arising under Federal Assimilated Crimes Act.
- WJCR 6.1h:** "Walk-ins" are cases in which charges are referred but not yet docketed and which both counsel desire to

have expeditiously adjudicated - i.e., prior to the next publication of the Circuit Docket. "Walk-ins" will be heard on a very limited basis. All requests for "walk-ins" must be made by either the unit SJA, the OIC of the LSSS, the Commanding Officer of the TSO, or the Commanding Officer of the RSO and be addressed to the Circuit Military Judge or the local Senior Military Judge.

- WJCR 6.1i:** Arraignment is an authorized means of docketing and may be utilized when necessary and appropriate or in the interest of justice as determined by the Circuit Military Judge or local Senior Military Judge. However, as stated in WJCR 6.1b, above, the preferred method of docketing cases within the Western Judicial Circuit is by mutual agreement of both parties via a MFD or a combined PTIR/MFD.
- WJCR 6.1j:** Should counsel be unable to comply with the strict deadlines established within this rule, counsel should seek immediate relief or a variance from the local Senior Military Judge or detailed military judge.
- WJCR 6.1k:** Upon receipt of either a MFD or a combined PTIR/MFD, the local Senior Military Judge shall detail a military judge to the case or immediately notify the Circuit Military Judge of special circumstances that may require detailing of a military judge outside that pending court-martial's district.
- WJCR 6.1l:** The detailed military judge may use a trial scheduling order, similar to Attachment (4) of these *Circuit Rules*, to establish deadlines for compliance with matters of discovery or notice or other pretrial matters. The detailed military judge establishes all trial deadlines.
- WJCR 6.1m:** Unless a different deadline is set by the detailed military judge or the PTIR was previously submitted, defense counsel shall notify the trial counsel and military judge, in writing, at least five (5) working days before the scheduled trial dates, of three items: trial forum, anticipated pleas, and notice of motions. This is a minimum notice requirement. Defense counsel shall, whenever possible, provide such notices as far in advance as possible in order to provide for an orderly administration of justice.
- WJCR 6.1n:** Deviations from a docketed date of trial such as a continuance or acceleration of trial date shall be granted solely by the detailed military judge. Requests for continuances shall be in conformance with applicable rules [See Rule 11, below]. Cases sought to be accelerated by mutual consent of counsel may be considered orally or in writing by the

detailed military judge. Generally, the detailed military judge will not accelerate docketed cases except by mutual consent of the parties or when the interests of justice dictate such an action.

- WJCR 6.1o:** After publication of the Circuit docket, a case docketed for trial or an Article 39a session for the upcoming week may not be removed from the docket without the express authorization of the Circuit Military Judge, the local Senior Military Judge or detailed military judge, except when the charges are withdrawn by the convening authority. When an Article 39a session or trial date has been ordered for a case the next week, counsel are required to submit written notice when they believe the scheduled court session is not necessary. Written notice regarding the lack of need for a docketed session of court will be submitted prior to the scheduled session and may be attached to the record in the discretion of the military judge. The written notice shall include an explanation of why the scheduled session is not necessary and will be signed by counsel for both sides. If the charges are withdrawn by the convening authority, the trial counsel shall inform the detailed military judge of such withdrawal as soon as possible, and forward a written copy of the withdrawal letter to the local District Clerk of Court. However, all previously scheduled Article 39a sessions for that case will remain on the docket until the withdrawal letter is received by the local Clerk of Court.
- Rule 6.2:** The Circuit Military Judge shall, on a weekly basis, cause the court docket to be published on Navy Knowledge On-line (NKO) at <https://wwa.nko.navy.mil>.
- WJCR 6.2a:** The Circuit Military Judge's (or designee's) signature on the docket serves to detail a particular judge to a particular court session. The weekly docket is a court order and the case will go as scheduled unless a continuance has been granted by the detailed military judge or the charges have been withdrawn from the referred court-martial.
- WJCR 6.2b:** The Circuit Clerk of Court shall cause the Circuit docket to be published in compliance with Rule 6.2, above.

RULE 7: EX PARTE COMMUNICATIONS WITH THE MILITARY JUDGE

- Rule 7.1:** *Ex parte* communications with a military judge concerning a case that is pending before that military judge is prohibited, except for routine

administrative matters and as otherwise provided by law.

Rule 7.2: Routine administrative matters include, but are not limited to, docketing and logistic matters (e.g. pleas, forum, and number of, or difficulty with, witnesses that affect the time, location, and length of court sessions).

Rule 7.3: Military judges may, at their discretion, conduct critiques or offer suggestions regarding counsels' performance in courts-martial to improve the administration of justice. At the discretion of the military judge, these sessions may be conducted *ex parte*, with trial and/or defense counsel, or in groups.

WJCR 7.4: "Communications" is defined within this section as any exchange of information with the detailed military judge regarding a case then pending in any form or manner of contact with that military judge and includes but is not limited to electronic mail, facsimile, letter, video teleconference or telephone. Communications shall include "info" or "copy to" for opposing counsel in the same or equally expeditious manner as provided to the detailed military judge.

WJCR 7.5: New Counsel Orientation - All newly arrived military counsel must participate in a New Counsel Orientation conducted by the District Senior Judge (or designee) prior to appearing as counsel or associate counsel in a court-martial in the Western Judicial Circuit.

Rule 8: CONFERENCES

Rule 8: 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. Such conferences shall not be used to litigate or decide contested issues.

Rule 9: DISCOVERY

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

Rule 9.2: Notwithstanding "open discovery" in the military, discovery requests should be as specific as possible

to avoid misunderstanding and to assist in obtaining the desired information in a timely fashion.

WJCR 9.3: Gamesmanship in the discovery process will not be tolerated. Discovery requests should be answered promptly in writing. All counsel are expected to adhere to the spirit of military discovery practice and shall promptly turn over all discoverable materials, including the identity of witnesses. In the normal case, the Court will not set discovery deadlines, but will instead rely upon the parties to either work together or bring unresolved discovery issues to the Court's attention as soon as they are ripe.

WJCR 9.4: Upon notice to opposing counsel, a party may request an *in camera* review of potentially discoverable material from the Court at any time.

RULE 10: MOTIONS

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

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

WJCR 10.2a: Each motion will be in substantially the same format as shown in Attachment (5) of these *Circuit Rules* and shall contain the following information:

- (1) A statement of the nature of the motion;
- (2) A summary of the facts supporting the motion;
- (3) A brief discussion of the points of law supporting the motion, including citation of authority as well as argument and conclusions;
- (4) A statement of the relief requested, including drafts of any proposed orders;
- (5) A statement of any evidence to be offered in

support of the motion, e.g., a description or copy of real evidence including photographs, names of witnesses, summaries of expected testimony, etc;

- (6) A statement whether oral argument is desired; and
- (7) A statement of which party bears the burden of production and persuasion.
- (8) If in excess of 10 pages long, a table of cases attached at the end, listing the page number of all references to the cited cases.

