



DEPARTMENT OF THE NAVY  
U.S. NAVY-MARINE CORPS TRIAL JUDICIARY  
WESTPAC JUDICIAL CIRCUIT  
PSC 473 BOX 122  
FPO AP 96349-0122

5810  
WPJC  
23 May 14

**WESTERN PACIFIC RULES OF PRACTICE**

From: Circuit Military Judge  
To: Distribution List

Subj: WESTERN PACIFIC RULES OF PRACTICE

Ref: (a) MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 108 (2012 ed.)  
(b) MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 801(b)(1) (2012 ed.)  
(c) NMCTJINST 5813.4B dtd 2 Aug 11 (Navy-Marine Corps Trial Judiciary Standard Operating Procedures Manual)  
(d) JAGINST 5813.4I w/CH-1 dtd 30 May 12 (Navy-Marine Corps Trial Judiciary)  
(e) JAGINST 5803.1D dtd 1 May 12 (Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General)

Encl: (1) Western Pacific Judicial Circuit Rules of Practice dtd 23 May 14.

1. **Purpose**: To prescribe Circuit Rules of Practice consistent with the references.
2. **Cancellation**: Western Pacific Rules of Practice 5810 WPJC dtd 1 Sep 10.
3. **Background**: The references authorize, and the sound administration of justice requires, circuit rules of practice to further implement the Navy-Marine Corps Trial Judiciary (NMCTJ) Uniform Rules of Practice, Appendix B to reference (c). The enclosed rules are intended to amplify the NMCTJ Uniform Rules of Practice and to facilitate the smooth and orderly trial of courts-martial within the geographically expansive Western Pacific Judicial Circuit. To the extent that inconsistencies are perceived, the rules contained in the references control.
4. **Action**:
  - a. Military judges within this Circuit shall ensure enforcement of the rules contained in the enclosure.
  - b. Counsel practicing before this Circuit shall become familiar with and comply with the references and these rules.
    - (1) RLSO Commanding Officers, Staff Judge Advocates, Officers in Charge, Military Justice Officers, and Senior Trial Counsels shall ensure compliance by trial counsels and bailiffs.
    - (2) DSO Commanding officer, Regional and Senior Defense Counsel shall ensure compliance by defense counsel and shall provide copies of the enclosure to civilian defense counsel.

Subj: WESTERN PACIFIC RULES OF PRACTICE

c. Trial Practitioners within the Western Pacific Judicial Circuit are encouraged to recommend improvements to these rules of practice. Written recommendations may be delivered to the Circuit Military Judge, PSC 473 Box 122, FPO AP 96349-0122.

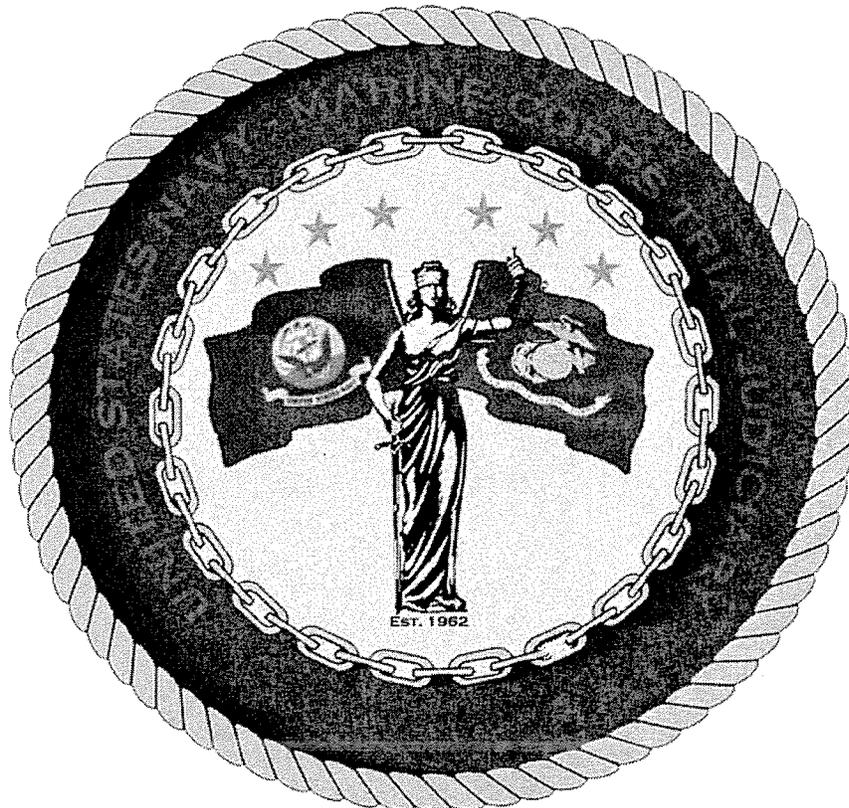
5. **Effective Date**: These rules shall become effective immediately and shall remain in effect until cancelled or otherwise modified by this or higher authority.



