

COURT RULES OF PRACTICE AND PROCEDURE FOR GENERAL AND SPECIAL COURTS-MARTIAL

These rules for courts-martial have been promulgated in accordance with RCM 108 in order to provide uniformity in the practice and proceedings of courts-martial throughout the Coast Guard, and to meet the goals set forth in Rule 1. Pursuant to RCM 801 and section 6.C. of the Coast Guard Military Justice Manual, the military judge has authority to modify or supplement these rules in whole or in part, but absent a specific court order by the military judge, these rules apply to all general and special courts-martial in the Coast Guard. Adherence to these rules by all parties is required and will assist in promoting the orderly disposition of courts-martial cases, and ensure that the proceedings manifest fairness, justice, and impartiality for all parties.

Purpose and Construction

Rule 1. 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.

Pretrial Matters

Rule 2. 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 subparagraph 6.C.4.a. of the Coast Guard Military Justice Manual, which makes Coast Guard courts-martial subject to the following:

ABA Model Rules of Professional Conduct

Code of Judicial Conduct

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 3. When a trial date has been set, and when a defense counsel other than the detailed defense counsel is to represent the accused, the detailed defense counsel shall advise the other defense counsel of the date, time, and place of trial or Article 39(a), UCMJ session, and the identities of the convening authority, the military judge, and the trial counsel. If a civilian attorney will represent the accused, that attorney shall file with the military judge, with a copy to the convening authority and the trial counsel, a written entry of appearance as counsel of record for the accused.

Rule 4. Requests for continuance by defense counsel that are premised upon schedule conflicts, i.e. prior scheduled appearance in another court, will 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.

Rule 5. In the event that it appears to counsel that a challenge to the pretrial investigation or the pretrial advice to the convening authority, or both, will be made, then a copy of the pretrial investigation, with the pretrial advice attached, will be furnished to the military judge by the trial counsel as soon as practicable, and in any case at least 5 days prior to trial.

Rule 6. In order to avoid unnecessary delays at trial, counsel are requested to freely communicate with each other prior to trial. If at any time it appears that circumstances or time constraints will make compliance with any of the time limits set forth in these rules impracticable, or if counsel become aware of any matters that may impact on the orderly proceeding of the trial as scheduled, the matter shall be brought to the attention of the military judge by telephone conference call with both counsel. In all cases, the time limits imposed by these rules are minimum time limits, and earlier compliance, if feasible, is encouraged.

Rule 7. The trial counsel will 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 three days prior to trial. 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 should reduce the court-martial below a quorum.

Rule 8. RCM 701 and the Military Rules of Evidence (MRE) set forth requirements for disclosure and discovery by both parties. The following minimum time limits are established for some of these requirements. Counsel should, in addition, review RCM 701 and the Discussions thereunder for a listing of other disclosure requirements that may be applicable.

Rule	Number of working days pre-trial	
	SPCM	GCM
MRE 301(c), 304(d)(1), 311(d)(1), 321 (c)(1)	5	10
MRE 412(c)(1)		1414
MRE 413 and 414		1515
RCM 701(a)(1), (3) and (4)	5	10
RCM 701(b)(1) and (2)		4 8
RCM 703(c)(2) (list of witnesses)		4 4

Rule 9. At least five working days prior to trial, defense counsel shall submit, in writing, to the military judge and trial counsel, a list of all motions intended to be raised, including a brief summary of the grounds for each motion, a brief statement of pertinent facts, and the points and authorities relied upon. Replies to motions, if opposed, shall be filed with the military judge and served on opposing counsel not later than two working days prior to trial. For any motion requiring the entry of essential findings under RCM 905(d) counsel shall include with their motion or reply, proposed essential findings of fact. Argument may be included at the discretion of counsel. If counsel choose, motions and briefs may be prepared separately for each motion, in which case the list of motions should be reduced to a mere list, excluding from this list the

grounds, facts and authorities. This latter practice is encouraged in general courts martial. See Enclosures (16c-e) of this Manual for formats of motions, responses, and rulings. These formats shall be used in any case wherein counsel desire a motion to be decided prior to the scheduled date of trial, in which case service on opposing counsel shall be shown over the signature of counsel.

Rule 10. (Reserved).