WJCR 10.2b: Each original motion shall be subscribed by counsel and will be served on opposing counsel, with the manner of service indicated on the original. Original motions shall become part of the record of trial. Complete copies of motions shall be served on the detailed military judge either via electronic mail, facsimile or personal service.

WJCR 10.2c: Answers to motions will be in substantially the same format as shown in Attachment (6) of these *Circuit Rules*. Answers to motions will comply with the same requirements as motions, except they will be filed with the detailed military judge as soon as possible or as directed by a pretrial order.

Rule 10.3: When essential findings are required on a motion, the military judge, whenever possible, shall enter those findings on the record contemporaneously with the ruling.

Rule 10.4: If the military judge rules adversely to the government on a significant matter, and the government is contemplating an appeal, 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 military judge with written notice of appeal.

WJCR 10.5: Counsel shall prepare proposed findings of fact and conclusions of law to accompany each motion, except as directed by court order. Proposed findings of fact and conclusions of law must be submitted and timely filed with each motion.

WJCR 10.6: If the motion involves only a dispute between the parties as to the law or an ultimate question of fact, and does not involve the underlying facts, counsel should endeavor to enter into, and prepare, prior to trial, stipulations of fact or of testimony covering those matters.

WJCR 10.7: If cases will be cited in the course of argument before the detailed 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.

RULE 11: CONTINUANCES

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

WJCR 11.1a: Requests for continuances shall ordinarily be submitted in writing and be electronically served on the military judge not later than five working days prior to the docketed court date, unless good cause is shown for an untimely continuance request. When the interests of justice and orderly procedure demand, the military judge may consider oral requests for continuances. Unopposed written continuances may be granted out of court by the military judge through a simple e-mail request. Opposed continuances will first be addressed at an 802 conference and, if still unresolved, will be docketed for resolution in court. All requests for continuances, whether written or oral, shall provide the specific reason(s) for the delay with a proposed new time and date the case is to proceed.

Rule 11.2: If the accused is in pretrial confinement, local rules may provide that defense motions for continuances and concurrences in government motions for continuances shall be signed by the accused as well as 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: The presiding military judge may prescribe rules in any case to establish courtroom security as deemed necessary.

Rule 13.2: Ordinarily, the government is responsible for ensuring that the courtroom facility is in compliance

with all applicable orders and directives governing courtroom safety requirements. Notwithstanding such orders and directives, counsel shall inform the military judge whenever they believe extra precautions and/or security measures should be implemented.

WJCR 13.2a: Counsel shall notify the detailed military judge of any matters that might affect courtroom security in any conceivable manner. If matters arise during the course of a trial, counsel will immediately ask for a recess and advise the detailed military judge.

WJCR 13.2b: Courtroom security is a matter of the highest priority. Potential offenders include spectators, witnesses, and the accused. Potential risks include disorderly conduct, threats, assaults with or without weapons, suicide attempts, and explosive devices. Courtroom security is the responsibility of all court personnel. Any matter that might affect courtroom security will be reported immediately to the presiding military judge. This obligation is of the highest priority of all trial participants. If trial is in progress when such information is discovered, counsel will immediately request a recess and advise the presiding judge. In any case involving a potential security problem, the Circuit Military Judge will be advised and will make a risk assessment. In any case in which the detailed military judge determines a security problem exists or where a high security risk or potential risk is present, the trial counsel will ensure a courtroom security officer is appointed and a courtroom security plan is developed. The detailed military judge may delay the trial until satisfied that the court-martial may proceed in a safe and secure manner for all trial participants, court personnel and trial observers.

Rule 13.3: The wearing or carrying of weapons in the courtroom is prohibited, except when authorized by the military judge.

WJCR 13.4: Chasers will sit in the gallery with their cover and duty belts removed when their prisoner is in court.

RULE 14: UNIFORMS

Rule 14.1: The military judge shall designate the proper uniform and civilian attire to be worn by all persons required to be present at trial. However, when court is convened in a courtroom facility or non-operational setting, all parties, counsel, and the court shall appear in the Uniform of the Day.

Utility uniforms and khakis shall not be designated as courtroom uniforms unless the court is convened at sea or in an operational setting in the field.

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

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

WJCR 14.3a: The uniform for trial participants including counsel, accused, court reporter, members, bailiff and all witnesses for all courts-martial sessions in the Western Judicial Circuit shall be in the seasonally prescribed dress uniform of the day (or service equivalent):

Marine Corps:

All ranks: Service "C" (norm) or Service "A" or "B" uniform.

Navy:

E-7 and above: Summer Whites (a/k/a Service Whites) or Service Dress Blues
E-6 and below: Service Dress Whites or Service Dress Blues

The uniform requirement shall be followed unless specifically modified on a case-by-case basis by the detailed military judge.

WJCR 14.3b: Civilian counsel will wear conservative business attire as would be appropriate for an appearance in a Federal District Court.

Rule 15: SPECTATORS

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

- Rule 15.2:** Spectators are encouraged to attend any sessions of the court-martial, unless otherwise determined by the military judge. See R.C.M. 806.
- 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:** Spectators are forbidden to demonstrate agreement or disagreement, either verbally or by non-verbal conduct (e.g. shaking or nodding of head), with testimony or other trial procedures. Spectators who violate this rule may be excluded from the courtroom or, in aggravated cases, held in contempt. Counsel are responsible for advising their clients, their witnesses, and friends of the accused and counsel, of the demeanor expected of them.
- WJCR 15.5:** Attire that displays wording or depictions intended to influence the conduct of the trial or the due administration of justice is not permitted in the courtroom or judicial spaces. Covers, hats, or caps shall not be worn by anyone in the courtroom unless authorized by the presiding military judge
- WJCR 15.6:** Disruptive note passing, whispering, gesturing and other demonstrations and interplay between counsel and those in the gallery during the course of trial is unprofessional and will not be tolerated.
- WJCR 15.7:** Unless otherwise authorized by the presiding military judge, no video, digital, still or motion photography or audio-visual recording devices of any nature, other than officially court-sanctioned court reporting equipment, are permitted in any courtroom. Cellular phones and pagers shall be turned off if brought into the courtroom.
- WJCR 15.8:** Counsel who become aware of potential media interest or presence at any phase of trial shall inform the presiding military judge as soon as possible. Trial counsel will coordinate with the bailiff to ensure that no video or audio recording devices are permitted in the courtroom. Trial counsel shall coordinate with the cognizant Public Affairs Officer regarding any media presence and/or interest.

RULE 16: PUNCTUALITY

- Rule 16:** Punctuality in all matters affecting the court is required of all parties and reflects preparation and professionalism. When a party unavoidably is, or will be, late, or proceedings delayed, the judge will

be notified as soon as possible and provided an explanation.

- WJCR 16.1:** Courts will convene promptly at the time set by the detailed military judge. Unless otherwise stated by the presiding military judge, all recesses will be 10 minutes in length. All court personnel shall be present in court and ready to proceed promptly at the time prescribed, or upon expiration of the recess.
- 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 who is in pretrial confinement or other restraint and, after the accused arrives at the place of trial, defense counsel is responsible for the timely presence of an accused who is not in pretrial restraint.

