

**COURT RULES OF PRACTICE AND PROCEDURE
BEFORE
COAST GUARD COURTS-MARTIAL
REVISED MAY 2016**

Court Rules of Practice and Procedure before Coast Guard Courts-Martial (2016 version)

PREAMBLE

These Rules of Practice and Procedure before Coast Guard Courts-Martial (Rules of Court) supplement the Rules for Courts-Martial (RCM) and, together with the RCM, govern trials by courts-martial presided over by judges assigned to or affiliated with the United States Coast Guard Trial Judiciary. They are effective upon approval by the Chief Trial Judge and supersede all rules previously published as Rules of Practice and Procedure before Coast Guard Courts-Martial. A copy of these rules will be maintained by each military judge, by each military trial and defense counsel and court reporter, and in every Coast Guard courtroom. Trial counsel will provide a copy of these rules to detailed defense counsel, and civilian counsel and/or individual military counsel immediately after such counsel is retained or made available.

Adherence to these rules will promote an orderly, expeditious, and just disposition of court-martial cases, and provide for more efficient application of judicial and legal resources. Counsel, as officers of the court, are ethically obligated and expected to be familiar with and follow these rules, as well as COMDTINST M5800.1, *Coast Guard Legal Professional Responsibility Program*, and current American Bar Association Standards for Criminal Justice, to the extent that the latter apply at courts-martial.

Rule 1. Applicability. These Rules of Court are applicable to all cases tried in and all counsel practicing before Coast Guard courts-martial, including accuseds who choose to proceed *pro se* pursuant to RCM 506(d), and in cases with a military judge from another armed force when a member of the Coast Guard is the accused. All counsel are to be familiar with and follow these rules.

Rule 2. Purpose, construction, and enforcement. These rules are intended to provide for the just determination of every court-martial proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. Although these rules are mandatory, noncompliance, in and of itself, does not give rise to any rights or remedies and the rules shall be interpreted and applied in that light. Counsel may be required to explain the failure to comply with these rules and the military judge is empowered to take appropriate action pursuant to applicable law and regulation. *See* the Coast Guard Legal Professional Responsibility Program (CGLPRP), COMDTINST M5800.1, RCM 109, and RCM 809.

Rule 3. Trial procedure guide. The Coast Guard Trial Guide will be used.

Rule 4. Trial Counsel Requirements.

Rule 4.1. Absent extraordinary circumstances, within 24 hours of referral, the trial

counsel will cause the charges to be served on the accused and defense counsel. The charge sheet must indicate the date on which the charges were served on the accused, IAW RCM 602. If such service has not been completed within 24 hours of referral, upon completion of such service the trial counsel will immediately provide the judge with another copy of the charge sheet(s) showing such service.

Rule 4.2. After referral, the trial counsel will immediately notify the judge and defense counsel if an alternate disposition of the charges is likely. To facilitate docket management and trial preparation after referral of charges, trial and defense counsel will notify the judge immediately when an offer to plead guilty or a request for discharge/resignation in lieu of court-martial has been submitted. Additionally, trial counsel will notify the judge when the offer to plead guilty or request for discharge/resignation will be presented to the convening authority for decision and whether the SJA is supporting the request. Immediately when such a decision is made but at least two duty days prior to trial, trial counsel will notify the judge and defense counsel of any charges or specifications upon which the Government will not present evidence.

Rule 4.3. When the convening authority accepts an accused's offer to plead guilty pursuant to a pretrial agreement, the trial counsel shall immediately provide a signed copy of the pleas portion only (Part I) to the judge, but in no case less than three full duty days prior to trial. If the pretrial agreement package presented to the convening authority included a signed stipulation of fact, it shall also be provided to the judge. Otherwise, stipulations of fact must be provided to the judge as soon as signed by all parties, but in no case less than three full duty days prior to trial.

Rule 4.4. Trial counsel is responsible for notifying all requested witnesses of the time, place, and uniform for the trial. Witnesses will be instructed to be present at a time so that the court will not have to recess awaiting their presence; however, the court will cooperate with witnesses whose absence from duty or job is especially disruptive or who provide essential services or missions to the extent that a fair, orderly, and expeditious trial is not sacrificed. Counsel will notify the judge when such witnesses are to be called so that appropriate coordination can be accomplished. Requests for delay to obtain or await arrival of witnesses normally will not be favorably considered in the absence of prior coordination with the judge. The timing of witnesses is crucial to the orderly presentation of a case. Unless otherwise ordered by the judge, before beginning their case in chief, counsel will provide the bailiff with a list of witnesses, in the order to be called, so the bailiff can have witnesses standing by to present their testimony.

Rule 4.5. Trial counsel is responsible for notifying the members of the time, place, and uniform for the trial. Members will not be informed of the projected pleas or any other information about the court-martial, to include the accused's name or the nature of the charges. Trial counsel is responsible for confirming that each panel member has

personally acknowledged the notification.

Rule 4.6. Trial counsel is responsible for notifying the detailed court reporter of the date/time, or changed date/time, of any Article 39(a) sessions and trial. Trial counsel will ensure the court reporter is sworn.

Rule 4.7. Trial counsel is responsible for ensuring that the courtroom, deliberation room, and waiting rooms are clean and in proper order before and after each trial.