J. A. MAKSYM  
Commander  
Judge Advocate General's Corps  
U.S. Navy

Distribution:  
Chief Judge, NMCTJ  
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DSO, RDC Pacific

# WESTERN PACIFIC JUDICIAL CIRCUIT NAVY-MARINE CORPS TRIAL JUDICIARY



## RULES OF PRACTICE

Revised: 23 May 2014

Enclosure (1)

## Preamble

These rules are to promote a common understanding of the procedure of practice of military criminal law in courts-martial within the Western Pacific Judicial Circuit (WPJC).

### Rule 1: Applicability and Scope

**Rule 1.1:** These rules apply to all general and special courts-martial within the Western Pacific Judicial Circuit (WPJC) in which the accused is a member of the Naval service. Per reference (d), the WPJC shall be comprised of two regional districts; the Yokosuka District and the Okinawa District. Each district shall have a Military Judge assigned by the Circuit Military Judge. The designated Military Judge shall be responsible for the administration and coordination of judicial resources and activities within their assigned district. Areas of responsibility of the districts are as follows:

Okinawa District: The entire land mass of Okinawa and Iwakuni, Japan; and Korea.

Yokosuka District: Areas of Japan not covered by Okinawa District, Australia, New Zealand, Guam, Philippines, Diego Garcia, Singapore, and all other areas of Asia and the Pacific and Indian Oceans not assigned to other Navy-Marine Corps Trial Judicial Circuits.

**Rule 1.2:** If a convening authority desires that a trial should be held onboard ship or in the field, that request shall be granted by the jurists of this circuit in the absence of extraordinary circumstances which render that venue inappropriate or contrary to the ends of justice. Ordinarily, the Navy jurist within the Circuit will preside over cases at sea or onboard ship in port and the Marine Corps jurist shall preside over cases held in the field.

**Rule 1.3:** Counsel, as officers of the Court, shall comport themselves with these rules. These rules are subject to waiver by the presiding military judge upon showing of good cause.

**Rule 1.4:** Counsel (including trial, defense, and victim's legal) appearing within the WPJC shall familiarize themselves with these rules prior to their first appearance of record. All military counsel newly assigned to commands within the WPJC shall report to the Circuit Military Judge, or his or her designee for a briefing on these rules prior to their first appearance of record. At the Circuit Military Judge's discretion, this requirement may be satisfied with a telephone briefing. Counsel who violate these rules could expose themselves to sanctions in accordance with Article 48 of the Uniform Code of Military Justice.

**Rule 2: Purpose**

**Rule 2.1:** These rules are intended to facilitate a just determination of military justice issues and to enhance the orderly administration of military justice.

**Rule 3: Construction**

**Rule 3.1:** These rules shall be construed to ensure simplicity in procedure, fairness in administration, efficiency of operation, and the timely disposition of courts-martial. Noncompliance shall neither create a right in, nor remedy for, either party to a court-martial. Adherence to these rules directly reflects on the professionalism of those individuals involved. The arbiters of these rules will be the military judges of the WPJC and where any conflict arises, the Circuit Military Judge.

**Rule 3.2:** If any rule herein conflicts with binding case law, statute, the MANUAL FOR COURTS-MARTIAL, any constitutional provision, or any service regulation, then that rule shall have no effect.

**Rule 4: Referred Charges**

**Rule 4.1:** Trial counsel shall forward to the military judge a copy of all referred charges and corresponding convening orders as soon after receipt as possible but not later than seven (7) business days following referral by the convening authority

**Rule 5: Information Regarding Languishing Cases**

**Rule 5.1:** Upon request, Senior Trial Counsel / Military Justice Officer shall provide to the detailed military judge or, if no military judge has been detailed, to the Circuit Military Judge all information regarding any referred court-martial which is not moving to trial with all deliberate speed. Detailed defense counsel shall be a "copy to" addressee on all written case status information reports and will be present during any meeting directed by the military judge to discuss case status with government counsel.

**Rule 5.2:** As appropriate, the military judge may direct an Article 39(a) session for arraignment whenever it appears that a referred court-martial is languishing.

**Rule 6: Civilian Counsel**

**Rule 6.1:** If an accused retains civilian counsel, detailed defense counsel shall furnish civilian counsel with a copy of these Rules. Civilian counsel shall file with the appropriate clerk of court a written notice of appearance

**Rule 6.2:** Detailed defense counsel shall also inform civilian counsel of reference (e), JAGINST 5803.1D (Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General).

**Rule 7: Docketing Requests and Pretrial Orders**

**Rule 7.1:** Trial counsel or defense counsel may request an initial court session by submitting a Pretrial Information Report (PTIR), Attachment (1), and proposed Trial Management Order (TMO) for any referred case. The PTIR will include a copy of the referred charge sheet as enclosure (1) and a copy of the convening order as enclosure (2), unless previously provided. The TMO shall include proposed trial dates and filing deadlines for discovery, filing of motions and a date for a motion practice hearing. In the absence of a defense PTIR, the Government shall submit a PTIR and attendant proposed TMO no later than fourteen (14) days after the date of referral.