RULE 17: BAILIFF

- Rule 17:** If practicable, a bailiff shall ordinarily be present at every court-martial. Trial counsel shall ensure the bailiff is provided a copy of attachment [(7) of these *Circuit Rules*] and is thoroughly briefed as to the bailiff's responsibilities.
- WJCR 17.1:** Unless otherwise directed by the detailed military judge, a bailiff is required at all sessions of court at which members are present. A bailiff is not required at Article 39a sessions unless otherwise directed by the presiding military judge. Trial counsel shall ensure that the assigned bailiff is fully trained regarding their assigned duties and responsibilities. The bailiff shall report to the trial counsel in advance of trial for a comprehensive briefing on assigned duties, and for trial shall be in the appropriate dress uniform of the day.
- WJCR 17.2:** The bailiff will not be a witness. The bailiff will not be a unit escort or guard for the accused. If the detailed military judge excuses the presence of a bailiff, the trial counsel will perform the bailiff's
- WJCR 17.3:** To ensure compliance with the *Uniform Rules*, these *Circuit Rules*, and the *Rules for Professional Conduct*, a bailiff will be physically located inside of all remote, closed-circuit viewing galleries while a broadcast is being received at that location from the courtroom.

RULE 18: GUARDS

Rule 18: When appropriate, a guard or guards shall be detailed to ensure proper custody of the accused and to assist the court in preserving order and decorum.

WJCR 18.1: Unless otherwise directed by the military judge, guards, if necessary, will not be permitted inside the bar of the courtroom. Arms or weapons, except when such are to be exhibits or when otherwise authorized by the military judge, are not permitted in the courtroom. If firearms are to be marked as exhibits, trial counsel will personally ensure that the firearms have been cleared and rendered non-firing before they are brought into the courtroom.

Rule 19: COURT REPORTERS

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

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

WJCR 19.4: The court reporter will mark all exhibits. Original exhibits should be distinguished from copies by placing a colored dot on them or by writing "Mbr Copy" or "MJ Copy" etc. in the lower right hand portion of the copies of the exhibit. Appellate exhibits will be marked under the direction of the military judge. Court-reporters will: secure all exhibits offered to the court, whether admitted or not admitted; secure members' folders and notes during periods of recess or adjournment; secure the deliberation room, to include gathering balloting material; and secure the court-room during recesses or periods of adjournment. The bailiff may be used to assist in the above.

WJCR 19.5: To assist the court reporter in the transcription of the record of trial, counsel will provide the court reporter with a witness list, with proper spelling of full name, including first and middle names used; and, the proper spelling of unusual words or acronyms to be used, including hometowns, high schools,

medical or expert terminology. Alternatively, counsel may have the witness spell out the word or acronym on the record.

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 or leaves the courtroom.
- WJCR 20.1:** The trial counsel or bailiff will announce "All rise" whenever the military judge enters or departs the courtroom.

RULE 21: ENTRY AND DEPARTURE OF MEMBERS

- Rule 21:** All persons, other than the military judge and court reporter, shall rise when the members enter and leave the courtroom.
- WJCR 21.1:** In consideration for member's time, when a case is to be tried before a court with members, trial counsel must ensure that the members are notified of the time, place, and uniform for the trial. Reporting times for court members will be scheduled to minimize waiting time for members. Members may be placed on standby or "on call" as deemed necessary by the detailed military judge.
- WJCR 21.2:** Trial counsel in every trial before members shall submit a proposed findings worksheet where any plea of "not guilty" has been entered. If there is more than one charge or specification, if lesser-included offenses are in issue, or if findings by exceptions and substitutions can reasonably be made, the worksheet shall be tailored to reflect each alternative finding. If defense counsel disagrees with the worksheet proposed by trial counsel, defense counsel may submit a proposed worksheet.
- WJCR 21.3:** Trial counsel in every trial before members shall submit a proposed sentencing worksheet when a finding of "guilty" has been reached. If defense counsel disagrees with the worksheet proposed by trial counsel, defense counsel may submit a proposed worksheet.

RULE 22: VOIR DIRE

- Rule 22.1:** The military judge determines the procedure for conducting voir dire.

- Rule 22.2:** Prior to voir dire, both counsel will provide the military judge with a written list of the full name and unit or city and state of residence of all witnesses. The list shall include witnesses whose testimony will be presented by stipulation.
- WJCR 22.3:** Prior to the date set for trial in a members case, trial counsel shall ensure prospective court members complete a member's questionnaire or have a recently completed member's questionnaire on file. Any questionnaire completed more than 6 months prior to the current trial is deemed to be stale and not recent. The format for the questionnaire shall be substantially similar to that in Attachment (8) of these *Circuit Rules*.
- WJCR 22.4:** Unless directed otherwise, counsel shall submit to the detailed military judge and to the opposing counsel general voir dire questions they desire to have asked of the members by close of business at least two working days before trial or per the trial schedule order. In appropriate cases, counsel are encouraged to prepare and submit for judicial approval supplemental member questionnaires in lieu of conducting extensive en banc or individual voir dire.

RULE 23: PROHIBITED ITEMS IN THE COURTROOM

- Rule 23.1:** Eating, chewing gum, or using tobacco products will not be permitted in the courtroom during open sessions. Weapons and objects that may be used as weapons, including potential exhibits, will not be permitted in the courtroom without specific authorization of the military judge.
- WJCR 23.1a:** Members, accused, and counsel are permitted to have covered drinks in the courtroom.
- WJCR 23.1b:** All firearms to be used as exhibits will be inspected by the trial counsel to ensure that the weapon is a clear and safe weapon. When possible trigger locks, cables and other safety devices shall be used.
- Rule 23.2:** Unless specifically authorized by the military judge, and except for the equipment required by the court reporter, no video or audio recording devices are permitted in the courtroom.
- Rule 23.3:** Cellular or mobile telephones must be switched off while in the courtroom unless otherwise permitted by the military judge.

WJCR 23.3a: In the discretion of the presiding military judge, electronic equipment such as cellular phones, pagers, laptops, and any other device that has the capability to record, transmit, or receive voice, data, photographs, video, or electronic mail (such as Blackberry Personal Digital Assistants and the like), above, may be permitted in remote, closed-circuit viewing galleries provided that no recording - audio, video, still, or otherwise - is conducted of the trial broadcast. Violations of this Rule may result in adverse consequences including, but not limited to, expulsion of the offender from the proceedings, confiscation of storage media, an action in contempt, and/or any other administrative or criminal penalties authorized by law or regulation.

RULE 24: COUNSEL DECORUM

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

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 question a witness, address the court on a motion or issue, or make opening statements or closing arguments.

WJCR 24.3a: Counsel shall not interrupt opposing counsel or the military judge unless making an objection.

RULE 25: COUNSEL CONDUCT

Rule 25.1: Counsel shall not, during trial, state or allude to any matter that counsel has no reasonable 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 the facts in issue, except when testifying as a witness.