Rule 5. Defense Counsel Requirements.

Rule 5.1. Unless the judge sets a different deadline, defense counsel will file all motions and notify trial counsel and the judge of the forum and pleas at least ten days before an Art. 39(a) session to resolve motions, or the date of trial (whichever is earlier). This is a minimum notice requirement. Defense counsel will, whenever possible, provide such notice and file all motions as far in advance as possible to ensure the orderly administration of justice. If the plea or forum changes after notification, defense counsel will immediately inform the judge and trial counsel of the change.

Rule 5.2. Unless the judge sets a different deadline, defense counsel will notify the trial counsel in writing at least ten duty days before the scheduled Art. 39(a) session and/or the trial date (whichever is earlier) of the intent to offer the defense of alibi, innocent ingestion, or lack of mental responsibility, or the intent to introduce expert testimony as to the accused's mental condition, and of all other notices required by RCM 701(b)(2).

Rule 5.3. In each case in which a civilian attorney is retained by the accused, the detailed defense counsel shall furnish a copy of these rules to that civilian attorney, who shall be bound by them, as well as by the Coast Guard Legal Professional Responsibility Program, COMDTINST M5800.1, and the Military Justice Manual, COMDTINST M5810.1E, which makes Coast Guard courts-martial also subject to the following ABA standards for the Administration of Criminal Justice: The Prosecution Function and the Defense Function; The Function of the Trial Judge; Fair Trial and Free Press.

Rule 5.4. When a trial date has been set prior to the accused's retention of civilian counsel, or individual military counsel, the detailed defense counsel shall advise the other defense counsel of the date, time, and place of trial or Article 39(a) session, and the identities of the convening authority, the military judge, and the trial counsel.

Rule 5.5. At the earliest opportunity, civilian defense counsel shall cause to be served on the court reporter a written notice of appearance, with copies to the military judge and trial counsel. This notice shall include the name of the accused, counsel's name, office address, telephone number, email address, and jurisdiction(s) where the

counsel is currently admitted to practice. The filing of any pleading relative to the case signed by the counsel, or submitted from the counsel's email account or fax number, constitutes an initial notice of appearance for such counsel.

Rule 6. Third Party Legal Counsel (LC) / Special Victim's Counsel (SVC).

Rule 6.1. Applicability of Rules. As stated in Rule 1, these Rules of Court apply to all counsel practicing before Coast Guard courts-martial. Accordingly, notwithstanding references to "both parties", "counsel for both sides", "party" or words to that effect, all Rules of Court apply to SVCs (whether military or civilian counsel representing victims), including but not limited to the rules on motions practice in Rule 11.

Rule 6.2. Entry of Appearance and Opportunity to be Heard. LC must file a Notice of Appearance with the court, stating the court, case caption, name of the respective client, and name, rank, address, phone number and email address of the LC. Said notice must also contain a brief statement as to the qualifications to practice and oath status of the LC. Said notice must be served on all parties in that case. See RCM 103(16).

Rule 6.3. Opportunity to be Heard and Pleadings. 3d Party legal counsel may be heard before this court to a limited extent as allowed by applicable law, subject to rulings and direction of the military judge. LC may file such motions and other pleadings with the court as they deem proper to represent their client's interests. LC shall articulate a basis for standing in their written pleadings if the pleading concerns issues outside those identified in Rule 11.6 below.

Copies of all filings by the LC must be served on all counsel participating in the case. The LC filings should comply with motion filing dates set in the case management order; however, the military judge may set separate deadlines for the filing of any motions by an alleged victim's legal counsel.

Rule 6.4. Manner of Participation. The MJ has the discretion to allow LCs to be heard in court via telephone or remote means. When appearing in the Courtroom, the LC should be seated behind the bar except when addressing the court. Legal Counsel may be heard in an Article 39(a) outside the hearing of the members. The LC will be brought forward at the appropriate time(s) and will only address the court from the podium. It is within the MJ's discretion to hear from the LC on each distinct issue separately or to have the LC address all the issues at one time. The right to be heard can be accommodated orally on the record, by telephone or remote means, or by requiring written submissions to the court. Within the discretion of the judge, LC may be seated at a third table inside the court well during motions to quash government subpoenas or other lengthy or highly complex hearings. Within the discretion of the judge, the LC may be invited to participate in pretrial conferences pursuant to RCM 802.

Rule 6.5. Notice of Court Sessions. If LC has filed a Notice of Appearance, trial counsel must provide the LC notice of all sessions of court at least five duty days prior to the session of court, unless, for good cause shown, the military judge permits a different time for such notice. Trial counsel must immediately provide copies of any case management order ordered by the court and any rulings on motions involving the alleged victim to the LC.

Rule 6.6. Closed Court Sessions. The LC may move to close the court proceedings during any Article 39(a) motion session in order to protect the privacy and dignity of his/her client. A court session may be closed over the objection of the accused or the public upon meeting the constitutional standard set forth in RCM 806(b)(4) and related case law. For hearings under MRE 412, the military judge shall conduct a closed hearing. For hearings under MRE 513(e)(2) and MRE 514(e)(2), the military judge may order the hearing closed.

