



**UNIFORM RULES OF PRACTICE  
FOR  
U.S. NAVY-MARINE CORPS TRIAL JUDICIARY**

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## **PREAMBLE**

These Uniform Rules govern courts-martial presided over by a military judge and supersede all rules previously published as the Uniform Rules of Practice before Navy-Marine Corps Courts-Martial.

There may be local rules in each judicial circuit that further implement these Uniform Rules. Local rules must be consistent with these Uniform Rules.

### **Rule 1: APPLICABILITY**

**Rule 1.1:** These Uniform Rules apply to the trial of all general and special courts-martial in which the accused is a member of the naval service. Counsel, as officers of the court, court reporters, clerks of court, and bailiffs are required to follow these and local rules.

**Rule 1.2:** All participants to the court-martial must 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.

### **Rule 2: PURPOSE**

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

### **Rule 3: CONSTRUCTION**

**Rule 3.1:** These Uniform Rules will 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 must be read in accordance with the law.

**Rule 4: REFERRED CHARGES**

**Rule 4.1:** After the referral of charges, the trial counsel must provide the responsible judicial circuit with a copy of those charges, along with the appropriate convening order, as soon as possible. (See JAGINST 5813.4I CH-2 establishing Judicial Circuits and Areas of Responsibilities.)

**Rule 4.2:** Trial counsel must immediately notify defense counsel, the Clerk of Court, and the military judge if referred charges have been withdrawn.

**Rule 5: CIVILIAN DEFENSE 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. Prior to appearing in court, civilian counsel must file with the Clerk of Court a written notice of appearance. This notice will be in the form of a pleading and must contain the following: name of the accused, counsel's name, office address, telephone number(s), e-mail address and jurisdiction(s) where the counsel is presently admitted to practice.

**Rule 5.2:** Detailed defense counsel must inform the civilian counsel of the rules of Professional Conduct of Attorneys Practicing Under The Cognizance and Supervision of the Judge Advocate General (JAGINST 5803.3 series).

**Rule 5.3:** Once civilian counsel notifies the clerk of court or the military judge of representation concerning the referred charges, civilian counsel may not withdraw from such representation without permission of the military judge.

**Rule 6: DOCKETING/TRIAL MANAGEMENT ORDERS**

**Rule 6.1:** The circuit judge of each judicial circuit will establish and promulgate docketing procedures for cases within their circuit. These procedures must

contain features that ensure positive control over the docketing and processing of courts-martial. Circuit rules shall operate to facilitate access to the court upon timely request by any party.

**Rule 6.2:** The circuit military judge will publish the circuit docket on a weekly basis in an online format available to the public and in accordance with OJAG standard operating procedures.

**Rule 6.3:** Docketing judges and military judges presiding over arraignments shall use the standard trial management order located at:  
[http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).

**Rule 7: PERSONALLY IDENTIFIABLE INFORMATION (PII)**

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

**Rule 7.2:** Unnecessary PII must be redacted in all documents (e.g., pleadings, discovery material) that are electronically transmitted. At a minimum, social security numbers, home addresses, telephone numbers, e-mail addresses, dates of birth, financial account numbers, and names of minors shall be redacted. Medical/psychiatric records must be sent by encrypted e-mail or through a secured access file exchange.

**Rule 7.3:** While names of minors will be used during the course of the trial, all named minor victims will be identified by their initials on the charge sheet and in pleadings.

**Rule 7.4:** All Navy personnel shall comply with JAG/CNLSC Instruction 5211.11 of 14 Jun 13. All Marine personnel shall comply with MARADMIN Active Number: 181/10 R291951Z MAR 10. All active duty counsel will comply with SECNAVINST 5211.5E dtd 28 Dec 2005 (5211.5E series).

**Rule 8: CONFERENCES & COMMUNICATIONS WITH THE MILITARY JUDGE**

**Rule 8.1:** Conferences between the military judge and trial and

defense counsel are authorized by R.C.M. 802. The presence of the accused is neither required nor prohibited. The purpose of such conferences is to inform the military judge of anticipated issues and to expeditiously resolve matters on which the parties can agree, but not to litigate or decide contested issues. The military judge must summarize all R.C.M. 802 conferences for the record at the next Article 39(a) session of the court, including the presence or absence of the victims' legal counsel. Whenever practicable, the military judge shall include the victims' legal counsel in R.C.M. 802 conferences in which the alleged victim has an identifiable interest. See Rule 36.4 below.