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

WJCR 25.4: Counsel shall confine their opening statements to what they expect the issues in the case will be and the evidence will show. Counsel will not use the

opening statement to argue the case or to instruct as to the law. Counsel who anticipate their opening statement will exceed 30 minutes will notify the court.

WJCR 25.5: Arguments should be limited to matters in evidence and all inferences fairly and reasonably to be drawn from the evidence, together with reference to matters of common and everyday knowledge. Counsel shall not assert a personal belief in the justice of his or her cause or in the guilt or innocence of the accused, nor may counsel personally vouch for the credibility, or lack of credibility of witnesses.

WJCR 25.6: Counsel are prohibited from making extrajudicial statements about any person or case pending or at court-martial that a reasonable person would expect to be disseminated by means of public communication if that counsel knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding or an official review process thereof, unless otherwise permitted. [See Rule 3.6 of the *Rules of Professional Conduct* for further elaboration].

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.

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

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

WJCR 26.5: In members cases, counsel will use the bailiff to hand any evidence to a witness, unless the military judge has approved some other method of handing evidence to a witness.

- WJCR 26.6:** Trial counsel is responsible for notifying all witnesses requested pursuant to R.C.M. 703 of the time, place, and uniform for trial.
- WJCR 26.7:** Witnesses ordinarily will not be present in court during trial. Counsel are responsible for ensuring their witnesses are aware of and comply with this rule. The detailed military judge may permit a witness to remain in the courtroom after the witness has testified, or otherwise, upon a showing of good cause. This rule is not to be construed as limiting Military Rule of Evidence 615.
- WJCR 26.8:** Unsworn statements will not be made from the witness stand. They will be made from the counsel table or by standing before the court.
- WJCR 26.9:** Witnesses may testify via video teleconferencing (VTC) or telephone when both parties agree to such alternative means of testimony. The specific logistics of taking such testimony will be coordinated with the military judge. (See Attachment (9) of these *Circuit Rules* for additional specific guidance on remote live testimony.) Absent approval by the military judge telephonic testimony will only be used in the motions and sentencing phases of the court-martial.
- WJCR 26.10:** Initial contact with a witness testifying telephonically will be off the record and outside the presence of the members. Prior to coming on the record, trial counsel will ask the witness if they are alone; in a place where they will not be interrupted; and have the witness state they are not testifying from any notes. Once these preliminary questions are satisfied the Court will come to order and the trial counsel will swear the witness in and the military judge will ask the same preliminary questions again on the record.
- WJCR 26.11:** No later than five working days prior to trial, counsel who intend to use an interpreter shall notify the detailed military judge and opposing counsel of the interpreter's identity and provide a brief summary of his/her qualifications. Any anticipated objection to the proposed interpreter will be provided to the military judge as soon as possible but no later than two working days prior to the date of trial. The interpreter's name and place of employment will be included on the combined witness list for use in voir dire.
- WJCR 26.12:** When the witness that needs interpretation is called to the witness stand, the interpreter will accompany the witness. The trial counsel will begin by

administering the oath set out in R.C.M 807 to the interpreter. The trial counsel will then have the interpreter identify him or herself for the record. The trial counsel will then utilize the interpreter and administer the standard witness oath to the witness.

WJCR 26.13: The interpreter's sole function is to translate the questions posed and responses provided. The testimony shall be read on the record as if the interpreter were not there. Therefore, during the examination of the witness, the interpreter will translate the question posed or response provided in the first person. For example, the interpreter will ask "Where were you on November 10th?", not "He wants to know where you were on November 10th." If the witness' response is "I was at the Birthday Ball" - the interpreter will respond "I was as the Birthday Ball", not "She was at the Birthday Ball." If the witness does not understand a question posed or needs clarifying information, the interpreter will bring this to the questioner's attention. The interpreter will not answer the question on his or her own.

RULE 27: OBJECTIONS

Rule 27: Counsel shall succinctly state the nature and basis of an objection. After the military judge rules on an objection, counsel may only make comment or further argument with the express permission of the military judge.

RULE 28: STIPULATIONS

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

Rule 28.2: Stipulations should be in writing, whenever practicable, and should be prepared prior to trial. Oral stipulations should be read into the record and agreed to by counsel and the accused.

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

Rule 28.4: Written stipulations of fact shall be marked as a trial exhibit and, in a members trial, read to the members. Stipulations of fact may be taken into the deliberation room by the members. Written

stipulations of expected testimony shall be marked as appellate exhibits and, in a members trial, read to the members. Stipulations of testimony may not be taken into the deliberation room.

RULE 29: OFFERS OF PROOF

- Rule 29.1:** When offers of proof are expected to be presented on motions or objections, counsel should inform opposing counsel and attempt to reach agreement on the content of the offer of proof before presentation.
- Rule 29.2:** Absent a stipulation, an offer of proof is not evidence upon which a finding of fact may be based.

RULE 30: JUDICIAL NOTICE

- Rule 30:** Counsel will advise the military judge and opposing counsel, as soon as possible and preferably before trial, of any intended requests for judicial notice.

RULE 31: EXHIBITS

- Rule 31.1:** Prosecution exhibits will be identified by Arabic numerals. Defense exhibits will be identified by capital letters. Appellate exhibits will be identified by Roman numerals.
- Rule 31.2:** If an exhibit is not compatible for inclusion in the record of trial, counsel shall prepare an appropriate substitute for inclusion in the record of trial.
- Rule 31.3:** All audio recordings and those video recordings that contain audio portions shall be transcribed, prior to trial, by the party offering such a recording 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.
- Rule 31.4:** For those circuits in which electronic media, or so-called "smart courtroom" technology, has been installed in some or all of the courtrooms, additional rules or protocols may be necessary for the handling and presentation of exhibits. Attachment 2 contains a proposed set of rules that may be used in their entirety or modified to accomplish the circuit's needs.

- WJCR 31.5:** To save time during trial, trial counsel and defense counsel shall endeavor to have all prosecution and defense exhibits intended to be introduced marked "For Identification" by the court reporter before trial and shown to the opposing counsel. Additionally, trial counsel and defense counsel shall endeavor to have all appellate exhibits marked by the court reporter before trial and shown to the opposing counsel. Counsel offering an exhibit should make a copy for the detailed military judge and opposing counsel. Counsel offering documentary or photographic exhibits should have a copy of the original exhibit for each member of the court.
- WJCR 31.6:** Counsel intending to use demonstrative aids, such as charts, diagrams, videotapes, audiotapes or any other technological presentations during their opening statements, closing arguments or cases-in-chief shall provide notice to the detailed military judge and opposing counsel no less than two (2) days prior to trial. Counsel giving notice will ensure the detailed military judge and opposing counsel have an adequate opportunity inspect the demonstrative aids prior to their use. Attachment (2) of the *Uniform Rules*, provides a generic protocol for the use of electronic technology, and is replaced in this republication by Attachment (9) of these *Circuit Rules*, which is substantially similar and had been previously adopted in this circuit. Each District Senior Judge may set specific rules and protocols based on the capabilities of the various courtrooms.
- WJCR 31.7:** The trial counsel will have a copy of any written military order alleged to have been violated included in the record as an appellate exhibit and a copy of the order will be provided to the Court when referred charges are filed with the Court in accordance with WJCR 4.1.