**Rule 7.2:** Either party may request an Article 39(a) session following referral of charges for any reason, using the docketing procedures listed below. Defense counsel or trial counsel may also request Rule for Courts-Martial 802 conferences at any time and for any reason.

**Rule 7.3:** The military judge will review the docketing requests and create and distribute the WPJC District docket for the following week. The docket is normally distributed electronically by the military judge each Friday. Senior Trial Counsel / Chief Trial Counsel shall ensure that the weekly docket is disseminated to all parties concerned with the scheduling of a particular case.

**Rule 7.4:** Counsel shall promptly review the docket and immediately notify the military judge of any concerns or discrepancies.

**Rule 7.5:** Proposed trial dates for special courts-martial should be within 30 days of the date of the docketing request or arraignment, and within 45 days of the date of docketing request or arraignment for general courts-martial. Exceptions to this general Rule require the prior approval of the military judge.

**Rule 7.6:** Counsel shall submit pretrial documentation addressing preliminary matters (found on page 58 of the 2013 Navy-Marine Corps Trial Judiciary Trial Guide) in accordance with the court-ordered deadlines.

**Rule 7.7:** If a case is withdrawn, trial counsel shall immediately submit a certification of withdrawal.

**Rule 7.8:** Any filing addressed in this section may be accomplished by electronic means, provided the following requirements are met: (1) a hard copy of the document is signed and dated by counsel and the original delivered to the Clerk of Court in either Yokosuka or Okinawa depending upon the venue of the litigation; (2) the filing is served on the military judge; and (3) the filing is served on opposing counsel. Accordingly, unsigned filings will NOT be accepted by the Court. It is the responsibility of counsel making the filing to ensure the foregoing requirements for electronic filing are met.

**Rule 8: Ex Parte Communications with the Military Judge**

**Rule 8.1:** Ex parte communications with a military judge are prohibited, except for routine administrative matters and as otherwise provided by law.

**Rule 8.2:** “Routine administrative matters” include docketing and logistical matters pertaining to the time, location, and length of court sessions.

**Rule 8.3:** The prohibition against ex parte communications extends to electronic mail. Counsel shall include opposing counsel as a “copy” addressee on all electronic mail sent to a military judge about case related matters, regardless of whether it is merely administrative in nature.

**Rule 8.4:** When appropriate, but at his/her total discretion, at the conclusion of trial military judges may conduct critiques or offer suggestions regarding counsel performance in courts-martial to improve the administration of justice.

**Rule 9: Discovery**

**Rule 9.1:** Counsel will comport themselves with the mandates of military jurisprudence relative to discovery. Included in this ongoing duty is the recognition that the military recognizes a mantra of “open discovery”. Counsel shall not countenance the festering of discovery disputes and they shall be brought to the attention of the Court as soon as the parties (one or both of them) recognize that a discovery conflict cannot be resolved minus judicial intervention.

**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:** Motions shall be submitted in accordance with the trial deadlines established by the military judge at arraignment or as ordered in an approved Motion for Docketing. Unless otherwise established by the trial judge, motions and responses shall be submitted by 1700 on the filing deadline. If no such filing deadlines have been established, counsel shall submit motions sufficiently in advance of trial to permit the opposing side to answer. *See Rule 7.1.*

**Rule 10.3:** Motions and any attachments will be filed with the Court and served on opposing counsel. Service may be accomplished by electronic means. Transmitting counsel will ensure that such documents are actually received by the Court and opposing counsel. Whenever motions are filed electronically with the Court, the original document shall also be filed with the cognizant clerk of court in either Yokosuka or Okinawa.

**Rule 10.4:** All motions must certify service on opposing counsel. Any motion seeking to introduce evidence pursuant to Mil.R.Evid 412 of the sexual conduct or sexual

predisposition of an alleged victim of a qualifying sexual offense must certify service on the alleged victim. Additionally, any motion brought under Mil.R.Evid. 513 seeking production or admission of records of a privileged communication between a patient and a psychotherapist must certify service on the patient, or the patient's guardian, conservator, or legal representative.

**Rule 10.5:** Documentary evidence submitted with motions shall be marked numerically as attachments and paginated. For all multi-page documents, counsel will paginate utilizing the "Page x of y" format.

**Rule 10.6:** Unless otherwise directed by the presiding judge, counsel shall attach proposed findings of fact and conclusions of law to their respective brief and provide an electronic copy in MS word to the presiding judge.

**Rule 10.7:** It is the responsibility of counsel to ensure prompt delivery of all motions and/or responses as well as all supporting documents by the appropriate filing date and to confirm receipt by the military judge.

