UNIFORM RULES OF PRACTICE BEFORE
NAVY AND MARINE CORPS COURTS-MARTIAL

5 August 2020

TABLE OF CONTENTS

PREAMBLE 1
Rule 1: APPLICABILITY 1
Rule 2: PURPOSE 1
Rule 3: CONSTRUCTION 1
Rule 4: REFERRED CHARGES 2
Rule 5: CIVILIAN DEFENSE COUNSEL 2
Rule 6: DOCKETING/TRIAL MANAGEMENT ORDERS 3
Rule 7: PERSONALLY IDENTIFIABLE INFORMATION (PII) 4
Rule 8: PRE-REFERRAL SUBPOENAS, ORDERS, WARRANTS, & OTHER COMMUNICATIONS WITH THE MILITARY JUDGE 4
Rule 9: DISCOVERY/PROTECTIVE ORDERS 6
Rule 10: MOTIONS/BILLS OF PARTICULARS 7
Rule 11: CONTINUANCES 8
Rule 12: SITUS 9
Rule 13: COURTROOM SECURITY 9
Rule 14: UNIFORMS 10
Rule 15: SPECTATORS 10
Rule 16: PUNCTUALITY 11
Rule 17: BAILIFF 12
Rule 18: GUARDS 12
Rule 19: COURT REPORTERS 12
Rule 20: ENTRY AND DEPARTURE OF MILITARY JUDGE 12
Rule 21: ENTRY AND DEPARTURE OF MEMBERS 13
Rule 22: VOIR DIRE 13
Rule 23: PROHIBITED ITEMS IN THE COURTROOM 14
Rule 24: COUNSEL DECORUM 14
Rule 25: COUNSEL CONDUCT 14
Rule 26: WITNESSES 15
Rule 27: OBJECTIONS 15
Rule 28: STIPULATIONS 16

Rule 29: OFFERS OF PROOF 16
Rule 30: JUDICIAL NOTICE 16
Rule 31: EXHIBITS 16
Rule 32: VIDEO TELECONFERENCE (VTC) REQUIREMENTS 17
Rule 34: RECORD OF TRIAL/APPELLATE RIGHTS/STATEMENT OF TRIAL RESULTS/ENTRY OF JUDGMENT/SEALING ORDERS 18
Rule 35: DOCUMENTS AND PLEADINGS 21
Rule 36: VICTIMS' LEGAL COUNSEL AND OTHER NON-PARTY COUNSEL 21
Rule 37: VICTIM'S RIGHT TO BE HEARD 23
Rule 38: APPOINTMENT OF A DESIGNEE FOR CERTAIN VICTIMS 23
Rule 40: MODEL PRETRIAL/PLEA AGREEMENT 24
APPENDIX A: MODEL MOTION TEMPLATE 25
APPENDIX B: MODEL CONTINUANCE REQUEST 28
APPENDIX C: MODEL TRIAL MANAGEMENT ORDER (TMO) 30

PREAMBLE

The Uniform Rules of Practice before Navy and Marine Corps Courts-Martial ("Uniform Rules") supplement the Rules for Courts-Martial (R.C.M.) and, together with them, govern trials by courts-martial in the Navy and Marine Corps. They are effective upon approval by the Chief Trial Judge and supersede all rules previously published as Uniform Rules of Practice for the U.S. Navy-Marine Corps Trial Judiciary.

Local rules of practice in judicial circuits may further implement these Uniform Rules. Local rules must be consistent with these Uniform Rules. Local rules should supplement and not replicate or be redundant 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 the Uniform Rules, implementing local rules or court orders, a 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, officer-in-charge, or supervisory counsel, or forward information about the matter to a civilian or military counsel's licensing 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 (UCMJ), or fashion other appropriate remedies.

Rule 2: PURPOSE

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

Rule 3: CONSTRUCTION

Rule 3.1: The 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 any constitutional provision, statute, the Manual for Courts-Martial (MCM), precedential case law, 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 the charge sheet and convening order as soon as practicable. (See JAGINST 5813.4J of 19 Dec 17, Navy Marine Corps Trial Judiciary, 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. If a case is withdrawn, documentation of such withdrawal must be submitted to the court. Proper documentation consists of a certificate of withdrawal, signed by the trial counsel, a withdrawal signed by the convening authority or a copy of the charge sheet that reflects the withdrawal action. Cases will not be removed from the docket, and counsel will be expected to appear as scheduled, until such written notification of withdrawal is received by the court.

Rule 4.3: After the referral of charges, the trial counsel must inform the military judge when the case involves classified information, at the earliest practicable opportunity. Trial counsel should normally provide notice when they submit the proposed Trial Management Order (TMO) or make a request for docketing.

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. The notice of appearance 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 currently 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 5803.1B).