RULE 32: INSTRUCTIONS

- Rule 32:** Trial and defense counsel shall make appropriate recommendations as to specific instructions for the military judge to provide to the members. Requests for special instructions, modifications to standard instructions, or a summarization of the evidence, shall be submitted in writing and in a timely manner to the military judge and opposing counsel.
- WJCR 32.1:** Tailored instructions shall be submitted with the Pre-trial Matters whenever possible. The specific factors counsel want the members to consider on sentencing should be prepared prior to trial in most

cases and tailored and submitted to the military judge shortly after findings are announced.

RULE 33: RECORD OF TRIAL

- Rule 33.1:** A complete and accurate record of the proceedings is needed to protect the rights of all parties. During the course of the trial, counsel shall ensure that uncommon names, places, and things are spelled out on the record, that witnesses respond verbally and not by nodding or shaking their heads, and that descriptions of size, distance, and location are clear and unambiguous.
- Rule 33.2:** At the conclusion of the trial, defense counsel will indicate whether civilian counsel or military counsel will examine the record, who will respond to the staff judge advocate's recommendations, and who will represent the accused in post-trial matters. The accused may include such decisions in the written acknowledgement of appellate rights.
- Rule 33.3:** Whenever practicable, trial counsel shall read the record of trial before it is submitted to the military judge for authentication and ensure that the court reporter makes any necessary corrections.
- WJCR 33.3a:** All pen and ink corrections made to the record of trial will be initialed.
- Rule 33.4:** The trial counsel is responsible for ensuring that the record of trial is prepared in a timely and accurate manner. The defense counsel shall also be given the opportunity to review the record of trial before it is submitted to the Military Judge for authentication.

RULE 34: DOCUMENT SIZE

- Rule 34:** All documents filed with the court shall be on 8.5 inch by 11 inch paper.
- WJCR 34.1:** All documents filed with the court shall have one inch margins and use Courier New or Times New Roman 12 point font.

**WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY**

U N I T E D S T A T E S)
) CIVILIAN COUNSEL
 v.) COURT-MARTIAL NOTICE
) OF APPEARANCE
)

1. I, _____, admitted to practice law, currently in good standing before the bar of the highest court of the State(s) of _____, and, having appeared as counsel in United States military courts-martial on approximately _____ occasions during my legal career, military or civilian, hereby enter appearance as attorney on behalf of the accused in the above captioned court-martial to do all that is necessary in connection therewith. I certify that I am not now de-certified or suspended from practice in Navy-Marine Corps courts-martial by the Judge Advocate General of the Navy.

2. I hereby certify that I have obtained a copy and agree to abide by: (1) the Rules for Courts-Martial and the Military Rules of Evidence set forth in the current editions of the Manual Courts-Martial; (2) United States, JAG INSTRUCTION 5803.1 series (Professional Conduct of Attorneys Practicing Under the Supervision of the Judge Advocate General); (3) NAVMARCORTRIJUDIC INSTRUCTION 5813.4, Appendix B (Uniform Rules of Practice Before Navy-Marine Corps Courts-Martial); (4) WESTERNJUDCIRINST 5813.4 (Western Judicial Circuit Rules of Court); and, (5) if published, the local District Rules of Practice for the Judicial District within which the above-captioned is currently pending. I further certify and agree to provide, upon request by the Circuit Military Judge or designee, a copy of the professional responsibility rules applicable to the Bar of the State in which I am licensed to practice law.

3. Unless indicated otherwise by the accused, all post-trial matters, including the staff judge advocate's or legal officer's recommendation and the accused's copy of the record of trial should be served on the undersigned. For purposes of this trial and all subsequent review matters, notice to and service upon the undersigned may be affected at the address listed below.

Subj: NOTICE OF APPEARANCE ICO US V.

4. Under penalty of perjury, I swear or affirm all information on this notice of appearance is true, correct and complete. Signed this date, _____, 20____.

Signature

Printed full name under which licensed to practice law

State(s) admitted to practice law

State Bar Number(s)

Mailing Address: _____

Voice Telephone Number: _____

Facsimile Telephone Number: _____

Email Address: _____

**WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY**

U N I T E D S T A T E S)	
	)	GENERAL/SPECIAL COURT-MARTIAL
v.	)	DEFENSE / GOVERNMENT
)	
NAME	)	MOTION FOR APPROPRIATE RELIEF
SSN	)	(Docketing Request)
RANK)	
U.S. Navy <input type="checkbox"/> /Marine Corps)	
	)	(DATE)

1. **Nature of Motion.** The defense/government moves the court to docket trial dates and set judicial milestones in the above-captioned case.

2. **Trial Dates and Deadlines.** The defense/government respectfully requests that, in lieu of arraignment, the Court order the following dates and milestones in this case:

<i>Event</i>	<i>Date</i>
a. Government discovery / Reciprocal discovery due:	_____
b. Defense witness requests due:	_____
c. Government response to witness requests due:	_____
d. Motions by either side due:	_____
e. Responses to motions due:	_____
f. Article 39(a) motions date:	_____
g. Written notice of pleas and forum due:	_____
h. Required notice of certain defenses due:	_____
i. Members Questionnaires, Witness Lists, Voir dire, Proposed Instructions due:	_____
j. TRIAL DATES:	_____

 COUNSEL NAME
 RANK, U. S. Navy / Marine Corps
 Defense / Trial Counsel

AE _____

Motion Response

1. Trial/Defense Counsel, in response to the above motion:

_____ Does not oppose it and agrees to the trial and pretrial dates proposed.

_____ Opposes the dates proposed and requests a 39(a) session on

_____.

Date

NAME
RANK, U. S. Navy / Marine Corps
Defense / Trial Counsel

Court Ruling

The motion is granted. All delay from the date of this request until the date of trial is excludable under Rule For Courts-Martial 707, Article 10, UCMJ and any other applicable speedy trial authorities. It is hereby ordered that all parties shall comply with the trial deadlines set forth above and shall appear before the Court at on:

_____ for an Article 39(a) session; and

_____ for commencement of trial.

Date

Military Judge

PRETRIAL INFORMATION SHEET

Date: _____

From: Trial and Defense Counsel
To: Senior Military Judge

Subj: PRETRIAL INFORMATION SHEET IN THE CASE OF U.S. V. _____

- 1. GCM: _____ SPCM: _____
- 2. Convening Authority: _____
- 3. Location of trial: _____
- 4. Date charges served on Accused: _____
- 5. Arraignment date: _____
- 6. Pretrial restraint:
 No: _____
 Yes: _____
 Number of days confined: _____
 Number of days restricted: _____
- 7. Related cases: _____
- 8. Scheduled trial date: _____
 Duration: _____
- 9. Forum selection:
 Judge Alone: _____
 Members: _____
 Members w/enlisted: _____
- 10. Witnesses (indicate number of witnesses)
 Government: _____ (live) _____ (telephonic) _____
 Defense: _____ (live) _____ (telephonic) _____
- 11. Article 39a session:
 Requested by:
 TC: _____ date requested: _____ duration: _____
 DC: _____ date requested: _____ duration: _____