- Rule 8.2:** *Ex parte* communications with a military judge concerning a case that is pending before that military judge are prohibited, except for routine administrative matters or as provided by law.
- Rule 8.3:** Routine administrative matters include, but are not limited to, docketing and logistic matters (e.g. uniform and facility issues and matters that may affect time and duration of court sessions).
- Rule 8.4:** After adjournment of a case, 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* or jointly.

#### **Rule 9: DISCOVERY**

- Rule 9.1:** Counsel will promptly comply with military law and service regulations concerning discovery.
- Rule 9.2:** Discovery requests should be as specific as possible to avoid misunderstanding and to assist in quickly obtaining requested information.

#### **Rule 10: MOTIONS**

- Rule 10.1:** Counsel are encouraged to discuss motions or potential motions with opposing counsel prior to any Article 39(a) session to determine whether an issue is in fact controverted and to narrow the issues in

contention to the maximum extent possible. Counsel should advise the military judge in a R.C.M. 802 conference as early as possible of motions that are likely to arise at trial, including any unusual motions or objections, and of any relevant authority then known to counsel.

**Rule 10.2:** When not prohibited by the military judge, motions and other documents may be filed with the court, opposing counsel, and if applicable, victims' legal counsel, by electronic transmission. It is the responsibility of the filing party to ensure that the filing is received by the intended court, opposing party, victims' legal counsel, or non-party legal counsel. In cases where a named victim is not represented by victims' legal counsel, any notice or motion which implicates an alleged victim's rights shall be provided to the alleged victim via the trial counsel. As appropriate, electronic mail transmissions used to communicate with the court or with opposing counsel should be maintained by the originator and provided to the court reporter for inclusion in the record of trial.

**Rule 10.3:** Each motion must include or be accompanied by a statement of the specific points of law and authority that support the motion, including, where appropriate, a concise statement of facts, which party bears the burden of production and persuasion and whether oral argument is requested. Counsel should submit motions in the format found at [http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).

**Rule 10.4:** Each motion that requires an order must be accompanied by a proposed order by the moving party. The moving party and any responding counsel shall include proposed Findings of Fact and Conclusions of Law.

**Rule 10.5:** Military judges will rule on motions in a timely fashion so as not to create unnecessary delay in court proceedings. In those instances when a ruling must be reserved, the military judge shall revisit the issue and rule when the reason for the reserved ruling has been resolved.

- Rule 10.6:** If the military judge rules adversely to the government and the government contemplates an appeal pursuant to Article 62 of the Uniform Code of Military Justice and R.C.M. 908, the military judge must 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.
- Rule 10.7:** Unless good cause is shown, motions must be filed in accordance with the Trial Management Order. Good cause is determined by the military judge. As supervisory counsel are not party to the trial, they shall not make, or be required to make, statements or certifications as to the timeliness of motions or whether good cause has been shown.
- Rule 10.8:** In cases wherein a named victim is represented by victim's legal counsel, all notices and motions in which an alleged victim's rights are implicated under the Uniform Code of Military Justice, Rules for Courts-Martial or the Military Rules of Evidence shall be served upon victims' legal counsel. In cases where a named victim is not represented by victims' legal counsel, any notice or motion which implicates an alleged victim's rights shall be provided to the alleged victim via the trial counsel.

#### **Rule 11: CONTINUANCES**

- Rule 11.1:** Continuance requests should ordinarily be made by written motion. The motion must state the specific reason for the request. Counsel must be prepared to fully justify each continuance request. At the discretion of the military judge and as circumstances require, a request for continuance may be made orally at an Article 39(a) session. Where counsel and the military judge are not co-located, and as exigent or emergent circumstances require, scheduling issues and continuance requests may be discussed in R.C.M. 802 sessions, but the matter shall be summarized and placed on the record at the next session of court.
- Rule 11.2:** All motions to continue must include the number of

previous continuances and who sought the continuances, whether opposing counsel consents, the trial date, and dates counsel and witnesses are available for trial. In cases involving victims' legal counsel, the moving party must certify that the motion was served on the victims' legal counsel. In cases involving a named victim not represented by victims' legal counsel, the trial counsel must certify that the motion was served on the named victim. The proposed order must contain language for both granting and denying the motion, a place to indicate whether the motion is granted or denied, and a place for indicating the new trial date. A model motion for a continuance and a proposed order can be found at:  
[http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).