Rule 6.7. Procedure for Presenting Unsworn Statements. In accordance with RCM 1001A, the victim may present an unsworn statement after the announcement of findings. The LC shall provide a copy of the unsworn statement to the trial counsel, defense counsel, and military judge one duty day in advance of presenting the statement on the record. The military judge may waive this requirement for good cause shown.

Rule 7. Docketing.

Rule 7.1. The trial counsel shall submit an electronic docketing request using the tool maintained by CG-LMJ within one duty day of referral. Upon submission of the docketing request, trial counsel shall promptly provide a copy of the referred charges, and all convening orders and amendments, to the Chief Trial Judge and alternate docketing judge. A military judge will not normally be detailed to the case until after receipt of the appropriate charge sheet(s) and convening order. Once the trial date is established, the trial judge shall post the trial date along with the charge sheet on the military judges' shared docketing calendar.

Rule 7.2. For purposes of these rules, a "duty day" is Monday through Friday, unless formally designated as a federal holiday or training holiday approved by the appropriate authority. Unless otherwise prescribed by appropriate authority, a "duty day" does not include Saturday and Sunday. Sessions of court shall not be held outside normal working hours except for good cause that shall be shown on the record.

Rule 8. Withdrawal of counsel. See Rule 1.16 of the CGLPRP, COMDTINST M5800.1.

Rule 8.1. Trial counsel. After referral, trial counsel shall not be permitted to withdraw unless substitute qualified counsel, who is available on the scheduled trial date,

is detailed prior to or simultaneously with the relief of the withdrawing counsel.

Rule 8.2. Military defense counsel. After referral, military defense counsel may not withdraw from representation of the accused without the judge's approval whether or not the accused wishes to release the detailed or individual military counsel.

Rule 8.3. Civilian defense counsel. Once civilian counsel enters an appearance, to include the filing of a pleading, such counsel may not withdraw from representation of the accused without the judge's approval, whether or not the accused wishes to release the counsel. Willful failure of a fee-paying client to comply with the terms of the contract for representation may provide grounds for counsel to request to withdraw. The mere failure, however, to pay the fee does not terminate the attorney's obligations as an officer of the court. Approval of the request to withdraw will be based on whether: (1) counsel has taken reasonable steps to avoid foreseeable, material prejudice to any substantial right of the accused; (2) adequate time exists to employ other military or civilian defense counsel without undue prejudice to the accused or the Government; and (3) the interests of justice and the orderly administration of justice are advanced.

Rule 9. Conferences and pretrial sessions.

Rule 9.1. Conferences. Conferences with the military judge and counsel for both sides are authorized by RCM 802. The accused is neither required nor prohibited from attending any such conference. Conferences may be held to inform the military judge of anticipated motions, unusual problems or issues which are likely to affect the duration, progress or orderly disposition of the case, and to expeditiously resolve matters on which the parties can agree. All conferences where agreements were reached between the parties shall be summarized on the record. Others should normally be summarized.

Rule 9.2. Article 39(a) sessions. As authorized under Article 39(a), UCMJ, a session of the court without the presence of the members may be called for the purpose of holding the arraignment and receiving the pleas of the accused, and for other matters not requiring the presence of members. A pretrial Article 39(a) session, however, is normally held only if necessary to receive testimony to resolve any pretrial motions. Either party may request, or the judge may direct *sua sponte*, an Article 39(a) session.

Rule 9.3. Arraignments. Either party may request, or the judge may direct *sua sponte*, an Art. 39(a) session solely for arraignment. Counsel should be prepared for arraignments shortly following service on the judge of the documents set forth in Rule 7.1 above.

Rule 10. Discovery.

Rule 10.1. RCM and MRE requirements. Counsel will promptly comply with

military law and service regulations concerning discovery. The military judge may establish more stringent deadlines in the case management order as deemed necessary.

Rule 10.2. Other trial documents. No later than two duty days before trial, the trial counsel will provide the judge and defense counsel the following documents, as applicable, by hardcopy or e-mail: all amending court-martial convening orders; and, in trials with members, a seating chart, a cleansed charge sheet, and draft findings and sentence worksheets. The judge may also require copies of proposed voir dire questions in writing. No later than one duty day before trial on the merits, trial counsel will provide to the detailed court reporter for marking all exhibits which may be used during the merits or sentencing phase of the trial.

Rule 11. Motions. Absent unusual circumstances, such as a particularly complex case, counsel should be prepared to dispose of all motions at one preliminary session. This requires counsel to conduct all reasonable investigation to identify and perfect motions in advance of that one preliminary session. Requests to file motions beyond the deadline set by the judge from counsel who do not comply with this requirement may not be favorably considered. Motions will consist of a written pleadings containing: (1) the relief sought; (2) the burden of persuasion and burden of proof; (3) the facts in issue as believed by counsel and supported by the evidence; (4) a list of evidence and witnesses to be produced; (5) argument and the legal authority upon which the argument is based and contrary legal authority of which counsel is aware; and (6) a conclusion that restates the relief sought. The motion will also state whether the moving party desires to present evidence or oral argument, or both, on the motion. All motions and responses shall be accompanied by proposed essential findings of fact and conclusions of law. Unless the judge sets a different schedule, the nonmoving party, if opposing the motion, will file a response with opposing counsel and the judge within five duty days after the motion is received or two duty days before any scheduled hearing on the motion, whichever is earlier. The response should follow the format for motions and must include that party's desire whether to present evidence or oral argument, or both, on the motion. The judge may consider failure to file a timely response as conceding the merits of the motion. If neither party requests oral argument, and the motion does not involve disputed issues of fact, the judge may rule on the basis of the matters filed. Motions requiring findings of fact must be supported by evidence presented by the parties or by a written stipulation of fact.