Trial Matters

Rule 11. Counsel have the duty and responsibility for knowing and observing the proper relationship and decorum that should exist in the courtroom. Counsel are obligated to acquaint clients and witnesses with appropriate courtroom procedures and decorum and, insofar as possible, ensure adherence.

Rule 12. Counsel shall always stand when addressing the military judge or court members. Counsel should also stand when conducting examination or cross-examination of witnesses; however, at the discretion of the military judge, counsel may remain seated during periods of questioning.

Rule 13. Counsel should conduct the questioning of witnesses and arguments to the court at a reasonable distance from the witness or the court. Counsel should not approach a witness without first obtaining the permission of the court.

Rule 14. Counsel will not be permitted to depart the courtroom during the conduct of a trial without first obtaining leave of the court.

Rule 15. If a party is represented by more than one counsel, only one counsel may examine any one witness or address the court on any particular issue or motion, except with the specific permission of the military judge.

Rule 16. When an objection is entered, only the objection and the ground(s) therefor shall be stated. Argument upon objections will not be heard or made until permission is given or argument is requested by the military judge. 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 17. Counsel shall at all times during the trial maintain a quiet and dignified atmosphere in keeping with the traditions of judicial proceedings. Colloquy, argument, or personal "barbs" between counsel; facial expressions or other movements or gestures by counsel intended to convey disagreement, disapproval, or disbelief of statements made by opposing counsel, testimony of witnesses, or rulings of the military judge will not be tolerated in the courtroom.

Rule 18. All personnel in the courtroom shall rise upon the entry and departure of the military judge. All personnel in the courtroom shall rise when the members of the court-martial are sworn. The defense counsel and the accused shall rise and face the court when entering pleas and when findings and sentence are announced.

Rule 19. Exhibits intended to be introduced at trial may be marked prior to the trial. 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. Appellate exhibits will be numbered consecutively with Roman 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.

Rule 20. Whenever possible, counsel planning to introduce documentary evidence at trial should 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 and the military judge. If a copy of a document is to be substituted for the original document in the record of trial, only a permanent copy is permissible, such as Xerox. Nonpermanent copies, such as thermofax, may not be used in the record.

Rule 21. If an item of real evidence cannot be included in the record of trial in the form in which admitted into evidence, a suitable substitute shall be provided, such as a photograph or written description. Such a substitute, however, 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 22. 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.

Rule 23. 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.

Rule 24. 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 personal belief in the accused's guilt or innocence, or in the justice of his or her cause. 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.

Rule 25. Upon the conclusion of the presentation of the case, the general rule concerning the order of argument is: on both findings and sentence, trial counsel may make an argument, or waive it; defense counsel may make an argument, or waive it; and, on findings only, if the defense counsel presents an argument, the trial counsel will be given the opportunity to present a brief rebuttal argument, limited solely to matters raised by the defense; and should the trial counsel raise any new matters in rebuttal, the defense counsel may be given the opportunity to rebut such new matters in a surrebuttal.

Rule 26. If either counsel desire instructions to the court, other than the standardized instructions contained in the trial guide and the Military Judge's Benchbook, such additional instructions, shall be proposed to the military judge in writing. If counsel desire any modification to the standardized instructions, such modified instruction should be proposed to the military judge in writing. If counsel desire that the military judge comment specifically on testimony given or

evidence introduced, such request should be made in writing accompanied with a proposed summarization of the testimony or evidence requested to be given.

Rule 27. Wherever possible, counsel shall fully cooperate in reducing agreed-upon facts to stipulations. Counsel should, wherever possible, stipulate as to the authenticity of documents known to be authentic.

Rule 28. Unsworn statements made by an accused in mitigation and extenuation will be given or presented from counsel table, or standing before the court. An unsworn statement may not be presented from the witness stand.

Rule 29. Guards who accompany the accused, if necessary, shall not be permitted inside the "bar" of the courtroom and will remain in the area designated for spectators. No arms or weapons, except when such are to be exhibits, or when otherwise authorized by the military judge, will be allowed inside the courtroom.

Rule 30. The taking of photographs in the courtroom during the process of judicial proceedings, **or the recording of the proceedings by tape or wire recorders or similar devices for any purpose other than the making of a record of trial will not be permitted.** Broadcasting of judicial proceedings from the courtroom shall not be permitted.