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 5.4: Detailed defense counsel must inform the civilian defense counsel of the requirements necessary for obtaining a security clearance immediately upon learning that classified information may be relevant to a pending case. Civilian defense counsel has a duty within ten (10) days from notice of appearance to request a security clearance application from the government where charges involve classified information; within ten (10) days from being notified by the government that classified information is relevant; or, within ten (10) days from determining that classified information may be relevant as a result of their own preparation, whichever is earliest. Civilian defense counsel must complete the necessary security clearance application within thirty (30) days of receiving the application from the government. If civilian defense counsel requires more time to complete the application process, civilian defense counsel must request additional time through the military judge. Requests for additional time will only be granted for good cause.

Rule 6: DOCKETING/TRIAL MANAGEMENT ORDERS

Rule 6.1: The circuit military 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 and should expedite subpoena, order, and warrant applications as appropriate. Circuit rules shall operate to facilitate access to the court upon timely request by any party.

Rule 6.2: All circuits will maintain their docket/calendar on the Navy-Marine Corps Trial Judiciary (NMCTJ) Sharepoint website. All circuits except WESTPAC, and EURAFSWA, will also maintain their docket on the NMCTJ/Code 52 section of the jag.navy.mil public webpage. The circuit military judge will also publish the circuit docket on a weekly basis in an online format available to the public and in accordance with OJAG standard operating procedures (most often on the installation or Region website). The NMCTJ Sharepoint site is available at: https://portal.secnav.navy.mil/orgs/JAG/52/SitePages/Home.aspx.

Rule 6.3: Docketing judges and military judges presiding over arraignments shall use the standard TMO located in Appendix C and at: http://www.jag.navy.mil/trial_judiciary.htm.

Rule 6.4: The Navy-Marine Corps Chief Trial Judge ("Chief Trial Judge") retains initial detailing authority for all reserve military judges. Circuits requesting reserve support will forward requests to the Chief Trial Judge for consideration. Once a detailed reserve military judge reports for AT/ADT/drill period on station, the circuit military judge may detail additional arraignments and/or Article 39(a) sessions as appropriate.

Rule 6.5: No reserve military judge (part-time judge) who serves as a civilian prosecutor may be detailed to preside over a court-martial where the convening authority or the situs of the trial is located in the same state or federal district where the reserve military judge regularly serves as a civilian prosecutor, unless the offense is a uniquely military offense over which there is no comparable federal or state jurisdiction. No reserve military judge may preside over cases where the same prosecutor's office they are employed by has an interest, regardless of where the court-martial is held.

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 also be redacted in all documents (e.g., pleadings and 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 witnesses and alleged victims will be used during the course of the trial, all named victims will be identified by their initials on charge sheets and in pleadings, and all witnesses will be identified by their initials 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 Section 0603 (and other relevant sections pertaining to protection of PII) of the Marine Corps Order 5800.16 (Legal Support and Administration Manual). All counsel will comply with SECNAVINST 5211.5F of 20 May 2019.

Rule 8: PRE-REFERRAL SUBPOENAS, ORDERS, WARRANTS, & OTHER COMMUNICATIONS WITH THE MILITARY JUDGE

Rule 8.1: After referral, 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 or require a party to 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, if applicable. Whenever appropriate, the military judge may, in his/her sole discretion,

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* communication with a military judge concerning a case that is pending before that military judge is prohibited, except for routine administrative matters, pre-referral subpoenas, orders, warrants, or as otherwise provided by law. 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 8.3: Military judges may communicate *ex parte* with government representatives for the purpose of considering pre-referral subpoenas, orders, and warrants, or for other pre-referral judicial proceedings as ordered by an appellate court. Pursuant to R.C.M. 309 and Article 30a, UCMJ, and prior to the referral of charges, these sessions may be *in-camera* or in open session of court. A counsel for the Government must be involved in all communications, and is responsible for maintaining all applications and resulting orders and forwarding them to the appropriate convening authority.

Rule 8.4: Prior to the referral of charges, a military judge may, upon written application by a federal law enforcement officer or authorized counsel for the Government in connection with an ongoing investigation of an offense or offenses under the UCMJ, consider whether to issue a warrant or order for wire or electronic communications and related information as provided under R.C.M. 309, R.C.M. 703A, and Article 30a and 46(d), UCMJ.

Rule 8.5: Government counsel applying for investigative subpoenas and warrants/orders for wire or electronic communications will follow the R.C.M. 703A(b) warrant procedures. *See*, JAGMAN Section 0132a –Warrants and Orders for Electronic Communications. Any such request will be presented to the circuit military judge or his/her designee using the model application for warrant and warrant forms (DD Form 453 (Subpoena), DD Form 3057 (Application for Warrant for Electronic Communications), and DD Form 3056 (Warrant for Electronic Communications)), located at: http://www.jag.navy.mil/trial_judiciary.htm.

Like other pre-referral subpoenas and orders, circuit military judges will expedite review of warrant applications as their dockets permit, but no later than five (5) days from the date the application is presented to the military judge.