Rule 11.1. Filing of Motions. Motions are considered filed with the court when the moving party has provided the signed original, including any enclosures, to the judge (in person or by confirmed email), as well as a copy, including all enclosures, (also in person or by confirmed email), to both opposing counsel and the court reporter. Motions sent by mail, courier, or other carrier are not considered filed until physically received. In extraordinary circumstances, the judge may allow filing to consist of a copy, including all

enclosures, to opposing counsel and to the judge and may authorize providing the original motion, including any enclosures, to the court reporter before the motions hearing. Should a motion submitted to the the judge be altered or amended in any way from the motion provided to the court reporter, the heading of the motion must identify it as a “corrected copy” and reflect the date of correction. The corrected copy of the motion is considered filed under the same circumstances as above.

Rule 11.2. Timeliness of Motions. Unless good cause is shown, motions must be filed in accordance with the case 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 11.3. Stipulations in motions hearings. If a motion or objection does not involve a factual dispute, counsel will, to the extent possible, endeavor to enter into a written stipulation of fact or expected testimony concerning undisputed matters for the limited purpose of obtaining a ruling on a motion or objection.

Rule 11.4. Counsel certification. Every motion, pleading or other document submitted to the court by a party shall be signed by at least one counsel of record. Electronic documents may be “signed” (among other electronic methods) by making an appropriate typed annotation on the document. Counsel’s signature constitutes a certification that he or she has read the motion, pleading or other document; that to the best of the signer’s knowledge, or upon information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or is a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause undue delay.

Rule 11.5. Speedy trial motions. In those cases where the defense moves to dismiss the charges and specifications on the grounds of denial of a speedy trial, the trial counsel will prepare a written chronology of events prior to trial. If the counsel cannot stipulate to the events and dates, areas of disagreement shall be identified and litigated when the motion is presented.

Rule 11.6. Motions involving Certain Victims. In cases where a named victim is represented by third party legal counsel or Special Victim’s 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’ counsel. In cases where a named victim is not represented by third party legal counsel or SVC, any notice or motion which implicates an alleged victim’s rights shall be provided to the alleged victim via the trial counsel. Ordinarily, LC may have an interest in hearings regarding MRE 412, 513 and 514. As such LC must be

provided with copies of the relevant Prosecution and Defense filings within 24 hours of said filings. The trial counsel is responsible for serving said pleading on the LC. LCs are encouraged to provide written motions and proposed rulings in advance to assist the court in clarifying the issues.

Rule 11.7. Continuances. Motions for a continuance will be in writing unless made verbally on the record. Counsel will promptly send the motion to opposing counsel and the judge and may use email. The motion shall include: (1) a statement of the specific facts supporting the requested delay; and (2) a statement of the duration of the delay. Requests for continuance by recently added defense counsel that are premised upon schedule conflicts, i.e. prior scheduled appearance in another court, shall set forth the name and address of the court, case name and docket number, the name of the judge, if known, the date the commitment was made, and a requested date for trial. Unless a different time is set by the judge, opposing counsel will indicate in writing his/her position regarding the delay within 48 hours of receipt of the motion. The judge may act on the motion without an Art. 39(a) session or RCM 802 conference. The judge has sole responsibility to set or change trial dates; only the judge may grant a continuance. Requests for continuance are not granted until affirmatively acted upon by the judge.

Rule 12. Courtroom security. The judge may require that courtroom security officers attend trials or hearings. If so, the trial counsel is responsible for ensuring this requirement is satisfied. When used, courtroom security officers will be military law enforcement personnel or other federal law enforcement personnel attired as the judge directs. Use of a courtroom security officer is not an indicator that the accused presents a security or flight risk. An instruction to members to that effect may be appropriate in the judge's discretion.

Rule 12.1. Responsibilities. The government, often the commanding officer of the unit with cognizance over the trial location, or local SJA, is primarily responsible for ensuring that the courtroom facility is safe. Notwithstanding such responsibility, counsel shall inform the military judge of any potential risks related to the court-martial or any security concerns that they become aware of. The military judge may require additional courtroom security measures as deemed necessary.

Rule 12.2. Weapons and dangerous items prohibited. No arms or weapons, except when such are to be exhibits, or when otherwise authorized by the military judge, shall be allowed inside the courtroom. Security officers working in the federal, state, or local courtroom or courthouse where a court-martial is being conducted may bring their standard personal protective equipment and weapons into the courtroom to the same extent as permitted by the hosting authority. Law enforcement officers in the courtroom in their official capacity may bring their standard personal protective equipment and weapons into the courtroom to the extent permitted by the military judge.

If firearms are marked as exhibits, the trial counsel shall ensure that, before they are brought into the courtroom, they are rendered inoperable in a manner that doesn't change their evidentiary value. Exhibits that could be used as a weapon, such as a knife, shall be attached to an evidence board or otherwise rendered safe.