Rule 31. There shall be no smoking in the courtroom during open sessions of the court-martial. No food or drink, except water, shall be permitted within the courtroom.

Rule 32. Sessions of court shall not be held outside normal working hours except for good cause that shall be shown on the record.

Rule 33. Prior to the submission of the record of trial to the military judge for authentication, the trial counsel shall thoroughly review the record for completeness and proper authentication of exhibits.

SAMPLE COURT ORDER NO. 1

**UNITED STATES COAST GUARD
(SPECIAL) (GENERAL) COURT-MARTIAL**

UNITED STATES)	
)	
V.)	
	)	COURT ORDER
NAME	)	No. 1
RATE/RANK)	
SERVICE)	
_____	)	DATE
)	

The [Convening Authority] has referred the charge(s) and specification(s) against [Accused's rate/rank, full name, SSN], U. S. Coast Guard (Reserve), to trial by Special Court-Martial convened by Convening Order Number ____ dated _____. The undersigned has been detailed by the Chief Trial Judge of the Coast Guard as Military Judge to preside over the court-martial pursuant to Rule for Courts-Martial (RCM) 503, Manual for Courts-Martial, United States (MCM). Jurisdiction over the case is now vested in the Military Judge.

Pursuant to RCM 701(g) and 801, MCM, and the American Bar Association Standards for the Administration of Criminal Justice relating to The Function of the Trial Judge, a Military Judge has the responsibility and duty to ensure that all trial proceedings are conducted in a fair, orderly, and efficient manner; and a responsibility and duty to prescribe and make known the ground rules relating to the conduct of all parties to the trial.

ACCORDINGLY, IT IS ORDERED THAT:

Both the Government and the Defense will endeavor to be ready for trial at ____ hours on _____, unless a continuance has been granted by the Military Judge upon the request of counsel for either side. A request for a continuance may be addressed and resolved by a RCM 802, MCM, conference, a written brief served by mail or electronic means, or an Article 39(a), Uniform Code of Military Justice (UCMJ) session.

RULES OF PRACTICE AND PROCEDURE

Except as otherwise provided in this order, the Court Rules of Practice and Procedure for General and Special Courts-Martial, contained in Enclosure (16a) to the Military Justice Manual, COMDTINST M5810.1D, apply in this case.

DISCOVERY

All responses to requests for discovery shall be made on or before _____, if practicable. All counsel are encouraged to be liberal in compliance with discovery requests. In particular, counsel are encouraged to disclose matters under RCM 914, MCM, and Military Rules of Evidence (MRE) 404 (b), 612, and 613(a), MCM, in advance of trial so as to not unduly impede the trial.

REQUIRED DISCLOSURES AND NOTIFICATIONS

Trial Counsel shall comply with the disclosure or notification requirements of RCM 701(a)(4), RCM 701(a)(6), MRE 201A(b), MRE 301(c)(2), MRE 304(d)(1), MRE 311(d)(1), MRE 321(c)(1), MRE 404(b), MRE 413(b), MRE 414(b), and MRE 609(b), MCM, as applicable to this case, on or before _____. Defense Counsel shall comply with the disclosure or notification requirements of RCM 701(b)(2), MRE 201A(b), MRE 412(c), MRE 505(h), and MRE 609(b), MCM, as applicable to this case, on or before _____. Both counsel shall immediately notify opposing counsel of any additional disclosures or notifications that are required as a result of further case preparation.

WITNESS NOTIFICATIONS AND REQUESTS

Trial Counsel shall comply with the witness provisions of RCM 701(a), MCM, on or before _____. Defense Counsel shall comply with the witness provisions of RCM 701(b) and RCM 703(c)(2), MCM, on or before _____. Both counsel shall immediately notify opposing counsel of any additional witnesses who are identified at a later date as a result of further case preparation. All notifications or requests must be given to opposing counsel not later than three working days before a witness testifies, unless the witness is called in rebuttal to an issue not previously raised.

MOTIONS

Notwithstanding any other rule, any motions under RCM 905-907, MCM, shall be filed in writing with the Military Judge and served on opposing counsel on or before _____.