**Rule 11.3:** If the accused is in pretrial confinement, defense motions for continuances and concurrences in government motions for continuances must be in writing and include a certification by defense counsel that the accused consents to the continuance request.

#### **Rule 12: SITUS**

**Rule 12:** Unless otherwise directed by the Convening Authority pursuant to R.C.M. 504(d)(1), the military judge will designate the situs of trial.

#### **Rule 13: COURTROOM SECURITY**

**Rule 13.1:** The presiding military judge may prescribe rules in any case to establish courtroom security as necessary.

**Rule 13.2:** The government is responsible for ensuring the courtroom facility is in compliance with all applicable orders and directives governing courtroom safety requirements. Notwithstanding such orders and directives, counsel must inform the military judge whenever they believe extra precautions and/or security measures should be implemented.

**Rule 13.3:** The circuit judge will review annually the security

plan for the courtroom facilities within the circuit with the government representative responsible for courtroom security at each installation.

**Rule 13.4:** The wearing or carrying of weapons in the courtroom is prohibited except when authorized by the detailed military judge.

#### **Rule 14: UNIFORMS**

**Rule 14.1:** The Circuit Judge will designate the proper uniform and civilian attire to be worn by all persons required to be present in court. Utility uniforms will not be designated as the uniform unless the court is convened at sea or in an operational setting.

**Rule 14.2:** The accused must 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 the proper uniform. When 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 will not be imposed on the accused or any witness during sessions of the court-martial unless prescribed by the military judge. No accused or witness will wear any tag or symbol that identifies that person as being in custody while in open court.

#### **Rule 15: SPECTATORS**

**Rule 15.1:** The military judge is responsible for maintaining the dignity and decorum of the proceedings, for courtroom security generally and for controlling spectators and ensuring their conduct is appropriate. The military judge may issue such orders as are deemed just to ensure a fair trial.

- Rule 15.2:** Spectators may attend any sessions of the court-martial unless otherwise determined by the military judge. See R.C.M. 806.
- Rule 15.3:** Counsel must ensure that the military judge is advised if there is a likelihood that any spectator is to be called as a witness. Except for alleged victims recognized by the court, spectators who may be called as witnesses should be excluded upon motion by the trial counsel or defense counsel. Alleged victims may only be excluded if the military judge determines by clear and convincing evidence that their testimony will be materially altered if the alleged victim heard the testimony at that hearing or proceeding.
- Rule 15.4:** Spectators are forbidden from disturbing the proceedings of the court-martial, using any menacing word, sign or gesture in the presence of the military judge, or demonstrating 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 alleged victim, accused and counsel of the decorum required in the courtroom.
- Rule 15.5:** In accordance with R.C.M. 806, courts-martial are public and shall be open subject only to those limited exceptions provided for in law and statute. The military judge shall make case-specific findings on the record justifying any court room closure regardless of whether there is an objection by a party. Supervisory counsel and support personnel may attend closed hearings to supervise and assist their counsel at the discretion of the military judge.

**Rule 16: PUNCTUALITY**

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

shall be notified immediately and provided an explanation.

**Rule 17: BAILIFF**

**Rule 17:** Trial counsel shall ensure bailiffs are thoroughly briefed on their duties and that they are provided a copy of the Bailiff Handbook, found at:  
[http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).

**Rule 18: GUARDS**

**Rule 18:** When appropriate, a guard or guards will be detailed to ensure proper custody of the accused and to assist the court in preserving order and decorum. However, see Rule 13.4 regarding weapons in the courtroom and Rule 14.3 regarding physical restraints.

**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 court reporter must note in the record the presence or absence of the parties and the time at which the court convenes or reconvenes. The court reporter must note the time at which recesses are taken and the time of adjournment.

**Rule 19.3:** Court reporters must 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.

**Rule 19.4:** Court reporters will maintain a complete list of all exhibits marked, those offered, and those admitted.

**Rule 20: ENTRY AND DEPARTURE OF MILITARY JUDGE**

**Rule 20:** Without regard to rank or grade, all persons in the courtroom except the court reporter must rise when the military judge enters or leaves the courtroom.