Rule 12.3. Restraint of the accused or a witness. The accused shall not be physically restrained in a manner observable by court members unless the judge approves the restraint in advance. Any defense counsel concern with the nature of such restraint shall be immediately brought to the attention of the military judge outside of the presence of the members.

Counsel shall advise the military judge whenever they anticipate calling an inmate as a witness and obtain advance approval of any special security measures, including restraint of the witness.

Rule 13. Decorum.

Rule 13.1. General. Counsel for both sides shall assist the judge with maintaining a solemn and dignified atmosphere throughout the trial. Generally speaking, counsel are responsible for the conduct of the witnesses they call during court proceedings. As a traditional mark of respect for the judicial system, all persons in the courtroom, regardless of rank or grade, except the court reporter, will rise when the judge enters or leaves the courtroom. All persons, except the judge and court reporter, will rise when the entire court member panel enters and leaves the courtroom. The trial counsel is responsible for saying (or having the bailiff say), "All rise," whenever the judge or entire court member panel enters or leaves the courtroom. All parties should remain in place until the judge indicates that all may be seated, or upon the full departure of the judge and members.

Rule 13.2. Addressing the Military Judge. Counsel and other persons connected with the trial, including court members, witnesses, court reporters, accused, and spectators, will address the judge as "Judge," "Your Honor," or "Sir" or "Ma'am" in the courtroom. Elsewhere, counsel should bear in mind the circumstances and presence of others when addressing the judge.

Rule 13.3. Bar of the courtroom. No one other than a trial participant is allowed inside the bar of the courtroom without the judge's permission when court is in session. When court is not in session, supervisory attorneys and paralegals are allowed inside the bar.

Rule 13.4. Prohibitions. Eating and drinking are not permitted in the courtroom during open sessions (except water or other non-alcoholic beverage in an unmarked opaque container for the trial participants). Chewing gum and tobacco products are not permitted in the courtroom at any time. Absent prior approval by the judge, passing notes

or whispering over the bar between trial participants and the gallery is prohibited. Photographs, video and sound recordings (except those by the detailed court reporter or otherwise authorized by the military judge), and radio and television broadcasts shall not be made in or from the courtroom during any trial proceedings. Cell phones, radios, pagers, iPods, smartphones, tablets, and similar devices are not allowed in the courtroom unless they are completely turned off. No explosives, flammable liquids, caustic materials, or other hazardous materials will be brought into the courtroom without the judge's prior approval. Firearms or weapons, except when used as exhibits or otherwise explicitly authorized by the judge (*e.g.*, law enforcement personnel or courtroom security officers), are not permitted in the courtroom. A copy of this rule will be posted near the entry of the courtroom and inside the courtroom to place spectators on notice of these prohibitions.

Rule 14. *Ex parte* Communications with the Military Judge.

Rule 14.1. *Ex parte* communications between counsel for one side and the military judge concerning a case which is pending before that judge are prohibited except as otherwise provided by law. Routine administrative matters, however, such as submission of the electronic docketing request are excluded from this prohibition.

Rule 14.2. Military judges may conduct critiques or offer suggestions regarding counsel's in-court performance to improve the administration of military justice. Any such session held before adjournment must be done with all counsel present.

Rule 15. Spectators.

Rule 15.1. General. Spectators are encouraged to attend courts-martial and shall be permitted to observe all trial proceedings, unless otherwise determined by the judge. While no age restrictions apply as to who may be a spectator, no one will be permitted to disrupt the dignified, formal atmosphere of the court-martial. The bailiff will advise parents to consider the nature of expected testimony before bringing young children into the courtroom as spectators, as testimony in some cases may unavoidably be graphic, vulgar, and/or obscene.

Rule 15.2. Restrictions. Spectators may enter and leave the courtroom during open sessions but will not be permitted to disturb or interrupt court proceedings by their conduct. Spectators will not indicate or demonstrate in any manner agreement or disagreement with testimony, procedures or results at a trial, nor will their appearance or attire be permitted to detract from the dignity of the proceedings or to create a disruption. Spectators will not sleep or engage in loud whispering.

Rule 15.3. Sanctions. Spectators who violate these rules may be excluded from the courtroom, held in contempt, or both.

Rule 16. Punctuality. Punctuality in all matters affecting the court is required of all parties and reflects preparation and professionalism. When a party unavoidably is or will be late, the judge shall be notified as soon as possible and provided an explanation.

Rule 17. Bailiff. Unless the judge directs otherwise, the court requires a bailiff at every Art. 39(a) session at which witnesses will be called and at every trial. The bailiff will retrieve witnesses as they are called to testify, call “all rise” when the judge or the entire panel enters or leaves the courtroom, and take care of administrative errands during trial. The bailiff will neither be a witness, nor the unit escort, nor a guard for the accused. Likewise, a bailiff should neither have an interest in the case nor a close association with the accused or a victim of a charged offense. In cases of an enlisted accused, the bailiff will ordinarily be a noncommissioned officer senior to the accused. In cases of an officer accused, the bailiff will ordinarily be an officer senior to the accused, if reasonably available. If not reasonably available, the bailiff will be a noncommissioned officer in the rank of E-5 or above. Trial counsel is responsible for obtaining and briefing the bailiff as to the bailiff's duties. If a bailiff is not present, trial counsel will perform the bailiff's duties.