Responses to motions shall be filed in writing with the Military Judge and served on opposing counsel on or before _____.

All motions and responses filed shall contain, or have appended thereto, a short statement of the facts and the points and authorities relied upon, and proposed essential findings of fact.

Any issues falling within this order but not raised in compliance with it will be deemed waived if the basis therefor is known or reasonably discoverable by the date specified.

PRETRIAL CONFERENCE

A RCM 802, MCM, conference will be held by telephone at [time including time zone] on _____. Trial Counsel is responsible for coordinating the call.

MILITARY JUDGE'S MAILING ADDRESS

All motions and responses shall be sent to the Military Judge at his/her office. This may be done by mail, overnight delivery service, electronic mail, or facsimile.

Mailing Address: _____ USCG

Military Judge

c/o _____

Telephone Number: () ____ - ____

Facsimile Number: () ____ - ____

E-Mail Address: _____

EFFECTIVE DATE

This order was effective on [date of RCM 802 conference] and confirms the agreement reached by the Trial Counsel, Defense Counsel, and Military Judge during a RCM 802, MCM, conference on that date.

Done at _____
[date of order]

_____, U. S. Coast Guard
Military Judge

Dist: Trial Counsel ([name, unit])
Defense Counsel (name, unit))

FORMAT FOR PRETRIAL MOTION

**(SPECIAL COURT-MARTIAL)
(GENERAL COURT-MARTIAL)
UNITED STATES COAST GUARD**

UNITED STATES)
	) (MOTION FOR APPROPRIATE
	) RELIEF)
V.	) (MOTION TO DISMISS)
	) /SUPPRESS)
NAME	) (MOTION FOR FINDINGS OF NOT
RATE/RANK	) GUILTY)
SERVICE)
	) DATE
_____)

1. (Here name the identity of the convening authority, the nature of the tribunal to which the case has been referred, and the identify of the order convening the court.)

(e.g.: "The Commanding Officer, USCGC NORTHLAND (WMEC 904), Portsmouth, Virginia has referred this case to trial by Special Court-Martial convened by his order No._____ dated_____".)

2. (The remaining paragraphs should set forth the basis and the nature of the relief requested.)

(The motion must show service on opposing counsel in accordance with Rule 9.)

FORMAT FOR PRETRIAL MOTION (ANSWER)

**(SPECIAL COURT-MARTIAL)
(GENERAL COURT-MARTIAL)
UNITED STATES COAST GUARD**

UNITED STATES	) ANSWER TO
	) (MOTION FOR APPROPRIATE
	) RELIEF)
V.	) (MOTION TO DISMISS)
	) /SUPPRESS)
NAME	) (MOTION FOR FINDINGS OF NOT
RATE/RANK	) GUILTY)
SERVICE)
	) DATE
_____)

1. (Here identify the motion to which the answer is directed including the nature of the relief sought in the motion and the date thereof.)

(e.g., "On 3 January 2000, the trial counsel in the above referenced case was served with a motion directed to the convening authority in which the defense moved for an inquiry into the accused's sanity pursuant to RCM 706. This answer is in response to that motion.")

2. (The remaining paragraphs should set forth the basis and the position of the government in response to the motion.)

(The motion must show service on opposing counsel in accordance with Rule 9.)

FORMAT FOR PRETRIAL MOTION (RULING)

**(SPECIAL COURT-MARTIAL)
(GENERAL COURT-MARTIAL)
UNITED STATES COAST GUARD**

UNITED STATES	) RULING ON
	) (MOTION FOR APPROPRIATE
	) RELIEF)
V.	) (MOTION TO DISMISS)
	) /SUPPRESS)
NAME	) (MOTION FOR FINDINGS OF NOT
RATE/RANK	) GUILTY)
SERVICE)
	) DATE
_____)

1. (Here identify the motion to which the answer is directed including the nature of the relief sought in the motion and the date thereof. Also indicate the fact of receipt of an answer by opposing counsel and the date thereof.)

(e.g., "On 3 March 2000, the defense in the above referenced case submitted a motion to dismiss all charges and specifications on the basis that the accused had been denied the right to a speedy trial. This motion was served on trial counsel on 3 March 2000 and was answered by trial counsel on 5 March 2000.")