**Rule 21: ENTRY AND DEPARTURE OF MEMBERS**

**Rule 21:** Without regard to rank or grade, all persons, other than the military judge and court reporter must rise when the members, as a panel, enter or leave the courtroom.

**Rule 22: VOIR DIRE**

**Rule 22.1:** In accordance with R.C.M. 912(d), the military judge determines the procedure for conducting voir dire. Voir dire examination shall be limited to matters relevant to determining whether to remove a member for cause and to determine the member's fairness and impartiality. The military judge shall ensure that the privacy of the prospective members is reasonably protected. All group voir dire questions must be submitted in writing to the military judge prior to trial.

**Rule 22.2:** The member's questionnaire shall be phrased and organized so as to facilitate an accurate screening and shall request that information essential for:  
(1) determining whether a person meets the Article 25 criteria for eligibility; and (2) determining the existence or nonexistence of facts which may disclose a proper ground of challenge for cause. A copy of a model questionnaire can be found at:  
[http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).

**Rule 22.3:** Before voir dire, trial counsel will provide the military judge with a combined list of the full name and unit or city and state of residence of all witnesses. The list must include witnesses whose testimony will be presented by stipulation of expected testimony.

**Rule 23: PROHIBITED ITEMS IN THE COURTROOM**

**Rule 23.1:** Eating, chewing gum, or using tobacco products is not permitted in the courtroom. Weapons and objects that may be used as weapons, including potential exhibits, are not permitted in the courtroom without specific authorization of the military judge.

**Rule 23.2:** With the exception of the court reporter, no person shall use electronic devices (e.g. laptops or tablets) to audio record or video record any courtroom session. No person in the courtroom may use any such electronic devices to transmit email, text messages, or social media messages.

**Rule 23.3:** Cellular or mobile telephones are only permitted for detailed counsel or supervisory counsel in the courtroom unless otherwise permitted or restricted by the military judge. When cellular telephones are in the courtroom, they must be silenced and used only during recesses of court.

**Rule 24: COUNSEL DECORUM**

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

**Rule 24.2:** Counsel shall stand when addressing the bench 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.

**Rule 25: COUNSEL CONDUCT**

**Rule 25.1:** During trial, counsel must not state or allude to any matter that counsel has no reasonable basis to believe is relevant to the case or that is not supported by admissible evidence.

**Rule 25.2:** During trial, counsel must not assert any personal knowledge of the facts in issue, except if testifying as a witness.

**Rule 25.3:** In presenting a matter to the court-martial, counsel must disclose legal authority in the controlling jurisdiction known to counsel to be directly contrary to their position and which is not disclosed by opposing counsel.

## **Rule 26: WITNESSES**

- Rule 26.1:** Trial counsel shall swear each witness called to testify and must ensure that the military witness's name, grade, and military organization, or civilian witness's name and city and state of residence are announced in court.
- Rule 26.2:** Counsel must ensure their witnesses understand the physical arrangements of the courtroom, where they should go, and how they must conduct themselves.
- Rule 26.3:** Counsel must ensure that their witnesses will be immediately available when called to testify.
- Rule 26.4:** Counsel will question witnesses from a reasonable distance. Before approaching the witness, counsel must obtain permission of the military judge. Counsel and, likewise, witnesses, should not position themselves so as to block the view of the military judge, members, the accused, or counsel.

## **Rule 27: OBJECTIONS**

- Rule 27.1:** Counsel must 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 permission from the military judge.
- Rule 27.2:** Should a non-party legal counsel, such as a victims' legal counsel, deem it necessary to object or otherwise be heard at trial, that counsel shall stand until recognized by the military judge. The counsel shall not speak until recognized by 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 will consider entering into stipulations of fact or of testimony covering those matters.

- Rule 28.2:** Stipulations must be in writing, and will be prepared prior to trial.
- 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 must be marked as a "Prosecution Exhibit" or "Defense Exhibit" and, in a members' trial, read to the members. Stipulations of fact may be taken into the deliberation room by the members like all other admitted evidence. Written stipulations of expected testimony will be marked as an "Appellate Exhibit" 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 of any intended requests for judicial notice in their written pretrial matters in accordance with the Trial Management Order.

**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 who offered the exhibit must prepare an appropriate substitute for inclusion in the record, such as a photograph or reduced-size copy of the exhibit.