Rule 8.6: Regardless of whether the military judge grants or denies the warrant application, the judge will ensure the application and warrant (if issued), is uploaded into the MJ Pre-Referral Document Collection tab on the NMCTJ Sharepoint site at: https://portal.secnav.navy.mil/orgs/JAG/52/SitePages/Home.aspx.

Rule 8.7: An individual in receipt of a pre-referral subpoena, order, or warrant may move the military judge to modify or quash the process on the grounds that compliance is unreasonable, oppressive, or prohibited by law. All filings to modify or quash a subpoena, order, or warrant must be served on government counsel, the Circuit Military Judge of the circuit that issued the process, and the Chief Trial Judge's Executive Assistant at the address located at: http://www.jag.navy.mil/trial_judiciary.htm.

Rule 9: DISCOVERY/PROTECTIVE ORDERS

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 9.3: A party or person from whom discovery or production is sought may move for a protective order. The motion must include certification that counsel for the moving party has in good faith conferred or attempted to confer with counsel for the other party or represented person in an effort to resolve the dispute without court action, unless a party believes submission of the matter *ex parte* is appropriate.

Rule 9.4: Pursuant to Article 31(c) of the UCMJ, R.C.M.s 701(g)(2) and 806(d) and Military Rules of Evidence (M.R.E.) 505(g) and 506(g), or for other good cause shown, the military judge may enter protective or other orders as may be required in the interests of justice. The military judge may issue whatever protective orders are necessary to protect a party or person as follows:

(a) when necessary to protect the safety of any person;
(b) to protect a party or person from an unwarranted invasion of privacy, annoyance, embarrassment, oppression or undue burden;
(c) to prevent violations of M.R.E. 412 and 513;
(d) to prevent breach of a privilege recognized by the M.R.E. or other laws applicable to courts-martial;
(e) to prevent disclosure of classified information or other government information that is subject to a claim of privilege under M.R.E. 505, 506 or other recognized discovery privilege; or
(f) to prevent parties and witnesses from making extra-judicial statements that present a substantial likelihood of material prejudice to a fair trial by impartial members.

"Good cause" is shown when a party demonstrates, with specificity, that disclosure will cause a clearly defined and serious injury. The military judge

may deny, restrict, or defer discovery or inspection, order that certain documents or materials be withdrawn from a party or be otherwise protected, issue orders that parties or potential witnesses not make extra-judicial statements and/or issue such other order as is just under the circumstances. A model protective 7 order is located on the NMCTJ Sharepoint site at: https://portal.secnav.navy.mil/orgs/JAG/52/SitePages/Home.aspx.

Rule 10: MOTIONS/BILLS OF PARTICULARS

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, including contrary authority.

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 filing party's responsibility 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 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 in Appendix A and at: 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, unless this requirement is explicitly waived by the military judge. If required by the military judge, the moving party and any responding counsel will 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 instances when a ruling must be reserved, the military judge shall revisit the issue and rule when the reason for the reserved ruling is resolved. Military judges are encouraged to issue written

rulings where appropriate and/or state their rationale on the record for their decisions.

Rule 10.6: If the military judge rules adversely to the government and the government contemplates an appeal pursuant to Article 62, UCMJ and R.C.M. 908, the military judge must state on the record the time of the ruling, the time the 72-hour appeal period will run, as well as 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 TMO. Good cause is determined by the military judge. Supervisory counsel are not a party to the trial; therefore, supervisory counsel shall not make, or be required to make, statements/certifications regarding timeliness of motions or whether good cause has been shown on the record.

Rule 10.8: Motions to Reconsider. Parties seeking reconsideration of a military judge's written pre-trial ruling or order must file a motion within fourteen (14) days after the pre-trial ruling or order is filed, unless the court extends the time for good cause shown. A motion to reconsider must be based on:

(a) an intervening change in controlling law;
(b) the availability of new evidence; or
(c) the need to correct clear error or prevent manifest injustice.

Rule 10.9: In such cases where the defense moves to dismiss charges and specifications on the grounds of a speedy trial violation, the trial counsel will prepare a written chronology of events prior to trial. *See United States v. Ramsey*, 28 M.J. 370, 374 (C.M.A. 1989).

Rule 10.10: When a trial counsel serves a Bill of Particulars on the defense, it shall also be filed with the court and marked as an appellate exhibit.

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. 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.

Rule 11.2: All continuance motions must cite 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 in Appendix B and at: http://www.jag.navy.mil/trial_judiciary.htm.

Rule 11.3: If the accused is in pretrial confinement, defense motions for continuance and concurrences to government motions for continuance 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)(B), 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 military 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 for good cause shown. Most courtrooms in the naval service are not stand-alone courtrooms and are located in multi-purpose buildings. The military authorities responsible for building entry may impose more restrictive rules prohibiting firearms from entering a building, even if a military judge were to permit wearing or carrying of a firearm inside the courtroom itself.