2. (The remaining paragraphs should set forth the ruling on the motion submitted and may also set forth reasons for the ruling.)

SAMPLE PRETRIAL AGREEMENT

[Note: The "sample" clauses in this document must be adapted to address the particular circumstances in each case; as a sample, it contains many clauses that may not apply in each case.]

**GENERAL/SPECIAL COURT-MARTIAL
UNITED STATES COAST GUARD**

UNITED STATES)	
	)	MEMORANDUM OF PRETRIAL
V.	)	AGREEMENT
)	
NAME)	
RATE/RANK)	
SERVICE)	
	)	DATE
_____)	

I, NAME, the accused in a [special/general] court-martial, do hereby certify:

That I am satisfied in all respects with LT [NAME & RANK], JAGC, USNR, my defense counsel, have discussed the facts of my case and the applicable law with my defense counsel, and consider [him/her] qualified to represent me before this court-martial;

That as a result of my consultations with my defense counsel, and for good consideration as set forth in this agreement, I agree to enter voluntary pleas of GUILTY to the charges and specifications as indicated below and adhere to the Specially Negotiated Provisions indicated below, in exchange for the Convening Authority's agreement to comply with the terms of this agreement, including the sentence limitation protections written in the Maximum Sentence Appendix;

That it is expressly understood that, for the purposes of this agreement, the sentence is considered to be in the following parts: A) punitive discharge, B) period of confinement and/or restraint, C) amount of forfeiture and/or fine, D) reduction in pay grade, and E) any other lawful punishment;

That should the court award a sentence that is less, or a part thereof that is less, than that set forth and approved in this agreement, then the Convening Authority, according to law, may approve not more than the lesser sentence;

That this offer to plead guilty originated with me and my counsel; that no person or persons whomsoever have made any attempts to force or coerce me into making this offer or pleading guilty;

That I fully understand that if I engage in misconduct after signing this pretrial agreement, I may forfeit the benefits of this agreement. Misconduct means any act or failure to act that violates the Uniform Code of Military Justice or any act or failure to act by which I fail to comply with this agreement. If I engage in misconduct at any time, between when I sign this

pretrial agreement and the time that I complete the sentence approved by the Convening Authority, including any period of probation or period in which a sentence component is suspended, the Convening Authority will be able to act on this agreement based on that misconduct. The action the Convening Authority may take on this agreement depends on when the Convening Authority acts, if he chooses to act, not on when the misconduct occurs, so long as the misconduct occurs within the time frame governed by this provision. There are three periods of time during which the Convening Authority may act on this agreement based on my misconduct: (1) from the time Convening Authority and I sign this pretrial agreement until the time a sentence is announced at my court-martial; (2) from the time a sentence is announced at my court-martial until the Convening Authority takes [his/her] RCM 1107 action; and (3) from the time the Convening Authority takes [his/her] RCM 1107 action until I have completed serving my entire sentence (including any period of suspension or probation, if applicable) as finally approved and executed;

That I understand that if, based on my misconduct, the Convening Authority acts on this agreement after [he/she] and I sign this pretrial agreement but before the time sentence is announced at my court-martial, the Convening Authority may use such misconduct as grounds to unilaterally withdraw from this pretrial agreement. Should the Convening Authority do so, I understand that the pretrial agreement would thereby become null and void, and both I and the Convening Authority would be relieved of all obligations and responsibilities that either of us would have been required to meet by the terms of this pretrial agreement;

That I further understand that if, based on my misconduct, the Convening Authority acts on this agreement after the time sentence is announced at my court-martial but before the time the Convening Authority takes [his/her] RCM 1107 action, such misconduct may be the basis for setting aside the sentencing provisions of the pretrial agreement. Before setting aside the sentencing provisions of this agreement, however, the Convening Authority shall afford me a hearing, substantially similar to the hearing required by Article 72, UCMJ, and the procedures based on the level of adjudged punishment set forth in RCM 1109(d), (e), (f), or (g), to determine whether the misconduct occurred and whether I committed the misconduct;