**Rule 31.3:** All audio recordings and video recordings that contain audio portions must be transcribed before trial by the party offering such a recording, unless the military judge has ordered otherwise. If a portion is inaudible, the transcript must so state. A copy of the transcript will be served on opposing counsel before trial in sufficient time to allow for ascertaining the accuracy of the transcript. The recording or a copy thereof will be made available to opposing counsel upon request. The transcript shall be marked as an appellate exhibit.

**Rule 32: VIDEO TELECONFERENCE REQUIREMENTS**

**Rule 32.1:** Consistent with the Rules for Courts-Martial and applicable DoN instructions, Video Teleconferencing (VTC) may be used to conduct Article 39(a) sessions for arraignments, motions practice and any other sessions permitted by the military judge.

**Rule 32.2:** The government will ensure that all sites meet the necessary technology and security requirements.

**Rule 32.3:** VTC sessions are open to the public at the site designated by the presiding military judge consistent with the 6<sup>th</sup> Amendment, R.C.M. 504(d)(1) and R.C.M. 804.

**Rule 33: FINDINGS & SENTENCING INSTRUCTIONS**

**Rule 33:** Trial and defense counsel will 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, must be submitted in writing and in accordance with the Trial Management Order to the military judge and opposing counsel.

**Rule 34: RECORD OF TRIAL/APPELLATE RIGHTS**

**Rule 34.1:** A complete and accurate record of the proceedings is required to protect the rights of all parties. During the course of the trial, counsel must ensure that uncommon names, places, and words are spelled out on the record, that witnesses respond verbally,

and that descriptions of size, distance, and location are clear.

**Rule 34.2:** 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 must include such decisions in the written acknowledgement of appellate rights. In memorializing the accused's understanding of appellate rights, counsel shall use the standard Appellate Rights Statement found at: [http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm)

**Rule 34.3:** Whenever practicable, trial counsel must read and make corrections to the record of trial. Corrections by trial counsel must be initialed and dated before submission to the military judge for authentication.

**Rule 34.4:** The trial counsel must ensure that the record of trial is prepared in a timely and accurate manner. Pursuant to R.C.M. 1103(i)(1)(B), the trial counsel must permit the defense to review the record except when unreasonable delay will result before it is submitted to the military judge for authentication.

#### **Rule 35: DOCUMENTS AND PLEADINGS**

**Rule 35.1:** All electronic filings must be signed and filed in MS Word or PDF format. All documents and pleadings filed with the court will be on white 8.5 inch by 11 inch white paper.

**Rule 35.2:** All motions will be filed in the standard form found at: [http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).

**Rule 35.3:** All pleadings filed must have one inch margins and use Courier New or Times New Roman 10-12 point font.

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

**Rule 36.1:** Victims' legal counsel, or other nonparty legal counsel, may be heard before the court to the extent authorized by applicable law, subject to the rulings and direction of the military judge. Victims' legal counsel shall file a Notice of Appearance with the

court, stating the judicial circuit, applicable case caption, name of the respective client (using initials only if the client is a minor), and name, rank, address, phone number and email address of the victims' legal counsel. The notice shall also contain a brief statement as to the qualifications to practice and status as to oath of the victims' legal counsel. The notice must be served on all parties in the case. A victims' legal counsel who fails to file a Notice of Appearance shall not be recognized by the court.

**Rule 36.2:** All victims' legal counsel are subject to these Uniform Rules, the Rules of Professional Conduct, and the applicable Circuit Rules. Military victims' legal counsel will be attired in the proper uniform required of trial and defense counsel by local Circuit Rules.

**Rule 36.3:** If victims' legal counsel has filed a Notice of Appearance, trial counsel shall consult with the victims' legal counsel regarding availability before agreeing to any session of court in a TMO or PTIR, or requesting a continuance. Trial counsel shall provide the victims' legal counsel notice of all ordered or scheduled sessions of court within twenty-four hours (24) of the order, unless the military judge permits a different time for such notice upon a showing of good cause. Additionally, trial counsel shall immediately provide victims' legal counsel with a copy of any TMO ordered by the court, any pending PTIR, and any rulings on motions involving the victims' legal counsel's client. Any required notices or motions may be filed electronically upon the victims' legal counsel in accordance with Rule 10.3.