Rule 14: UNIFORMS

Rule 14.1: During winter months, the prescribed uniform for military personnel is Service Dress Blue for Navy personnel and Service "B" for Marine personnel. During summer months, the prescribed uniform is Summer White (E-7 and above)/Service Dress White (E-6 and below) for Navy personnel and Service "C" for Marine personnel. The date for the shift of seasonal uniforms shall be set by service guidelines or at the direction of the area uniform coordinator, as applicable. Utility uniforms will not be designated as the uniform unless the court is convened at sea or in an operational setting. The presiding military judge retains the authority to modify the proper uniform to be worn by military personnel in a particular case. When considering what uniform will be worn by military personnel, the presiding military judge will give careful consideration to the seriousness with which the proceedings are viewed, customs and traditions of the naval service, as well as the potential for publicity. This rule applies equally to military personnel who are detailed to the court-martial as counsel, accused, members, bailiff, court reporter, and other official roles, and to witnesses.

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. No accused or witness will wear any tag or symbol that identifies that person as being in custody while in open court.

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.

Rule 14.4: The judicial robe will be worn by the military judge in all Department of the Navy courts-martial, including during hearings on interlocutory matters.

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. Spectators will appear in the gallery in the uniform of the day or appropriate civilian attire. 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. 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 courtroom 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 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 on the merits should be excluded upon motion by the trial counsel or defense counsel. Sentencing witnesses are often permitted to observe the trial, but could also be excluded due to objection from either side.

Alleged victims may only be excluded pursuant to M.R.E. 615 if the military judge determines by clear and convincing evidence that their testimony will be materially altered if the alleged victim were to hear the testimony at that hearing or proceeding. The "right not to be excluded" does not include the right to listen remotely to court proceedings. Unless a remote viewing location is authorized by the military judge, all spectators are prohibited from listening remotely to a court-martial 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 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.

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 19.5: Trial counsel are responsible for keeping the Clerk of Court and/or the court reporter apprised of the status of all docketed cases, to include, but not limited to: anticipated delays, continuances, withdrawal of charges, changes of courtrooms or location, changes in anticipated pleas and forum, and the need for court reporter support in unscheduled hearings.

Rule 20: ENTRY AND DEPARTURE OF MILITARY JUDGE

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, UCMJ 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.

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 22.4: **(Applicable only to charges referred on or after 1 January 2019)** After completion of challenges for cause, the court reporter will randomly assign numbers to all remaining members in accordance with R.C.M.s 912 and 912A using the Excel random number generator or the Army Trial Judiciary's "Randomizer" program located on their website. Counsel for all sides may view the random number generation. When the court reporter completes the random number generation, a copy of the results will be printed and marked as an appellate exhibit. A copy of the random number generator is located at: http://www.jag.navy.mil/trial_judiciary.htm.

Rule 22.5: If after peremptory challenges are exercised, the panel falls below quorum, new members must be added. After challenges for cause of the additional new members, the court reporter will randomly assign numbers to the new members using the process in Rule 22.4, but starting at the next number following those assigned to the original members. Those members previously given numbers will retain the numbers they have been assigned.

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 in the courtroom for detailed counsel or supervisory counsel unless otherwise permitted or restricted by the military judge. When cellular telephones are in the courtroom, they must be placed in silent mode and used only during recesses of court. Trial counsel will post signs prohibiting cell phones outside the courtroom where spectators and the court members enter.

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, make opening statement, or make closing argument.

Rule 24.4 : Counsel shall address all remarks, arguments, and questions to either the court or the witness testifying and shall refrain from addressing opposing counsel directly**.**

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. Counsel will not assert personal opinion as to the justness of a cause, the credibility of a witness, or the guilt or

innocence of the accused, except that counsel may argue for any position or conclusion based on an analysis of the evidence with respect to the matter stated.

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 25.3: Counsel will not leave the courtroom during trial without first obtaining the military judge's permission.

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 witnesses should not position themselves so as to block the view of the military judge, members, the accused or counsel.

Rule 26.5: Not later than five (5) business days prior to trial, counsel who intend on using an interpreter during the trial will notify the presiding military judge and opposing counsel of the interpreter's identity and a brief summary of the interpreter's qualifications. Any objection to the interpreter will be provided to the presiding military judge as soon as possible, but not later than two (2) business days before the date of the trial.

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. When recognized, the non-party legal counsel shall enter the well, and speak from the podium.

Rule 28: STIPULATIONS

Rule 28.1: Counsel will attempt to narrow the issues to be litigated as much as possible by the use of stipulations of fact and testimony. 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 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 TMO.

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: Any offered exhibit discussed on the record will be appended to the record even if not introduced into evidence.

Rule 31.4: 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 orders 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 31.5 Military Judges will include a protective order for victim impact statements marked as appellate exhibits to ensure they are not uploaded to any public system of records under Article 140a.