That I further understand that if based on my misconduct, the Convening Authority acts on this agreement after the time the Convening Authority takes [his/her] RCM 1107 action, but before I have completed serving the entire sentence (including any period of suspension or probation, if applicable) as finally approved and executed, the Convening Authority may, after compliance with the hearing procedures set forth in RCM 1109, vacate any periods of suspension agreed to in this pretrial agreement or as otherwise approved by the Convening Authority;

That my counsel fully advised me of the meaning and effect of my guilty pleas and I fully understand and comprehend its meaning and all its attendant effects, and consequences, *[Insert the following clause if applicable -- check your charges against Coast Guard Personnel Manual, COMDTINST M1000.6B, Article 12.B.12]* including the possibility that I may be processed for an administrative discharge, even if all or part of the sentence, including any punitive discharge, is suspended or disapproved pursuant to this agreement or for any other reason;

[Insert the following clause if applicable -- check your charges against Coast Guard Personnel Manual, COMDTINST M1000.6B, Article 12.B.12] That my counsel has advised me that an administrative discharge may result in an other than honorable characterization of service, and that I may therefore be deprived of virtually all veterans' benefits based upon my current

period of active service, and that I may therefore expect to encounter substantial prejudice in civilian life in many situations;

That I understand that I may ask permission to withdraw any of my pleas of guilty at any time before sentence is announced, and that the military judge may, at [his/her] discretion, permit me to do so;

That I understand this offer and agreement and have been advised that it cannot be used against me in the determination of my guilt on any matters arising from the charge and specification made against me in this court-martial;

That it is expressly understood that this pretrial agreement will become null and void if: (1) I fail to plead guilty to the charge and specification as set forth below; (2) the court refuses to accept my plea(s) of guilty to the charge(s) or specification(s) to which I agreed to plead guilty; (3) the court accepts (each of) my plea(s) but, prior to the time sentence is announced, I ask permission to withdraw (any of) my plea(s), and the court permits me to do so; (4) the court initially accepts my plea(s) of guilty but, prior to the time the sentence is announced, the court sets aside (any of) my guilty plea(s) and enters a plea of not guilty on my behalf; or (5) I fail to plead guilty to the charge(s) and specification(s) as set forth below at a rehearing, should one occur.

<u>CHARGE/SPECIFICATION</u>	<u>OFFENSE</u>	<u>PLEA</u>
Charge I, Violation of Art. 121, UCMJ		G
Specification 1	Larceny of TV on 21 January 2000	G
Specification 2	Larceny of TV remote on 21 January 2000	NG

That my counsel advised me that I may be placed on appellate leave in a no pay status under the provisions of Article 76a, UCMJ if the Military Judge sentences me to be discharged with a punitive discharge and it is approved and not suspended by the Convening Authority, notwithstanding any provision regarding forfeitures or fines in the sentencing appendix of this agreement;

[GCM] That my counsel has advised me that under Article 58b, UCMJ, I will automatically forfeit pay and allowances during any period of confinement if I receive a sentence of confinement for more than 6 months or a sentence of a punitive discharge and any period of confinement, and that such forfeitures will take effect 14 days after the date on which the sentence is adjudged;

[SPCM] That my counsel has advised me that under Article 58b, UCMJ, I will automatically forfeit two-thirds pay during any period of confinement if I receive a sentence of confinement for more than 6 months or a sentence of a punitive discharge and any period of confinement, and that such forfeitures will take effect 14 days after the date on which the sentence is adjudged;

This agreement and its appendices constitute all the conditions and understandings of both the government and the accused regarding the pleas in this case.

SPECIALLY NEGOTIATED PROVISIONS:

a. I agree to be tried by a military judge alone. [Attorney note: Use of this term has been upheld by CAAF. United States v. Burnell, 40 M.J. 175 (CMA 1994).]

b. I agree to enter into a stipulation of fact acceptable to the Convening Authority regarding the offenses to which I am pleading guilty and that the stipulation of fact will be used for purposes of determining the proviency of my plea(s) and may also be considered by the Court in determining an appropriate sentence. [Attorney note: Use of this term has been upheld by CAAF. United States v. Bertelson, 3 M.J. 314 (CMA 1977).]

c. I will not object on the grounds of hearsay or authenticity to the admission for sentencing purposes of relevant documents from my service record or relevant documentary evidence of prior convictions, military or civilian.