**Rule 36.4:** Victims' legal counsel may have an interest in hearings for rights afforded alleged victims by law. As such, the trial counsel and defense counsel shall provide copies of the relevant Prosecution and Defense filings to the victims' legal counsel within twenty-four (24) hours after filing. Whenever practicable, victims' legal counsel should be included in R.C.M. 802 conferences regarding the filing of such motions as discussed in Rule 8.1.

**Rule 36.5:** Victims' legal counsel may file such motions and other pleadings with the court as they deem proper to represent their client's interests. Victims' legal counsel shall articulate a basis for standing in their written pleadings if the pleading concerns issues outside those identified in Rule 36.4 above. Copies of all filings by victims' legal counsel must be served on all counsel participating in the case. Victims' legal counsel filings should comply with motion filing dates set in the TMO; however, the military judge may set separate deadlines for the filing of any motions by a victims' legal counsel.

**Rule 36.6:** The military judge has discretion to allow victims' legal counsel to be heard in court via telephone or Video Teleconference (VTC). When in the courtroom, the victims' legal counsel shall remain seated behind the bar in proximity to trial counsel, except when invited inside the bar by the presiding military judge to address the court. When addressing the court, the victims' legal counsel shall do so from behind the podium. Victims' legal counsel may be heard in an Article 39(a) outside the hearing of the members. It is within the military judge's discretion to hear from the victims' legal counsel on each distinct issue separately, to have counsel address all issues at one time, or to require counsel to submit written matters to the court. Whenever practicable, victims' legal counsel may be seated at counsel table inside the bar during lengthy or complex motions hearings in which they will be heard. The manner in which the victims' legal counsel presents evidence is within the discretion of the military judge (e.g., when the victims' legal counsel is the moving or responding party, the military judge may allow victims' legal counsel to conduct examination of witnesses).

**Rule 36.7:** The victims' legal counsel may move to close the court proceedings during any Article 39(a) motion session in order to protect the privacy and dignity of their client. A court session may be closed over the objection of the accused or the public upon meeting the constitutional standard set forth in R.C.M. 806(b)(2) and related case law. For hearings under M.R.E. 412, the military judge must conduct a closed hearing. For hearings under M.R.E. 513(e)(2)

and M.R.E. 514(e) (2), the military judge may order the hearing closed.

**Rule 37: VICTIM'S RIGHT TO BE HEARD**

**Rule 37:** In any motion or hearing where an alleged victim has a right to be heard, the military judge shall verify on the record that the victim was notified of the right to be heard. When a victim elects not to testify or otherwise be heard, the military judge may require the trial counsel and/or victims' legal counsel to certify in writing that the victim was made aware of the right and affirmatively declined to do so.

**Rule 38: APPOINTMENT OF A DESIGNEE FOR CERTAIN VICTIMS**

**Rule 38.1:** In cases involving a victim who qualifies for a designee under R.C.M. 801(a) (6), the initial PTIR or request for docketing shall include a recommendation from both parties and, if appropriate, the victim's legal counsel, regarding this appointment. Trial counsel shall also include a draft proposed appointing order, using the standard appointment form found at:  
[http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).

The draft shall include the name of the proposed designee, the proposed designee's relationship to the named victim, and the rights of the designee. The appointment of the designee shall be accomplished at arraignment when practicable. Either party may request, or the military judge shall order, an Article 39 (a) session under this rule in cases where a designee cannot be identified or agreed upon by the parties.

**Rule 38.2:** At any time after appointment, an individual shall be excused as the designee upon request by the designee or a finding of good cause by the military judge. If the designee is excused, the military judge shall appoint a successor using the procedures established in R.C.M. 801(a) (6).

**Rule 38.3:** Nothing in this rule conveys any additional rights to a named victim, victims' legal counsel, or designee.

**Rule 39: CONTEMPT PROCEEDINGS**

**Rule 39.1:** Military judges are empowered to punish persons in accordance with Article 48 and R.C.M.s 801(b) and 809 for direct or indirect contemptuous behavior. Such contempt power is to be exercised with restraint and in strict compliance with the statute and the implementing Rules for Courts-Martial.

**Rule 39.2:** If a military judge intends to hold a contempt proceeding under R.C.M. 809(b)(2), the military judge shall notify the subject of the proceeding in writing, notwithstanding the provision in the rule allowing for oral notification.

**Rule 40: MODEL PRETRIAL AGREEMENT**

**Rule 40.1:** Counsel are strongly encouraged to use the model PTA found at:  
[http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).