Rule 32: VIDEO TELECONFERENCE (VTC) REQUIREMENTS

Rule 32.1: Consistent with the Rules for Courts-Martial and applicable DoN instructions, VTC may be used to conduct Article 30a sessions for pre-referral subpoenas, orders, or warrants, or Article 39(a) sessions for arraignments, motions practice, and any other sessions permitted by the military judge. Two-way audio and visual transmissions (in color) shall be utilized to conduct VTC sessions of court. The remote VTC location must have telephonic connectivity and a means of receiving documents and other written material. Knowledgeable support personnel shall be available at both locations to assist with technical issues that may arise. The court reporter will transcribe the VTC witness' testimony in the same manner as a normal witness.

Rule 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 6th 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 relevant to an instruction, must be submitted in writing and in accordance with the TMO to the military judge and opposing counsel.

Rule 34: RECORD OF TRIAL/APPELLATE RIGHTS/STATEMENT OF TRIAL RESULTS/ENTRY OF JUDGMENT/SEALING ORDERS

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 descriptions of size, distance and location are clear.

Rule 34.2: At the conclusion of the trial, defense counsel will ensure the accused understands all of his/her post-trial and appellate rights and specifically designates who he/she wants to receive the entry of judgment, record of trial and any matters submitted by the victim. 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 model Appellate Rights Statement found at: http://www.jag.navy.mil/trial_judiciary.htm.

Rule 34.3: Immediately upon adjournment of the court-martial, the trial counsel shall cause a Statement of Trial Results to be prepared for the military judge's signature in accordance with R.C.M. 1101. *See* JAG/CNLSCINST 5814.1D.

A draft of the Statement of Trial Results shall be prepared by the trial counsel, except for the findings and sentence, and submitted to the military judge in every contested case prior to the commencement of trial on the deadline set for final pretrial matters in the TMO, or if no date for final pre-trial matters is set in the TMO, then three (3) days before the date set for the commencement of trial. In a guilty plea case, the draft Statement of Trial Results, except for the sentence, shall be provided to the military judge not later than the day before the date set for trial. The military judge shall only sign the Statement of Trial Results and shall not sign the confinement order.

Rule 34.4: Sealing Orders Required. Pursuant to M.R.E.s 412, 505, 513, 514 and 701(g)(2) and R.C.M. 1113, all motions, responses, enclosures and other papers relating to motions and responses, rulings and orders, and portions of the record of trial of closed or *ex parte* sessions of court for hearings conducted

pursuant to M.R.E.s 412, 505, 513 and 514, and where the military judge has granted relief after an *ex parte* hearing conducted pursuant to M.R.E. 701(g)(2) shall be ordered sealed by the military judge at such time as the military judge shall direct and not later than certification of the record of trial. Exhibits containing child pornography shall also be sealed by order of the military judge. Sealing shall be accomplished to prevent unauthorized viewing or disclosure but not to unnecessarily or unfairly restrict appropriate trial preparation by counsel.

Rule 34.5: Sealing for Good Cause Shown. Upon good cause shown by either party, medical records, mental health records that have been voluntarily disclosed by a person otherwise entitled to claim the patient-psychotherapist privilege, autopsies, materials containing pornography or erotica, and other material which the military judge determines should be sealed upon a showing of good cause may be ordered sealed by the military judge prior to certification of the record of trial. Pursuant to M.R.E. 506, all motions, responses, enclosures and other papers relating to motions and responses, rulings and orders, and those portions of the record of trial of closed or *ex parte* sessions of court for hearings conducted pursuant to M.R.E. 506 concerning disclosure of non-classified government information that may be detrimental to the public interest may be ordered sealed by the military judge prior to verification of the record of trial.

Rule 34.6: The court reporter shall ensure that the record of trial is prepared so that sealed materials are clearly marked. As an example, the exhibits or the pages of the record of trial ordered sealed may be placed in an 8.5 by 11inch envelope, two hole-punched at the bottom with the opening of the envelope at the bottom of the record of trial for easy removal of sealed materials, and the sealing order or a copy affixed to the envelope in the original record of trial (or substituted for the sealed materials in the copies of the record of trial).

Rule 34.7: Court reporters will ensure the sealed matters are not further reproduced or copied and will remain only in the original record of trial. All exhibits, documents, and portions of the record of trial ordered sealed, to include videos and images of child pornography, will be appended to the original record of trial as set forth in Rule 34.5 and will be sent to the Clerk of Court for the Navy and Marine Corps Court of Criminal Appeals for inspection in accordance with that court's rules.