Indicate issues to be addressed in the Article 39a session, including all motions, evidentiary matters, and sessions to review members' questionnaires, proposed voir dire, etc. (list all motions separately):

12. Anticipated pleas: _____

13. If mixed pleas, the government intends to:
 Go forward on charge(s): _____
 Withdraw charge(s): _____

14. Pretrial agreement: a copy of part I of the PTA has been provided to the judiciary:
 Yes: _____
 No: _____ Reason: _____

15. Stipulation of fact: a copy of the stipulation of fact has been provided to the judiciary:

Yes: _____
No: _____ Reason: _____

16. A copy of the pretrial information sheet has been provided to the court reporter:

Yes: _____
No: _____ Reason: _____

By the signatures below, trial and defense counsel certify that they have read the above information and it is true and correct to the best of their knowledge.

Trial Counsel

Date

Defense Counsel

Date

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

UNITED STATES)	
v.	)	<u>PRETRIAL ORDER</u>
_____)	
)	
U.S. Navy/U.S. Marine Corps)	_____

1. This Pretrial Order is issued pursuant to RCM 701(g)(1). This order is intended to complement and insure the smooth and orderly progression of this case. Nothing within this order shall be construed to supersede any rule found within the Manual for Courts-martial or other regulatory, statutory or constitutional obligation or right of either party. **UNLESS OTHERWISE SPECIFICALLY NOTED, ALL DOCUMENTS OR MOTIONS ORDERED OR FILED WITH THE COURT SHALL BE FILED WITH THE COURT AND OPPOSING COUNSEL NO LATER THAN 1200 ON THE DAY ORDERED.**

2. Trial is set to begin in the above styled case at _____ at _____. Counsel shall comply with this order or seek relief from same by the undersigned judge as soon as possible. **Items preceded by an asterisk (*) shall also be provided to the military judge.**

3. Not later than _____, trial counsel will provide the following items to the defense:

a. Papers accompanying the charges, convening orders, and statements. (RCM 701(a)(1)).

b. Names, phone numbers, addresses, and unit (when applicable) of potential witnesses in the government's case in chief. (RCM 701(a)(3)). [complete list may depend on Para. 5(b)(2) below]

c. Notice of records of prior convictions of the accused to be offered on the merits, if any. (RCM 701(a)(4)).

d. Notice of immunity or leniency to prosecution witnesses, if any. (MRE 301(c)(2)).

e. Disclosure of known evidence that is favorable to the defense, if any. (RCM 701(a)(6)).

f. Disclosure of relevant statements made by the accused, if any. (MRE 304(d)(1)).

g. Disclosure of evidence seized from or the property of the accused, if any. (MRE 311(d)(1)).

h. Disclosure of evidence of prior identification of the accused, if any. (MRE 321(c)(1)).

i. Disclosure as required by MRE 413(b), and 414(b) if applicable.

4. Not later than 5 calendar days after receipt by the trial counsel of a request from the defense counsel under RCM 701(a)(2) or (5), or MRE 404(b), trial counsel will provide the notice or make the disclosures required by the applicable rule.

5. Defense counsel will provide notice and disclosure to the trial counsel in accordance with the following schedule:

*a. Not later than _____, submit any request for the employment of a defense expert [consultant and/or witness]. (RCM 703(d)).

b. Not later than _____:

(1) Request production of out of area defense witnesses (RCM 703)(c)(2)(A)). In this regard, the parties are reminded that a "synopsis" as this term is used in the RCM, is not a statement of the subject matter of the witness' testimony. A "synopsis" is a summary, in narrative form, of the requested witness' actual testimony.

*(2) If applicable, provide written notice of intent to offer evidence of the defense of alibi, innocent ingestion, lack of mental responsibility, or the defense's intent to introduce expert testimony as to the accused's mental condition fully complying with RCM 701 (b)(2) in the particulars contained in the notice.

*(3) If applicable, file a written motion and provide notice of intent to offer relevant evidence of specific instances of the purported victim's past sexual behavior as required by MRE 412(c)(1)(A) and (B).

c. Not later than _____:

(1) Provide names, addresses, unit of assignment if applicable, and telephone numbers of witnesses for the defense case-in-chief and provide copies of their statements. (RCM 701(b)(1)(A)).

(2) Provide notice of forum and pleas. This shall be accomplished, at a minimum, with submission of a pretrial information report initiated by trial counsel and endorsed by defense counsel.

d. Not later than 5 calendar days after receipt by the defense counsel from the trial counsel under RCM 701(b)(1)(B) or RCM 701 (b)(3) or (4), the defense will make the disclosure required by the applicable Rule.

*6. Not later than _____, both the trial and defense counsel will provide briefs on any motion. The responding party shall reply not later than 3 calendar days after receipt of the motion. All motions (except for docketing motions and continuance motions or those specifically delineated on a case-by-case basis by the undersigned military judge) shall include respective counsel's proposed findings of fact and findings of law.

7. The trial counsel shall notify the defense counsel of its intent to deny the defense any witness requested by the defense not later than 3 duty days after receipt of a request for that witness. If a motion to compel production is deemed appropriate by the defense, counsel shall endeavor to make timely requests as well as timely motions to compel production so as to meet all milestone dates within this order or seek the Court's leave for alterations or deviations from this order. Deviations may be granted for good cause shown.

8. If during or before the court-martial, a party discovers additional evidence or material previously requested or required to be produced which is subject to discovery or inspection under RCM 701, or any other matter with regard to which notice or disclosure was required to be given under RCM 701 or this order, that party shall immediately notify the other party.

*9. Not later than _____ if the forum selected will be with member's (either on merits or sentencing only) both Trial and Defense Counsel shall provide to the court with appropriate service between themselves, a cleansed charge sheet, complete witness lists, proposed voir dire, proposed findings instructions and a findings worksheet. Should the member's trial be for sentencing only, counsel may substitute proposed sentencing instructions and a sentencing worksheet for proposed findings instructions and worksheet.

Military Judge

Date

Appellate Exhibit _____

NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT

U N I T E D S T A T E S)	
	)	(GENERAL)(SPECIAL) COURT-MARTIAL
V.)	
	)	(MOTION FOR APPROPRIATE RELIEF)
(Accused's name)	)	(MOTION TO DISMISS)
(Rate/Rank))	
(Service))	

1. Nature of Motion. (This is a motion to dismiss Specification 3 of Charge II on the grounds that the specification fails to state an offense in that...) (This is a motion by the government to...).