Rule 18. Situs of Trial. Unless otherwise directed by the Convening Authority pursuant to RCM 504(d)(1), the military judge will designate the location of trial.

Rule 19. Uniforms. The default military uniform for all courts-martial is Service Dress Blue. This uniform is mandatory only for the military personnel required to be present at trial sessions attended by the members. The military judge may, however, designate an alternate uniform. Trial counsel will ensure all parties receive timely notice. Civilian attorneys shall wear appropriate business attire suitable for appearance before a federal district court. The military judge shall wear the judicial robe.

A military witness who normally performs their duties in civilian clothes may testify in appropriate business attire suitable for appearance before a federal district court.

The accused and defense counsel are responsible for ensuring that the accused is properly attired. In the event of pretrial confinement, however, the government is responsible for ensuring that the accused is in the appropriate uniform. Confinement uniforms are not appropriate courtroom attire.

Rule 20. Personally Identifiable Information

Rule 20.1. Minimize use of PII. Use of Personally Identifiable Information (PII) must be eliminated or minimized to the maximum extent possible in all pleadings and documents.

Rule 20.2. Redacting PII. 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, names of minors, and names of alleged victims in all sexual assault cases, shall be redacted.

Medical/psychiatric records must be sent by encrypted e-mail or through a secured access file exchange.

Rule 20.3. Names of Minors and Certain Victims. 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. Alleged victims of sexual assault shall also be identified by their initials on the charge sheet and in pleadings.

Rule 21. Use of Technology/Remote Means.

Rule 21.1. General. In accordance with RCM 914B, remote means may be used to conduct Article 39(a) sessions for arraignments, motions practice and any other sessions permitted by the military judge. “Remote means” are defined as video teleconference, closed circuit television, or similar technology. Such means do NOT include telephone.

Rule 21.2. Location of Parties. Parties participating in sessions conducted via remote means should not be in more than two locations. The government will ensure that all sites meet the necessary technology and security requirements.

Rule 21.3. Spectators. Sessions conducted by remote means are open to the public at the site designated by the presiding military judge consistent with the 6th Amendment, RCM 504(d)(1) and RCM 804.

Rule 21.4. Loss of Communications. An automatic recess will be taken if communications (audio or video) are lost during a session conducted by remote means. The court reporter shall make the appropriate notation in the record and cease recording the court session. Once full communications are restored, the military judge will call the court back to order.

Rule 22. Court-Martial Members.

Rule 22.1. Conduct of group voir dire. The judge will ordinarily initiate voir dire examination by asking the preliminary questions contained in the Coast Guard Trial Guide. The judge may then permit such additional questions by counsel as deemed

reasonable and proper by the judge. The judge will normally require counsel to submit voir dire questions to the judge and opposing counsel in advance of trial.

Rule 22.2. Individual voir dire. Counsel must state specific reasons for any desired voir dire of individual members. Subsequent individual voir dire will be limited to those specific reasons and any reasonable follow-up questions.

Rule 22.3. Questionnaires. The trial counsel shall ensure that a copy of the completed "Court Martial Member Questionnaire" for each prospective member is furnished to defense counsel and the military judge at least five full duty days prior to trial. The military judge may establish earlier deadlines. If it appears to counsel that a challenge might be sustained, the convening authority should be advised that it would be advisable to have alternate members readily available for detailing to the court in the event that the challenge procedure reduces the court-martial below a quorum. To expedite voir dire, the trial counsel shall provide new members with questionnaires before trial under RCM 912, and provide those to the judge and the defense counsel. No post-trial questionnaires or surveys will be sent to any member except upon approval of the judge.

Rule 22.4. Challenges. Counsel will not state challenges, or lack thereof, in the presence of court members.

Rule 23. Counsel conduct.

Rule 23.1. Personal opinions. Counsel shall not, during trial, assert personal knowledge of the facts in issue, except when testifying as a witness. *But see* rule 27 (offers of proof). Counsel shall not assert a personal opinion in the course of arguing for any position or conclusion based on an analysis of the evidence with respect to the matter stated. Counsel shall not express a personal belief or opinion as to an appropriate sentence or portion thereof.

Rule 23.2. Undue familiarity. Counsel shall refrain from any familiarity among themselves, with the judge, with court members, or with witnesses, in the presence of the accused or other trial participants, or while court is in session. Counsel shall address their comments to the court, not to each other. Opposing counsel will not confer without the judge's permission.

Rule 23.3. One counsel at a time. Only one counsel per side may examine any one witness or address the court on any particular issue, motion, argument, or objection except with the specific permission of the military judge.

Rule 23.4. Conduct of opposing counsel. During argument or examination of a witness, opposing counsel shall remain quietly seated at counsel table, except when rising to state an objection or when whispering or passing notes to others seated at the counsel

table. Opposing counsel shall not talk to others or engage in conduct that diverts attention from counsel's argument or examination.

Rule 23.5. Opening statements. Opening statements may be made by either or both counsel or waived; however, they shall be confined to what counsel expect their evidence to prove. Counsel will not use the opening statement to argue the case or to instruct as to the law. Unless granted prior permission from the judge, counsel shall not show to the members during opening statement evidence that has not been admitted.