Rule 34.8: For cases in which child pornography is introduced into evidence in a digital format, and published to the military judge or members on a computer monitor, the government trial counsel will provide to the court reporter a password protected compact disk (CD) containing the electronically formatted evidence for inclusion in the record of trial. In cases in which the evidence of child pornography is introduced in printed format, the government trial counsel will scan the evidentiary exhibit or exhibits into a portable document format (.pdf)

onto a password protected CD, which will then be substituted in the record of trial for the original evidence. The original evidence should then be returned to the Naval Criminal Investigative Service or United States Marine Corps Criminal Investigation Division or other cognizant law enforcement agency, as appropriate, for storage as evidence until final action on the record of trial and completion of appellate or other review. Under the terms of a sealing order issued by the military judge, the password to any protected CD in the record of trial shall be provided by the government trial counsel to those with record of trial responsibilities including the trial military judge who shall forward it via email to the Clerk of Court for the Navy-Marine Corps Court of Criminal Appeals. See JAGINST 5813.1B of 29 Sep 10.

Rule 34.9: All military judges will use the sealing order located on the NMCTJ Sharepoint site at: https://portal.secnav.navy.mil/orgs/JAG/52/SitePages/Home.aspx.

Rule 34.10: All documents and materials which are reviewed by the military judge pursuant to an *ex parte* request or an *in camera* review and not ordered disclosed shall be sealed and attached to the record as an appellate exhibit. This includes any motions or other writings or statements requesting *ex parte* review. *See* M.R.E. 701(g)(2).

Rule 34.11: Certification of the Record. Pursuant to R.C.M. 1112 and JAG/CNLSCINST 5814.1D, the court reporter will compile the record of trial (ROT) for certification. The certified record of trial is the official record of the proceedings of a court-martial. Once the record of trial is compiled in accordance with R.C.M. 1112(b), the court reporter will certify the ROT pursuant to R.C.M. 1112(e).

The court reporter will further prepare the certified record of trial for appellate review in accordance with R.C.M. 1112(f), to include the verbatim transcript. The verbatim transcript will be prepared in accordance with R.C.M. 1114 and pursuant to JAG/CNLSCINST 5814D, will be prepared for all courts-martial but acquittals. The court reporter will certify that this written transcript is a true, accurate, and complete copy of the audio or other electronic recording of the court-martial proceeding in the case. Certification of the record should occur within one hundred twenty (120) days after the completion of trial.

Rule 34.12: Verification of the Record and Entry of Judgment. Pursuant to JAGINST/CNLSCINST 5814.1D, the military judge will verify the record of trialwithin twenty (20) days of receipt of the certified record, including the verbatim transcript. "Verifying" the record of trial ensures the record is complete, all of the exhibits and enclosures are appropriately included in accordance with R.C.M. 1112, the pleas, findings, and sentence are accurately reflected in the transcript accompanying the record of trial, and the verbatim transcript is suitable for appellate review.

As with the Statement of Trial Results noted in Rule 34.3, the trial counsel or his/her designee shall cause the Entry of Judgment to be prepared for the military judge's signature in accordance with R.C.M. 1111. Additionally, in accordance with R.C.M. 1111 and JAG/CNLSCINST 5814.1D, the military judge (or his or her circuit military judge if the Chief Trial Judge determines the military trial judge is unavailable) will enter the judgment of the court-martial as soon as practicable, but no later than 20 days after the military judge receives the complete ROT and verbatim transcript.

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 in Appendix A and at: 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 35.4: Motions will be marked as appellate exhibits. Enclosures and attachments to motions shall be consolidated and attached as a separate appellate exhibit in order to prevent needless duplication of enclosures in the record.

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. 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 will not be recognized by the court.

Rule 36.2: If an alleged victim retains civilian counsel, trial counsel shall furnish the civilian victims' legal counsel with a copy of the Uniform Rules and any local rules. The civilian victims' legal counsel's notice of appearance must acknowledge familiarity with the Uniform Rules and any local rules.

Rule 36.3: All victims' legal counsel are subject to these Uniform Rules, the Rules of Professional Conduct, and the applicable local rules.

Rule 36.4: 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 36.5: 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. When appropriate, 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 36.6: 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. 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 and response 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 36.7: The military judge has discretion to allow victims' legal counsel to be heard in court via telephone or 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 victim's legal counsel desires to be heard, if not seated in the well of the court, that counsel shall stand silently until recognized by the military judge and invited into the well of 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. 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.

Rule 36.8: 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.

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 may 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 R.C.M.

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/PLEA AGREEMENT

Rule 40.1: Counsel are strongly encouraged to use the model pretrial or plea agreement depending on the offense date found at: http://www.jag.navy.mil/trial_judiciary.htm.

Rule 40.2: Counsel should note that for cases referred on or after 1 Jan 19, no automatic reductions in pay grade for enlisted members pursuant to Article 58a, UCMJ, will be imposed until the Secretary promulgates rules concerning automatic reductions. See JAGMAN Section 0153(e).