2. Summary of Facts. (Insert here a statement of the case and, if appropriate, a brief summary of the facts giving rise to, or supporting the motion. If none, so state.)

3. Discussion. (This paragraph should contain a discussion of the law supporting the motion, including argument, conclusion, and citations and quotations from legal authorities.)

4. Relief Requested. (The accused requests that the court dismiss Specification 3 of Charge II.) (...that the court order trial counsel to issue a subpoena to compel the attendance of A proposed order and subpoena are attached to this motion.) (The government requests that...)

5. Evidence. (No evidence will be presented in support of this motion.) (The (accused) (government) offers the following evidence to support this motion...).

6. Oral Argument. The (accused)(government) (does)(does not) desire to make oral argument on this motion.

_____	_____
(date)	Signature of counsel or party

A true copy of this motion was served _____(via)_____ on _____.

_____	_____
(date)	Signature of counsel or party

NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT

U N I T E D S T A T E S)	
	)	(GENERAL)(SPECIAL) COURT-MARTIAL
V.)	
	)	ANSWER TO
(Accused's name)	)	(MOTION FOR APPROPRIATE RELIEF)
(Rate/Rank)	)	(MOTION TO DISMISS)
(Service))	

1. Nature of Answer. This answer is in opposition to a motion (to dismiss Specification 3 of Charge II on the grounds that the specification fails to state an offense)(to...).

2. Summary-of Facts. (The answer may concur with the facts set out in the motion or may set forth the respondent's view of the, facts.)

3. Discussion. (This paragraph should set forth the position of the respondent to the motion, including a discussion of this law, argument, conclusions, citations and quotations from legal authorities.)

4. Relief Requested. (The United States requests that the motion to dismiss Specification 3 of Charge II be denied.)(the defense requests that...).

5. Evidence. (No evidence will be presented in rebuttal of this motion.)(The (defense)(government) offers the following evidence in opposition to the (accused's)(government's) motion...).

6. Oral Argument. The (accused)(government) (does)(does not) desire to make oral argument in opposition to this motion.

_____	_____
(date)	Signature of counsel or party

A true copy of this motion was served _____(via)_____ on _____.

_____	_____
(date)	Signature of counsel or party

THE BAILIFF'S HANDBOOK

The trial is a visible procedure dedicated to the propositions of equal justice under the law and protection of the community. A trial should be conducted so as to command the respect of the community it serves and to assure all that the law is functioning and will preserve order. Anything that distracts from respect for the law and the authority of the court is to be avoided.

The trial of a case should not be disturbed by small administrative matters. Every party to the trial should know what is expected of them. The military judge and trial counsel receive the assistance of a bailiff who has been instructed as to his or her responsibilities. The bailiff should be senior to the accused. A bailiff is disqualified if he or she is, or has been, in the same case, the accuser, a witness, an investigating officer, counsel, or has previously served as a member of the accused's court-martial. Trial counsel normally provides a briefing as to the bailiff's responsibilities.

The bailiff should receive specific instructions as to duties from trial counsel before and after each session of court. While the court is in session, the bailiff is under the supervision of the military judge and will assist the military judge and counsel in the conduct of an orderly trial. The bailiff should be familiar with the location of the principle offices and facilities, such as the library, within the law complex.

DUTIES OF THE BAILIFF**Prior to Trial**

1. The bailiff will report in the uniform designated by the military judge to trial counsel at least 30 minutes before the beginning of each day's proceedings. Thereafter, the bailiff will report to the military judge 15 minutes before the reconvening of each of the day's proceedings.

2. The bailiff ensures that the courtroom spectator area and deliberation room for court members are neat and orderly. He or she will place the furniture in the proper arrangement as directed by the trial counsel or the court reporter.

3. The bailiff, with assistance of trial counsel or the court reporter will ensure that the military judge has the desired desk supplies and that the court members have pencils and pads of papers in their deliberation room.

ENTRY AND DEPARTURE OF MILITARY JUDGE

4. When counsel for both sides, the accused, the reporter, and if applicable, court members, are present in the courtroom, the bailiff will notify the military judge and escort the judge to the courtroom. When the bailiff enters the courtroom with the military judge, he or she will announce: "All rise." When the military judge announces a recess or adjournment the bailiff will announce: "All rise." If need be, the bailiff will instruct the spectators to stand fast until the military judge has departed the courtroom. The military judge will advise the bailiff of any departure from this procedure.

ENTRY OF COURT MEMBERS

5. When the court members enter the courtroom and when the court members stand to be sworn, the bailiff will announce: "All rise" in a voice that can be heard by all, unless advised of different procedure by the military judge.

SPECTATORS AND MEMBERS OF THE NEWS MEDIA

6. Military trials are usually open to the public. Spectators and members of the news media are welcome in the courtroom to observe the trial proceedings, unless otherwise instructed by the military judge. The bailiff should see that they enter the courtroom, be seated, and leave quietly while the court is in session.

7. As the law does not permit picture taking or any type of broadcasting in or from the courtroom. The bailiff will not permit broadcasting-capable equipment to be taken into the courtroom. Any problems concerning this matter should be brought to the attention of the trial counsel without delay.

8. Courtroom rules do not permit spectators to eat, sleep, smoke, or engage in conversation while the court is in session. The bailiff should quietly and diplomatically inform offenders of these rules.

9. Anyone talking or making distracting noises in the areas outside of or adjacent to the courtroom while court is in session will be informed by the bailiff that a court is in session and they can be heard in the courtroom.

10. Rowdiness and violence are not unknown in the courtroom. The bailiff must be alert and prepared to take immediate steps to suppress unruly behavior.

COURT MEMBERS - IN CLOSED SESSION

11. When the court members are in closed session, they are the only ones permitted in the deliberation room. Therefore, the bailiff will not enter that room or permit anyone else to enter during the closed session.

12. The bailiff is the only contact between the court members and the parties to the trial during the periods the court members are deliberating. The bailiff will be available to the court members outside their deliberation room and immediately notify counsel and the military judge when the court members are ready for the court to be reopened.

13. If the bailiff is instructed to deliver any item or message to the court members in closed session, he must first inform the military judge and obtain his or her approval.

MISCELLANEOUS DUTIES DURING TRIAL

14. The bailiff will be prepared to furnish the following services:

a. Summon the court members to the courtroom at the beginning of each session of court when directed to do so by the military judge or trial counsel.

b. While the court is in session, collect written questions from the court members upon the military judge's request and hand them to the court reporter, the military judge, and counsel as instructed.

c. Summon witnesses to the courtroom when requested by counsel.

d. While the court is in session, deliver findings and sentence worksheets to the president of the court when instructed to do so.

e. Deliver items of evidence to the deliberation room, if instructed to do so by the military judge, when the members retire to the deliberation room.

f. Perform administrative errands during the trial as requested by the military judge or counsel.