### **Rule 11: Continuances**

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

### **Rule 12: Situs**

**Rule 12.1:** Subject to Rule for Courts-Martial 504(d)(1), the military judge shall designate the situs of the trial. However, in the absence of good cause, any request to hold a trial onboard a vessel or in the field shall be granted.

### **Rule 13: Security / Uniform / Physical Restraint / Civilian Attire**

**Rule 13.1:** Ordinarily, the Government is responsible for ensuring that the courtroom facility is in compliance with all applicable orders and directives governing courtroom security and safety requirements. The trial judge may prescribe additional rules to establish and maintain courtroom security as deemed necessary. Counsel must immediately notify the trial judge of any unusual circumstances or potential threat to the accused, a party, or trial participant. If such circumstances occur in the courtroom, counsel will request an "Article 39(S)" session [code for courtroom security incident] and will follow the directions of the trial judge. Trial counsel will ensure that bailiffs and security personnel are briefed and trained to recognize the significance of a request for an "Article 39(S)" session. Unless specifically permitted by the trial judge, no judicial proceeding in the circuit will proceed in the absence of a bailiff.

**Rule 13.2:** The wearing or carrying of weapons in the courtroom is prohibited, except when specifically authorized by the trial judge. This rule applies to all federal agents including Naval Criminal Investigative Service (NCIS) agents and Criminal Investigation Division (CID) personnel.

**Rule 13.3:** The trial judge shall designate the proper uniform and civilian attire to be worn by all persons required to be present at trial. Unless the trial judge directs otherwise, the uniform for all military participants in special or general courts-martial is as follows:

- U.S. Navy seasonal dress uniform (summer whites or service dress blues).
- U.S. Marine Corps service “A”, “B”, or “C” uniform pursuant to USMC directives.
- Other service participants will wear their service equivalent dress uniforms.

The trial judge may prescribe alternative uniforms if conditions warrant. Except as otherwise provided by the military judge, all military personnel required to be present at trial shall appear in the designated service uniform.

**Rule 13.4:** The accused shall wear the appropriate insignia of grade and may wear any decorations, emblems, or ribbons to which entitled. Generally, the accused and defense counsel are responsible for ensuring that the accused is properly attired. However, when the accused is in pre-trial confinement or in a Class Charlie liberty status, that responsibility falls to the Government.

**Rule 13.5:** Physical restraint shall not be imposed on the accused or any witness during open sessions of the court-martial unless prescribed by the trial judge. No accused or witness in open court shall wear any tag or symbol which identifies that person as being in restriction or in custody. Neither the accused nor any other participant shall appear at any session of a special or general court-martial in a restriction or confinement uniform.

**Rule 13.6:** Brig chasers / security personnel shall not sit in the gallery minus the assent and imposition of appropriate conditions by the trial judge.

### **Rule 14: Spectators**

**Rule 14.1:** The trial judge is responsible for the control of court-martial spectators.

**Rule 14.2:** This is a public federal judicial proceeding. Spectators are encouraged to attend any session of the trial, unless otherwise determined by the trial judge.

**Rule 14.3:** 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 14.4:** Counsel shall refrain from conferring with spectators or other non-participants across the bar while court is in session. Counsel shall not pass or receive notes across the bar. Supervisory attorneys shall not communicate with counsel across the bar while court is in session.

### **Rule 15: Punctuality**

**Rule 15.1:** The military judge shall be notified promptly of any delays and the reasons therefore. All parties are expected to be punctual for all matters involved in the trial of a case.

**Rule 15.2:** Trial counsel shall notify the accused's command of the date, time, and place of trial that the presence of the accused is required, and that appropriate transportation to the situs of the trial should be arranged. Generally, trial counsel is responsible for ensuring the timely presence of an accused who is in pretrial confinement or other restraint. However, after the accused arrives at the place of trial, defense counsel is responsible for the timely presence of an accused at all required court sessions. Defense counsel is also responsible for the timely presence of an accused that is not in pretrial restraint.

### **Rule 16: Bailiff**

**Rule 16.1:** A bailiff shall be present at every judicial proceeding unless otherwise directed by the trial judge. Trial counsel shall ensure the bailiff is provided a copy of Attachment (2) and is thoroughly briefed as to the bailiff's responsibilities.

**Rule 16.2:** Bailiff's shall be senior to an accused in rank or grade, unless otherwise determined by the trial judge.

### **Rule 17: Guards**

**Rule 17.1:** When appropriate, a guard (or guards) shall be detailed by the convening authority or the courtroom security officer to ensure proper custody of the accused and to assist the court in preserving order and decorum. The military judge may also order that a guard or guards be detailed in order to preserve courtroom decorum or ensure courtroom security during the proceedings. Guards, brig chasers, or security personnel shall not sit in such close proximity to the accused so as to imply that the accused is a physical threat to any witness, court member, or spectator unless directed otherwise by the military judge.

### **Rule 18: Entry and Departure of the Military Judge**

**Rule 18.1:** 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.

**Rule 19: Entry and Departure of Members**

**Rule 19.1:** All persons in the courtroom, except the court reporter and the military judge, without regard to rank or grade, shall rise when the members enter or leave the courtroom as a body but not individually during private voir dire.