APPENDIX A: MODEL MOTION TEMPLATE

NAVY-MARINE CORPS TRIAL JUDICIARY
_____ JUDICIAL CIRCUIT
SPECIAL/GENERAL COURT-MARTIAL

UNITED STATES v. **NAME** **RANK/RATE** **USN/USMC**	**DEFENSE/GOVT MOTION FOR APPROPRIATE RELIEF** **DD MMM YY**

MOTION

Pursuant to RCMs 307(c)(4) and 907(b)(3)(B), the defense moves this Court to dismiss Specification 2 of Charge II and merge it with Specification 1 of Charge II, and to dismiss Charge III and its Specification. The defense does request an Article 39(a), UCMJ, session.

SUMMARY

SSgt Accused faces three specifications stemming from an alleged single uninterrupted altercation with the complaining victim. The Government unreasonably has charged assault with a loaded firearm (Ch II, Spec 1), simple assault (Ch II, Spec 2), and drunk and disorderly conduct (Ch III). First, for the alleged assaults, this constitutes an impermissible "blow by blow" charging scheme under *Morris*. Second, the underlying facts supporting the allegation of drunk and disorderly conduct overlap exactly with the facts supporting the alleged assaults, a practice specifically frowned upon in *Doss*. Finally, all the *Quiroz* factors point to an unreasonable multiplication, requiring relief in the form of dismissal and merger of specifications.

FACTS

1. [Procedural background of the case. Generally, one paragraph is sufficient.]

2. [Facts relevant for resolution of the motion. Several paragraphs may be used.]

BURDEN

3. The burden of proof and persuasion rests on the Defense for this motion. The standard as to any factual issue necessary to resolve this motion is to a preponderance of the evidence. RCM 905(c)(1).

LAW

4. The concept of unreasonable multiplication of charges stems from "those features of military law that increase the potential for overreaching in the exercise of prosecutorial discretion." *United States v. Quiroz*, 55 M.J. 334, 337 (CAAF 2001); see also RCM 307(c)(4), Discussion ("What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person.").

5. [More law, including the full citations for any cases referenced in the summary. Several paragraphs may be used.]

ARGUMENT

6. [Use the facts and law to convince the military judge to agree with your position. Several paragraphs may be used.]

RELIEF REQUESTED

7. Appellate courts have dealt with unreasonable multiplication of charges through combinations of dismissal and consolidation of specifications. Such action is appropriate here. The defense offers the following recommended action to aid the Court: dismiss Charge III and its Specification, and dismiss Specification 2 of Charge II and consolidate it with Specification 1 of Charge II as follows:

In that Staff Sergeant John Q. ACCUSED, United States Marine Corps, Headquarters and Service Battalion, Camp Pendleton, California, did, at or near, Oceanside, California, on or about 2 December 2018, commit an assault upon Corporal Mark A. VICTIM by displaying to him a dangerous weapon, to wit: a loaded firearm, and striking at him with his fist.

8. The defense requests an Article 39(a), UCMJ, hearing to present additional evidence and argument on this motion.

Respectfully submitted,

(Signature Block)

I certify that I have served a true copy (via e-mail) of the above on Judge (Name) and (Trial Counsel's name) on XX Jan XX.

(Signature Block)

APPENDIX B: MODEL CONTINUANCE REQUEST

NAVY-MARINE CORPS TRIAL JUDICIARY
_____ JUDICIAL CIRCUIT
SPECIAL/GENERAL COURT-MARTIAL

UNITED STATES v. NAME RANK/RATE USN/USMC	**DEFENSE/GOVT MOTION FOR APPROPRIATE RELIEF (Continuance Request)** **DD MMM YY**

1. Nature of Motion. Pursuant to Rule For Courts-Martial 906(b)(l), the Defense/Government moves the court for a continuance of the subject case.

2. Summary of Facts and Discussion.

a. The case is scheduled for an Article 39(a), UCMJ, session on _____ and trial to commence on _____

b. Reason for request.

c. List all prior continuances in the case; requested by which party; granted/denied.

d. Moving party does/does not request oral argument.

e. (If there is a named victim: Moving Party certifies that Victim's Legal Counsel (VLC) was provided a copy OR if filed by the Government and there is no VLC, Trial Counsel certifies that a copy was provided to the victim.)

SIGNATURE

****

Opposing Party Response

1. Trial/Defense Counsel does/does not oppose this continuance request (and does/does not request oral argument).

2. (If submitted by Defense Counsel and there is a named victim and the named victim is not

represented by VLC: Trial Counsel certifies a copy of this continuance request was provided to the victim who is not represented by a VLC.)

Date SIGNATURE

****

Court Ruling

The above request is approved/disapproved/approved in part.

39a will be held on _____ and/or

Trial will commence on _____ OR

This motion will be litigated at a 39a on _____.