Rule 23.6. Closing argument. Counsel in their closing statements may make reasonable comment on the evidence and may draw such inferences from the evidence and testimony as will support their theory of the case. In argument, counsel shall not assert a personal belief in the accused's guilt or innocence, or in the justness of a particular cause, or the credibility of a witness. Trial counsel may not, under any circumstances, either directly or indirectly, or by inference, argue or bring to the attention of the court any desire, belief, or opinion of the convening or other authority concerning the guilt or innocence of the accused, or an appropriate sentence if convicted. Trial counsel also may not argue that an accused is guilty, or deserves a more severe punishment, because their acts violated "core values" or other command policy that is not contained within a charged offense.

Rule 23.7. Rebuttal arguments. The trial counsel may, if the defense counsel presents argument on findings, make a rebuttal argument. RCM 919(a). Trial counsel's rebuttal argument is limited to matters raised by the defense and will not introduce new matters. Should trial counsel raise any new matters in rebuttal, the defense counsel may be given the opportunity to rebut such new matters in surrebuttal.

At sentencing, the trial counsel may, in the discretion of the military judge, be permitted to make a rebuttal argument after the defense presents a sentencing argument. RCM 1001(a)(1)(G). Any sentencing rebuttal argument by the trial counsel shall be strictly limited to responding to new matters raised by the defense argument. As a result, rebuttal sentencing arguments should be rare. The trial counsel may not waive, or limit, the government's sentencing argument in order to maximize the scope of rebuttal.

Rule 24. Witnesses.

Rule 24.1. Presence in the courtroom. Witnesses generally shall not sit in the courtroom prior to their testimony in a contested case. After a witness has been permanently excused, they may remain as spectators. The military judge shall ensure alleged victims of certain offenses to which Art. 6b applies are not excluded from any public hearing or court proceeding unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this

chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.

Rule 24.2. Preparation. Trial counsel will ensure that all witnesses understand the physical layout of the courtroom, where they should go, and what they should do upon entering the courtroom. Counsel should arrange before a trial session for witnesses to be immediately available when called to testify. Military witnesses must not salute the judge or president of the court in the courtroom.

Rule 24.3. Oaths and identification. Trial counsel will swear all witnesses testifying on the merits in the presence of the members and fully identify them even if they have been previously sworn and identified at an Art. 39(a) session. If a witness is later permanently excused and recalled, the witness will be resworn. If a witness is later temporarily excused and recalled, the witness will be asked if they are the same person who previously testified in the court-martial and will be reminded he/she is still under oath. Trial counsel will not announce the witness' social security number or require the witness to do so. For example: Are you Mrs. Mary Bragmar of Oxford, MD?

Rule 24.4. Conduct of Examination. Counsel shall conduct the questioning of witnesses and arguments to the court at a reasonable distance from the witness or the court. This reasonable distance will normally be from a fixed position that does not block the view of any other trial participant and is near one of the court reporter's microphones. Counsel shall not approach a witness without first obtaining the permission of the court. Witnesses shall be treated with consideration and respect – they will not be crowded, ridiculed, or otherwise abused. All witnesses, except children, will be referred to by their surnames and titles, as applicable.

Rule 24.5. Gestures or actions by witnesses. Examining counsel shall concisely and accurately summarize any gestures or nonverbal communication of their witnesses. This will be done as near in time as possible to the gesture or nonverbal communication.

Rule 24.6. Mid-testimony consultations. Once a witness has begun their testimony, counsel shall not, during any recess, consult with them on the subject of their ongoing testimony without advance permission of the military judge.

Rule 24.7. Unsworn statement by the accused. Unsworn statements made by an accused in mitigation and extenuation shall be given or presented from counsel table, or standing before the court. An unsworn statement may not be presented from the witness stand.

Rule 25. Objections. When an objection is entered, only the objection and a short statement of the ground(s) shall be stated. Argument upon objections will not be heard or made until permission is given or argument is requested by the military judge. Any

argument will normally be conducted at an Article 39(a) session after the witness, if any, answers the question that drew the objection. This negates the need for offers of proof and provides the most accurate record.

After a matter has been argued and submitted to the military judge, and the military judge has announced his or her decision, counsel shall not make further comment or argument. A request for reconsideration of a ruling by the military judge will not be made unless counsel making such a request has new matter of substance to present on the issue; such a request shall not be made for the purpose of making further argument.

Rule 26. Stipulations. Wherever possible, counsel shall fully cooperate in reducing undisputed items to stipulations. Counsel may enter stipulations for the limited purpose of obtaining a ruling on a motion or objection. Counsel should also, wherever possible, stipulate as to the authenticity of documents known to be authentic.

Rule 26.1. Format. Stipulations will normally be written. Oral stipulations shall be read into the record and agreed to by counsel and the accused.

Rule 26.2. Marking and use. Written stipulations of fact shall be marked as a prosecution or defense exhibit, as appropriate. In a members trial, it may be read and published to the members and is taken into the deliberation room. Stipulations of expected testimony shall be marked as Appellate exhibits and only read to the members. They may not be taken into the deliberation room.