**Rule 20: Voir Dire**

**Rule 20.1:** The military judge shall determine the procedure for conducting voir dire. *See* R.C.M. 912(d). The trial counsel is responsible for ensuring that all court members complete the WPJC Court-Martial Member Questionnaire, Attachment (3) to these Rules.

**Rule 21: Prohibited Items in Courtroom**

**Rule 21.1:** The trial judge will determine which liquids are permitted in the courtroom for consumption. Smoking is strictly prohibited. Trial participants will not chew gum or tobacco or use snuff. Weapons and objects that may be used as weapons will not be permitted in the courtroom without specific authorization of the trial judge.

**Rule 21.2:** Unless specifically authorized by the military judge, and except for the equipment required by the court reporter, no video, photographic, or audio recording devices are permitted in the courtroom. Additionally, unless specifically authorized by the military judge, video and audio recording and the taking of photographs of court proceedings, and radio or television broadcasting of proceedings from the courtroom, is prohibited. Cellular telephones, pagers, ipads, and all other cameras and recording gear are prohibited.

**Rule 22: Witnesses**

**Rule 22.1:** Trial counsel shall swear each witness called to testify and shall ensure that the military witnesses' name, grade, and military organization, or civilian witness' name and city of residence are announced in court and made part of the record.

**Rule 22.2:** Despite the geographic vastness of the Western Pacific Judicial Circuit, live in-person testimony from witnesses is the expected norm (in the absence of a stipulation of expected testimony) during trial on the merits. Failure to timely litigate denials of witness requests are not considered proper cause for requesting telephonic testimony. Nothing in this rule shall be construed to limit or alter the trial judge's discretion or responsibilities under Mil.R.Evid. 611. Counsel shall notify the military judge when such witnesses are expected to be remotely or telephonically presented by the motions filing deadline so that appropriate rulings and coordination may be accomplished.

**Rule 22.3:** Witnesses shall be instructed by counsel that, when testifying, they must not chew gum or tobacco, wear dark glasses, or use slang expressions or profanity, except as

may be required in the presentation of the case. Witnesses shall be told not to engage court members or the military judge in casual conversation.

**Rule 22.4:** Counsel shall ensure that their witnesses understand the physical arrangements of the courtroom, where they should go, and how they should conduct themselves.

**Rule 22.5:** Witnesses shall be treated with respect by counsel. They must not be crowded, shouted at, ridiculed, humiliated, or otherwise abused. However, they shall address the Court as “your honor” or “judge” and treat counsel as they would any commissioned officer.

**Rule 22.6:** Counsel shall ensure that their respective witnesses will be immediately available when called to testify. This includes informing the witness of the time, location, and uniform for court, as well as making any arrangements necessary to allow a civilian witness to come aboard the base. The fact that the government has agreed to, or has been ordered to produce a witness on behalf of the defense, does not relieve the defense counsel of these requirements for defense witnesses. Counsel shall coordinate with each other and the trial judge to reduce, whenever practicable, the amount of time a witness is required to wait prior to testifying.

**Rule 22.7:** No later than five working days prior to trial, counsel who intend on using 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 trial judge as soon as possible but no later than four business days prior to the date of trial.

**Rule 22.8:** Separate waiting areas for defense and government witnesses are required. To the greatest extent possible, a waiting area that is removed from and out of the sight and hearing of defense witnesses will be made available to government witnesses.

**Rule 22.9:** Counsel shall provide their respective witnesses with information and, to the extent practicable, assistance concerning the availability of services such as transportation, parking, childcare, lodging, and courtroom translators or interpreters.

#### WITNESS TESTIFYING REMOTELY VIA VIDEO TELECONFERENCING OR TELEPHONICALLY

**Rule 22.10:** 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 remotely will be coordinated with the military judge.

**Rule 22.10(a):** Requests for remote testimony over the objection from the opposing party will be made as soon as the perceived need for remote testimony is discovered.

**Rule 22.10(b):** When a military judge has authorized VTC testimony over the objection of one of the parties, the procedural safeguards specified below shall be utilized. The

military judge may deviate from the procedures based upon the exigencies of the situation.

**Rule 22.10(c):** Two-way audio and visual transmissions shall be provided in color transmissions should be used. The two VTC locations must have telephonic connectivity and access to a fax machine or other means of receiving documents / written materials. A VTC technician or knowledgeable support personnel will be available at both locations. The court reporter will transcribe the VTC witness' testimony in the same manner as a normal witness.

**Rule 22.10(d):** A bailiff will be detailed at the witness's remote location. The remote bailiff will identify, on the record, those present at the remote location and will ensure that the VTC witness is seated far enough away from any authorized spectators so that the spectators cannot communicate with the VTC witness. During the VTC witness's testimony, the bailiff will ensure that there is no non-verbal communication between the VTC witness and authorized spectators. The remote bailiff will also ensure that the VTC witness has no access to papers, exhibits, or the like while testifying unless authorized by the military judge. All spectators at the remote VTC location must be identified on the record and authorized by the military judge.