THE BAILIFF'S RELATION
TO THE ISSUES AND PARTIES OF THE TRIAL

The bailiff must remain neutral during the trial of a case. In other words, the bailiff should not take the side of prosecution or defense. The bailiff must never participate in any discussion of the merits of the case and should never attempt to predict the

outcome of the trial. The bailiff must not make any comments on the performance of counsel or on the testimony of a witness. The bailiff shall not reveal to members the matters discussed during sessions of the trial held outside the presence of the members.

COURTS-MARTIAL MEMBER QUESTIONNAIRE

DATE: _____

You have been detailed to serve as a member of a court-martial. Accordingly, this questionnaire is submitted to you under Rule for Courts-Martial 912, Manual for Courts-Martial. Its purpose is to provide counsel with general information relevant to your participation in a particular case. This information will be made available to trial and defense counsel before trial so that they may have general information about your background before assembly of the court. This information will also be made available to the military judge. Disclosure of this information on this written questionnaire is voluntary. However, nondisclosure on this questionnaire may require you to divulge such matters at trial. By requesting this information on a one-time basis before you actually serve as a member, repetitive questions and unnecessary delay can be avoided.

- 1. Full name: _____

	Last	First	Middle
--	------	-------	--------
- 2. Rank: _____
- 3. Date of rank: _____
- 4. (For officers only) Source of commission: _____
- 5. Branch of service/MOS: _____
- 6. Date of birth: _____ Place of birth: _____
- 7. Marital status: _____ Age and sex of children: _____

- 8. Home of record: _____
- 9. Have you served in another Branch of Service? ____ Yes ____ No
 - a. Service: _____
 - b. Dates: _____
 - c. Highest rank attained: _____
- 10. Years of active duty: _____
- 11. (For officers only) Prior enlisted service? ____ Yes ____ No
 - a. Number of years of enlisted service: _____
 - b. Highest rank attained: _____
- 12. Current unit assignment and duty station (do not abbreviate), and anticipated PCS/PRD date: _____

- 13. Office telephone: _____ Fax #: _____
- 14. Home telephone: _____
- 15. Present job assignment (be specific): _____

16. Have you attended college (undergraduate):
_____ Yes _____ No If "yes," indicate the following:

	<u>1st College</u>	<u>2nd College</u>
a. Name of college:	_____	_____
b. Location:	_____	_____
c. Years attended:	_____	_____
d. Major field:	_____	_____
e. Minor field:	_____	_____
f. Degree awarded:	_____	_____

17. Have you attended post-graduate school?
_____ Yes _____ No If "yes," indicate the following:

	<u>1st University</u>	<u>2nd University</u>
a. University name:	_____	_____
b. Location:	_____	_____
c. Years attended:	_____	_____
d. Field of study:	_____	_____
e. Degree awarded:	_____	_____

18. Have you taken any law courses? (Including military schools):
_____ Yes _____ No If "yes," indicate the following:

	<u>School Attended</u>	<u>Dates Attended</u>	<u>Course Topic</u>	<u>Length of Course</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____

19. Have you had any specialized law enforcement training, civilian or military (either before or after entering the military service) other than that generally received by service members of your rank or position?
_____ Yes _____ No If "yes," describe below:

20. Have you worked in a provost marshal's or CID office, as a military policeman or military police officer, as a military police investigator, or in a civilian police or law enforcement agency?
_____ Yes _____ No If "yes," describe below and indicate dates:

21. Summary of military career (last 10 years).

<u>FROM / TO</u>	<u>COMMAND</u>	<u>SPECIFIC ASSIGNMENT</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Continue on back of the last page if necessary)

22. Have you, or any close relative or close friend, ever been involved in any of the following areas?

___ Yes ___ No If "yes," check applicable areas and explain briefly.

_____ Crime prevention (policeman, sheriff, detective, etc.)

_____ Medicine (doctor, nurse, pharmacist, etc.)

_____ Mental health (psychiatrist, psychologist, etc.)

_____ Law (Judge, attorney, law student, etc.)

_____ Social work (including human services, etc.)

23. Have you ever served as a legal officer?

___ Yes ___ No If "yes," indicate as follows:

<u>DATE</u>	<u>COMMAND</u>	<u>DESCRIPTION OF DUTIES</u>
_____	_____	_____
_____	_____	_____

24. Have you, as a commander, ever convened?

	<u>NUMBER</u>	<u>YEAR(S)</u>
a. Summary court-martial: ___ Yes ___ No	_____	_____
b. Special court-martial: ___ Yes ___ No	_____	_____
c. Article 32 pretrial investigation: ___ Yes ___ No	_____	_____
d. General court-martial: ___ Yes ___ No	_____	_____

25. Have you ever served as trial counsel or defense counsel?
___ Yes ___ No If "yes," indicate as follows:

Approximate number of times served:

Dates (years only) served: _____

26. Have you ever served as a summary court-martial?
___ Yes ___ No If "yes," indicate as follows:

a. Number of times: _____

b. Dates (years only): _____

27. Have you ever imposed non-judicial punishment under Art. 15?
___ Yes ___ No

28. Have you ever been appointed as a member of a general or special court-martial within the last 12 months?
___ Yes ___ No If "yes," indicate as follows:

How many times Date (year only)

SPCM: _____ _____

GCM: _____ _____

29. Have you had any experience as a member of a general or special court-martial prior to the last 12 months?
___ Yes ___ No If "yes," indicate as follows:

How many times Date (year only)

SPCM: _____ _____

GCM: _____ _____

30. Have you ever served as a juror in a civilian trial (state or federal)
___ Yes ___ No If "yes," indicate for each:

<u>Year</u>	<u>Civil or criminal case</u>	<u>State or federal court</u>
_____	_____	_____
_____	_____	_____

31. Have you ever been a witness at a court-martial?
___ Yes ___ No

32. Have you or a close relative ever been the victim of a crime?
___ Yes ___ No If yes, indicate the nature of the crime, how long ago it occurred, the relationship of the victim to you, and whether the individual was arrested or convicted.

TECHNOLOGY SUPPLEMENT
WESTERN JUDICIAL CIRCUIT RULES OF COURT
USE OF ELECTRONIC MEDIA

These rules supplement the Rules of Court, Western Judicial Circuit, to address the use of electronic media in courts-martial. The most critical aspects of the use of electronic media is notice to the detailed military judge and opposing counsel, presentation and memorializing in court use of electronic media for the record of trial.

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 Western Judicial 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 Western Judicial 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 Western 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 detailed military judge, 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 will be filed immediately with opposing counsel and the Court. 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 A docketing memo, notice of intent to use electronic media must

be provided to opposing counsel and to the presiding military judge at arraignment or Article 39(a) session held in advance of trial or at a milestone established by the detailed military judge. 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 evidence or rendition of facts via argument 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. Failure to provide notice at arraignment or Article 39a session or at a milestone established by the detailed military judge 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 Pre-Trial Order (PTO) 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 Pre-Trial Order (PTO) 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 military judge may require disclosure of the nature of the presentation, or the contents thereof, to the military 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 PTO 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 PTO, requesting such remote live testimony and setting out the justification therefor, pursuant to 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 detailed military 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 military 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 military judge.