DATE MILITARY JUDGE SIGNATURE

APPENDIX C: MODEL TRIAL MANAGEMENT ORDER (TMO)

NAVY-MARINE CORPS TRIAL JUDICIARY
_____ JUDICIAL CIRCUIT
SPECIAL/GENERAL COURT-MARTIAL

U N I T E D S T A T E S **v.** **NAME** **RANK/RATE USN/USMC**	**TRIAL MANAGEMENT ORDER** **DD MM YY**

1. **Trial Dates and Milestones**. The following are due on or before 1700 on the ordered date:

a. Arraignment (and appointment of victim's designee if applicable)	**DD MMM YY**[i]
b. Defense request for discovery	DD MMM YY
c. Government disclosure obligations[ii]	DD MMM YY
d. Defense reciprocal disclosure obligations[iii]	DD MMM YY
e. Defense expert consultant request	DD MMM YY
f. Government response to Defense expert consultant request	DD MMM YY
g. Government notices pursuant to M.R.E. 404(b), 413(b), 414(b)	DD MMM YY
h. Defense witness request[iv]	DD MMM YY
i. Government response to Defense witness request	DD MMM YY
j. Motions filed and notice pursuant to M.R.E. 412[v]*	DD MMM YY
k. Responses to motions*	DD MMM YY
l. **Article 39(a)**	**DD MMM YY**
m. Written notice of certain defenses[vi]	DD MMM YY
n. Motions filed (second session, if necessary)*	DD MMM YY

o. Responses to motions (second session, if necessary)* DD MMM YY

p. **Article 39(a) (second session, if necessary)** **DD MMM YY**

q. Written notice of pleas and forum[vii]* DD MMM YY

r. Final pretrial matters[viii]* DD MMM YY

s. **Trial Dates at _____** **DD-DD MM YY**

2. Timeliness. A party shall seek leave of court to make a notice or filing after the ordered milestone or the written pleading shall include an explanation for good cause. If a continuance is necessary, counsel will seek relief as soon as possible.

3. Victims' Legal Counsel (VLC) and other Non-Party Counsel. VLC and other non-party counsel shall file a notice of appearance with the court, stating the court 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 counsel. The notice shall contain a brief statement as to the qualifications to practice and oath status of the counsel. The notice must be served on all parties, and prior to any 39(a) session at which the VLC desires to be heard. VLC and other non-party counsel's appearance and filings must be filed in accordance with this Order's milestones, including responses to motions upon which the counsel desires to be heard, and in consideration of the Circuit Rules. Failure to comply with this Order will constitute waiver by the VLC or other non-party counsel's right to be heard, subject to a good cause determination by the Court.

So **ORDERED** this____ day of_____, 20__.

_____
Military Judge

*Filed with the Clerk of Court and served on counsel consistent with the NMCTJ Uniform Rules. Trial counsel is responsible for service upon named victims in the absence of a victims' legal counsel where such service is necessary.

---

[i] All times are _____ standard time.

[ii] Discovery obligations are continuous. R.C.M. 701 & 703 disclosures: papers accompanying the referred charges; convening and amending orders; statements in the possession of the trial counsel; names and addresses/contact information of witnesses the trial counsel intends to call in the prosecution's case-in-chief and to rebut certain defenses when notified; notice of records of prior convictions of the accused to be offered on the merits; sentencing information when required; and evidence that is favorable to the defense; notice of any immunity or leniency to prosecution witnesses (M.R.E. 301(c)(2)). Disclosure of evidence seized from or the property of the accused, if any (M.R.E. 311(d)(1)). Disclosure of evidence of prior identification of the accused, if any (M.R.E. 321(c)(1)). Disclosure of relevant statements made by the accused, if any, is required prior to arraignment (M.R.E. 304(d)(1)).

[iii] Discovery obligations are continuous. Upon request of trial counsel, the defense shall permit the trial counsel to inspect the documents, tangible objects and relevant reports prepared by expert witnesses that it intends to introduce as evidence

in its case in chief or of relevant reports prepared by expert witnesses the defense intends to call at trial upon Government compliance with such requests made by the defense. (R.C.M. 701 (b)(3)&(4)).

[iv] A proper witness request includes a synopsis of expected testimony sufficient to show its relevance and necessity on the merits or that a witness' personal appearance is necessary on sentencing. (R.C.M. 703(c)(2)(B)).

[v] Counsel should strive to litigate all ripe motions at the first motions date, including those required for M.R.E. 412, allegations of errors in the Article 32, preferral and referral process, appointment of expert consultants, witness production, and discovery.

[vi] Particulars of defenses of alibi, innocent ingestion, lack of mental responsibility, or the defense's intent to introduce expert testimony as to the accused's mental condition. (R.C.M. 701(b)(2)).

[vii]Note that forum selections of judge alone or members with enlisted representation must be personally signed by the accused or declared on the record.

[viii] Member questionnaires, requests for judicial notice, voir dire, combined witness list with units, company sized unit, proposed instructions, cleansed charge sheet, findings and sentencing worksheets, and any motions for preadmission of evidence. Notice will be provided to the Court and opposing counsel when a party intends the use of electronic media or to take testimony by telephone or video-conferencing.