**Rule 22.10(e):** The VTC witness will be seated, except when sworn, and the image projected to the trial location will be a full torso frontal image. A monitor will be placed so the VTC witness will see the court proceedings as if the witness were sitting in the witness stand. Like all witnesses, the VTC witness will hear all objections and Article 39(a) sessions unless otherwise directed by the military judge. During any breaks in testimony, the remote bailiff will ensure that the VTC witness does not communicate with authorized spectators except as allowed by the military judge.

### **Rule 23: Objections**

**Rule 231:** Before members, counsel shall initially state only the nature and basis of an objection, without further elaboration. The entire objection may be stated in the absence of members.

### **Rule 24: Trial Exhibits**

**Rule 24.1:** Prosecution exhibits will be numbered consecutively with Arabic numerals, and defense exhibits will be identified with capital letters.

**Rule 24.2:** Prosecution exhibits intended to be introduced at trial should be marked consecutively as "Prosecution Exhibit \_\_\_ for identification" or with a suitable abbreviation.

**Rule 24.3:** Defense exhibits intended to be introduced at trial should be marked consecutively as "Defense Exhibit \_\_\_ for identification" or with a suitable abbreviation.

**Rule 24.4:** Counsel shall mark each page of documentary exhibits “Page [*page number*] of [*total number of pages*].” Example: Page 1 of 20.

**Rule 24.5:** In formulating questions to witnesses concerning an exhibit, counsel will refer to the exhibit by the exhibit number or letter.

**Rule 24.6:** If an exhibit is not compatible for inclusion into the record of trial, proffering counsel should prepare a substitution before trial and shall ask the court’s permission to make the substitution at the first point the exhibit for identification is brought to the court’s attention. Such substitution for an item of real evidence shall include an accurate and detailed description, either pictorially or in writing, stating the exhibit’s size, shape, weight, substance, color, serial number, model, brand name, and any other physical or identifying characteristics.

**Rule 24.7:** All audio recordings and those video recording that contain audio portions shall be transcribed by the party offering such a recording prior to trial, unless otherwise permitted by the military judge. If a portion is inaudible, the transcript shall so state. A copy of the transcript shall be served on opposing counsel, with a certificate of service, prior to trial in sufficient time to allow for ascertaining the accuracy of the transcript. The recording or a copy thereof shall be made available to opposing counsel upon request. The transcript and recording shall be marked as exhibits and offered to the court at the same time.

**Rule 24.8:** Exhibits shall be numbered by the court reporter, not by the counsel, in the anticipated order of presentation prior to trial or during recess.

**Rule 24.9:** The proponent of documentary or photographic evidence should arrange to have a copy of the original exhibit on the date of trial for each member of the court as well as a copy for opposing counsel and the military judge.

**Rule 24.10:** Any exhibits (including computer generated exhibits or any other exhibits or demonstrative aids prepared prior to trial) or evidence intended for use during argument or opening statement, must first be shown to opposing counsel no less than 1 day before trial and then approved for use by the military judge.

**Rule 24.11:** For those courtrooms in which electronic media or “smart courtroom” technology has been installed, additional rules and protocols may be necessary for the handling and presentation of exhibits.

### **Rule 25: Appellate Exhibits**

**Rule 25.1:** Appellate exhibits will be numbered consecutively with Roman numerals at the direction of the military judge.

### **Rule 26: Record of Trial**

**Rule 26.1:** A complete and accurate record of the proceedings is needed to protect the rights of all parties. During the course of trial, trial counsel will ensure that uncommon names, places, and things are spelled out on the record, that witnesses respond verbally and not nod or shake their heads, and that descriptions of size, distance, and location are clear and unambiguous.

**Rule 26.2:** At the conclusion of the trial, detailed defense counsel will indicate who (e.g., detailed defense counsel, individual military counsel, civilian counsel, or accused) will accept service of the accused's copy of the record of trial and staff judge advocate's recommendation (if applicable). In addition, detailed defense counsel will indicate who will represent the accused in post-trial matters. This acknowledgement shall be reflected in writing through an appellate rights advisement, signed by the accused, and attached to the record of trial.

**Rule 26.3:** 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 changes and corrections.

**Rule 26.4:** Defense counsel shall be given the opportunity to review the record of trial prior to authentication unless unreasonable delay will result. The review by defense counsel, or lack thereof, must be documented in the record before the military judge will authenticate the record. *See* R.C.M. 1103(i)(1)(B).

**Rule 26.5:** All corrections to the record will be legibly made in black ink and initialed by the trial counsel or military judge. Defense counsel shall not mark on the record of trial, but may suggest to the trial counsel or the military judge appropriate changes. *See* R.C.M. 1103(i)(1)(B), Discussion.