Rule 27. Offers of proof. Absent a stipulation, an offer of proof is not evidence upon which a judge's essential findings of fact may be based. They will only be used in those rare circumstances set forth in MRE 103(a)(2). Even then, the preferred practice is to receive the evidence in an Article 39(a) session before ruling.

Rule 28. Judicial notice. Counsel shall advise the military judge and opposing counsel as soon as possible of any intended requests for judicial notice. Counsel shall provide a copy of the applicable law, regulation, order, or other source to be used in determining whether to take judicial notice. Such documentation will be an Appellate exhibit.

Rule 29. Exhibits.

Rule 29.1. Marking. Exhibits intended to be introduced at trial shall be marked prior to the trial. If more than one page in length, the exhibit shall also be marked as follows on each page: "Page __ of __ pages." Prosecution exhibits will be numbered consecutively with Arabic numerals and marked "for identification" prior to being offered into evidence. Defense exhibits will be lettered consecutively with capital letters and marked "for identification" prior to being offered into evidence. The first twenty Appellate exhibits will be numbered consecutively with Roman numerals and

then transition to Arabic numerals. Each counsel will keep a list of all exhibits. In formulating questions to witnesses dealing with an exhibit, the designation of the exhibit will be specific so that the record will be clear. Neither a counsel nor witness may mark or in any way alter an exhibit after it has been admitted into evidence without the express permission of the military judge.

Rule 29.2. Completing the record. When paper, whiteboard, or electronic media are used at trial but not admitted into evidence, such as a PowerPoint or flip chart in an opening statement, or an item to refresh recollection, a printed copy of the item, photograph of a large item, etc., shall be labeled as an Appellate exhibit and included in the record of trial. When an item of real evidence is published to the court by use of visual presentation equipment, the proponent counsel shall prepare an accurate color photograph of such exhibit that duplicates, as closely as possible, the image presented to the members. It shall be included in the record as an Appellate exhibit.

Rule 29.3. Copies. Whenever possible, counsel planning to introduce documentary evidence at trial shall have sufficient copies of the document(s) at hand so that upon the offer of the document into evidence, copies can be furnished to opposing counsel, the military judge, and, if publication is desired, the members. If a copy of a document is to be substituted for the original document in the record of trial, only a permanent exact copy is permissible, such as photocopy. The copy/reproduction shall mirror the actual item as nearly as possible to include the use of color copies.

Rule 29.4. Presentation before trial. The trial counsel shall show the prosecution exhibits to the defense counsel before trial. The defense counsel shall similarly show defense exhibits to the trial counsel before trial.

Rule 29.5. Substitution. If an exhibit is not compatible for inclusion in the record of trial, counsel shall prepare an appropriate substitute and request that it be inserted into the record. Such a substitute shall include an accurate and detailed description either pictorially or written, as to the exhibit's size, weight, color, substance, and other relevant characteristics.

Rule 29.6. Exhibits during deliberations. Prior to closing the court for deliberations, the trial and defense counsel shall agree on the record which exhibits are going back with the members. Tape recordings, video, and similar forms of evidence shall be treated like a stipulation of expected testimony and not provided. If the members request to review such evidence during their deliberations, the judge will, if the request is deemed appropriate, assemble the members in open court and replay the audio, video, or other evidence. Remote testimony or pre-recorded deposition testimony should be treated like any in-court testimony that the members request to review. That is, only the audio portion is replayed if the judge grants the request.

Rule 30. Instructions. Trial and defense counsel shall make appropriate recommendations from the Military Judge's Benchbook, DA Pamphlet 27-9, as to specific instructions for the judge to provide to the members. Requests for special instructions or modifications to standard instructions shall be submitted in writing and in a timely manner to the military judge and opposing counsel. If counsel desire that the military judge comment specifically on testimony given or evidence introduced, such request shall be made in writing accompanied with a proposed summarization of the testimony or evidence requested to be given.

Rule 31. Record of trial.

Rule 31.1. Counsel review. Prior to the submission of the record of trial to the military judge for authentication, the trial counsel shall thoroughly review it for completeness and proper authentication of exhibits. The defense counsel shall also normally be given an opportunity to review the record of trial before it is submitted to the judge for authentication. *See* RCM 1103 (i)(1)(B).

Rule 31.2. Electronic review. At the direction of the military judge, authentication of all or part of the record of trial may be accomplished using electronic means. The transcript portion of the record is particularly suitable for digital review since the military judge may correct it by editing the electronic document itself. Afterward, the original and all copies of the authenticated transcript shall be produced from the judge's edited document. Several methods exist to collect the recommended transcript edits from counsel; however, submission of errata sheets is often the most expeditious technique given the limits of current technology. Caution: The transcript is not a complete record of trial and the judge is responsible for authenticating the entire record.

Rule 31.3. Errata. Changes or corrections in the record of trial due to errors will be made by trial and defense counsel by recording the necessary changes in the manner directed by the military judge. Substantive changes should first be coordinated by counsel with the court reporter. If there is disagreement, the matter shall be presented to the judge for resolution.

Effective date. The foregoing Rules of Practice and Procedure before Coast Guard Courts-Martial are approved and effective on the 1st day of June, 2016.

C. A. Kitchen, CDR, USCG
Chief Trial Judge