**Rule 26.6:** The record of trial for all special and general courts-martial, regardless of acquittal or sentence, shall be forwarded to the military judge for authentication. In the non-temporary absence of the military judge, the trial counsel, if present throughout the trial, may authenticate the record. In such cases, the Circuit Military Judge will, upon request, prepare and sign a statement regarding the absence of the military judge for inclusion in the record of trial. Temporary absences which do not justify authentication by the trial counsel include expected absence of 60 days or less.

### **Rule 27: Court Filings / Document Size / Type Font**

**Rule 27:** All documents filed with the Court shall be on 8.5 inch by 11 inch paper, double spaced, and be in 12-point Times New Roman font.

**Attachments**

- (1) Pretrial Information Report format
- (2) Bailiff's Handbook
- (3) Court-Martial Member Questionnaire

**PRETRIAL INFORMATION REPORT (PTIR)**

Date Submitted:

Subj: U.S. v.  GCM  SPCM  ART 32

Ref: (a) Uniform Rules of Practice for U.S. Navy-Marine Corps Trial Judiciary

- Encl: (1) Trial Management Order  Attached  Previously Submitted
- (2) Copy of Referred Charge Sheet  Attached  Previously Submitted
- (3) Copy of Convening Order  Attached  Previously Submitted
- (4) Copies of Relevant Portions of Written Orders/State or Fed Statutes  Attached  Not Applicable
- (5) Proposed Elements for State/Fed Offenses  Attached  Not Applicable

1. Pursuant to Rule 6.1 of reference (a), the marked enclosures and the following information are provided:

- a. Requested Court Date:  Type of Session:
- b. Previous court session?  Yes  No If yes, MJ and date:
- c. Proposed court site:  Expected duration:  Hours
- d. Related case(s):
- e. Civilian counsel:
- f. Anticipated forum:  MJ Alone  Officer Members  Enlisted & Officer Members
- g. Anticipated pleas:  NG (to all)  G (to all)  Mixed Pleas or Exceptions (Specify in Part 3).
- h. Pretrial agreement?  ATTACHED  NO  ANTICIPATED BY
- i. Article 39(a) session requested by  TC  DC to resolve:

2. Trial Schedule:

- a. Government discovery due:
- b. Defense witness requests / Reciprocal discovery 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 (alibi, etc...) due:
- i. Page 58 matters (voir dire, witness lists, instructions, etc... ) due:
- j. **TRIAL DATES:**

Government Proposed Dates	Defense Proposed Dates
<input type="text"/>	<input type="text"/>

3. Additional comments / Explanation for missing counsel signature:

Trial Counsel or Senior TC Signature

Printed Name of TC & Phone Number

Defense Counsel Signature

Printed Name of DC & Phone Number

## **THE BAILIFF'S HANDBOOK**

This trial is a visible procedure dedicated to the propositions of equal justice under 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 detracts 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 principal 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 trial counsel or the court reporter.
3. The bailiff, with assistance of trial counsel/court reporter, will ensure that the military judge has the desired

desk supplies and that the court members have pencils and pads of paper 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 a 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 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 THE 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 court 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**

15. The bailiff must remain neutral during the trial of a case. In other words, the bailiff should not take the side of prosecution or the 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 until after the trial. The bailiff shall not reveal to members the matters discussed during sessions of the trial held outside the presence of the members.

# WESTERN PACIFIC JUDICIAL CIRCUIT COURT-MARTIAL MEMBER QUESTIONNAIRE

In accordance with Rule for Courts-Martial 912, please complete the following questionnaire and provide to the appropriate authority. Its purpose is to provide the Convening Authority, counsel, and the Military Judge with general information relevant to your participation in a particular case. Disclosure of the 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. Further, because of the sensitive personal information requested, no copy will be retained on file outside of the Unit Legal Office. However, if you are detailed to serve as a court-martial member, then a copy will be attached to the record of trial. Please do not discuss the questionnaire or your answers with anyone. It is very important that the answers be your's and your's alone.

PLEASE PRINT YOUR ANSWERS AND USE INK TO INSURE LEGIBILITY.

1. Full name: \_\_\_\_\_ Active Duty Base Date \_\_\_\_\_
2. Rank/Grade: \_\_\_\_\_ Date of Rank: \_\_\_\_\_ Service/MOS: \_\_\_\_\_
3. Home of record: \_\_\_\_\_ Place of birth: \_\_\_\_\_
4. Date of Birth: \_\_\_\_\_ Gender: \_\_\_\_\_ Race/Ethnic Origin: \_\_\_\_\_ Marital Status: \_\_\_\_\_
5. Age and gender of any children \_\_\_\_\_  
\_\_\_\_\_
6. Age, race, and occupation of spouse if married \_\_\_\_\_
7. Have you ever served in another branch of service: \_\_\_\_\_ Yes \_\_\_\_\_ No
  - a. Service: \_\_\_\_\_
  - b. Dates: \_\_\_\_\_
  - c. Highest rank attained: \_\_\_\_\_
8. Date Current Tour Began \_\_\_\_\_ Years of Service \_\_\_\_\_
9. Current billet: \_\_\_\_\_ Work Phone: \_\_\_\_\_
10. Unit (down to Company Level): \_\_\_\_\_
11. Military Awards / Decorations: \_\_\_\_\_  
\_\_\_\_\_
12. Civilian Education: College / Vocational / Civilian Professional School / Civilian Post-Graduate:  
Date graduated or dates attended (and number of years), school, location, degree/major: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
13. Military Education. Dates attended, school/course title. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WESTERN PACIFIC JUDICIAL CIRCUIT  
COURT-MARTIAL MEMBER QUESTIONNAIRE**

14. Duty Assignments. Last four assignments, units, and dates of assignments. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

15. Have you had any combat tours? \_\_\_\_ Yes \_\_\_\_ No. If so, how many? \_\_\_\_\_

16. Have you ever sat as a court-martial member or juror in any other case? \_\_\_\_\_ If so, how many special courts-martial \_\_\_\_\_; general courts-martial \_\_\_\_\_; civilian trials \_\_\_\_\_. How many of these cases resulted in an acquittal? \_\_\_\_\_ What were the general nature of the charges for these cases (rape, murder, theft . . .) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

17. Have you ever conducted an Article 15 or Summary Court-Martial? \_\_\_\_ If so, how many times? \_\_\_\_

For what type of offenses? \_\_\_\_\_

How many of these cases resulted in a finding of Not Guilty? \_\_\_\_\_

18. Have you, a close relative, or friend ever had any legal or law enforcement training or experience (including Legal Officer School)? Explain. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

19. Have you, a close relative, or friend ever been the victim of any crime, including sexual assault, whether or not reported to law enforcement authorities? \_\_\_\_\_. Explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

20. Have you, a close relative, or friend ever been the witness to any crime? Explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

21. Have you, a close relative, or friend ever testified in any legal proceeding? Explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

22. Have you, a close relative, or friend ever been accused of, arrested for, or investigated for committing any crime, including sexual assault? \_\_\_\_\_ Explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

23. Have you participated in any sexual assault awareness training in the past twelve (12) months?

\_\_\_\_\_  
\_\_\_\_\_

**WESTERN PACIFIC JUDICIAL CIRCUIT  
COURT-MARTIAL MEMBER QUESTIONNAIRE**

24. If so, what training have you participated in?

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25. What was your role in the training, in other words, did you receive training, give training, or both?

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26. What was the format of the training? (i.e, lecture, seminar, on-line, etc.)

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27. Was the term "sexual assault" used during the training? \_\_\_\_\_

28. Was the term "consent" used during the training? \_\_\_\_\_

29. Did the training mention any statistics about the frequency of sexual assault in the armed services?

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30. Did the training mention any allegations of false reporting? \_\_\_\_\_

31. In the past twelve (12) months, have you seen any service or DOD-produced videos about sexual assault awareness? \_\_\_\_\_

32. Have you heard any statements from civilian or uniformed members of the Department of Defense about prosecuting allegations of sexual assault? \_\_\_\_\_

33. Have you been pressured in any way by your Commander, or by any other superior in your chain of command, to decide the issues in court-martial cases in a particular fashion? \_\_\_\_\_

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34. Have you or someone you know worked as a counselor, first responder, or medical provider, or in some similar capacity, in a case involving sexual assault? \_\_\_\_\_

35. Do you belong to any organization (religious, social, etc.) that is opposed to the lawful use of alcohol?

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36. Have you ever dealt with any military or civilian law enforcement agency (CID, NCIS, local police, etc...)? \_\_\_\_\_ If so, was/were your experience(s) positive or negative? Explain \_\_\_\_\_

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37. What is your opinion of the military's criminal justice system? \_\_\_\_\_

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38. Do you believe that anything about your religious beliefs would make it difficult for you to sit in judgment of another person? Explain. \_\_\_\_\_

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**WESTERN PACIFIC JUDICIAL CIRCUIT  
COURT-MARTIAL MEMBER QUESTIONNAIRE**

39. After you leave the Service, what profession or job do you plan to pursue and why? \_\_\_\_\_

40. Have you ever visited a military brig? \_\_\_\_\_ For what reason? \_\_\_\_\_

41. Do you have any specialized training in medicine, science, psychology, or biology? If yes, explain. \_\_\_\_\_

42. Do you believe you may be disqualified to sit as a court member for any reason? Explain. \_\_\_\_\_

43. If you were the accused at a court-martial, would you be willing to be judged, and if found guilty, sentenced by a person who has provided information similar to your responses and who has your personal temperament, views and morals? \_\_\_\_\_

\*Signature of Member: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewed and made any necessary changes: Initials/Date \_\_\_\_\_

\*NOTE: Electronic signatures are NOT authorized.