d. If for any reason I fail or refuse to enter the guilty plea(s) that I agreed to enter according to this agreement, or upon the rejection of any such guilty plea(s) by the Military Judge: (1) I move this Court pursuant to RCM 906(b)(1) for appropriate relief in the nature of an immediate continuance of the proceedings for a period of thirty days, and (2) I move this Court to find that such thirty days are "excludable delay" within the meaning of RCM 707(c).

e. To the extent, if any, the Commandant of the Coast Guard has, through the Coast Guard Personnel Manual, COMDTINST M1000.6B, provided me a right to a hearing before an administrative discharge board, I agree to waive my right to a hearing before an administrative discharge board, doing so with full understanding of the consequences of waiving such a board, as explained by defense counsel. I will submit a written waiver to the Convening Authority.

f. I will not request the United States to pay travel and/or associated expenses for any sentencing witnesses traveling from more than 50 miles from Norfolk, Virginia.

g. The Convening Authority agrees not to prosecute me in a trial by court-martial for any additional uncharged misconduct concerning my actions in Key West in or about the month of September 1999, as described in the Coast Guard Investigative Service Report of Investigation dated 24 December 1999.

PROHIBITED TERMS

1. Any term listed in RCM 705(c)(1)(B).
2. The accused agrees to waive all pretrial motions. United States v. Rivera, 46 M.J. 52 (1997).

3. The accused agrees to "waive any pretrial motion I may be entitled to raise." United States v. Jennings, 22 M.J. 837 (NMCMR 1986).

TERMS THAT SHOULD NOT BE USED BECAUSE THEY CREATE SIGNIFICANT COMPLICATIONS IN THE PROVIDENCE INQUIRY & ON APPEAL

1. The accused agrees "to waive all motions which can be waived under applicable statutes, case law, and public policy." United States v. Burgwyn, 1997 WL 655891 (N.M.Ct.Crim.App.) (unpub.).

MAXIMUM SENTENCE TO BE APPROVED BY CONVENING AUTHORITY: See Maximum Sentence Appendix to Memorandum of Pretrial Agreement.

NAME
RATE, USCG
Accused

DEFENSE COUNSEL
LT, JAGC, USNR
Detailed Defense Counsel

Date

Date

The foregoing pretrial agreement is approved. The maximum sentence to be approved by the Convening Authority will be as shown on the maximum sentence appendix to this Memorandum of Pretrial Agreement.

OEGCMJ, RADM, USCG

Date

GENERAL/SPECIAL COURT-MARTIAL
UNITED STATES COAST GUARD

UNITED STATES)
) MAXIMUM SENTENCE APPENDIX
V.)
)
NAME) MEMORANDUM OF PRETRIAL
RATE/RANK) AGREEMENT
SERVICE)
) DATE
_____)

[Note: Many of the suggested clauses below are alternatives and not to be used together.]

Maximum sentence to be approved by the Convening Authority

1. Upon successful completion of the accused's obligations in regard to this agreement, the Convening Authority agrees to limit any part of any sentence adjudged by the Court as follows:

A. Punitive discharge: May be approved as adjudged.

A bad-conduct discharge, if adjudged, may be approved. A dishonorable discharge, if adjudged, will be mitigated to a bad-conduct discharge; the punitive discharge, as mitigated, may be approved.

B. Confinement or Restraint: May be approved as adjudged.

Confinement, if adjudged, may be approved. However, the execution of all confinement in excess of twelve (12) months will be suspended for a period of twelve (12) months from the date of the Convening Authority's action, at which time, unless sooner vacated, the suspended portion will be remitted without further action.

If a punitive discharge is adjudged, the Convening Authority agrees to disapprove all adjudged confinement in excess of 60 days. If a punitive discharge is not adjudged, the execution of all confinement in excess of 120 days will be suspended for a period of twelve (12) months from the date of the Convening Authority's action, at which time, unless sooner vacated, the suspended portion will be remitted without further action. However, restraint other than confinement, if adjudged, may be approved.

The Convening Authority agrees to defer the service of any confinement from the date confinement is adjudged until the date of the Convening Authority's action.

The Convening Authority agrees to defer the service of any confinement to be suspended pursuant to the terms hereof from the date confinement is adjudged until the date of the

Convening Authority's action.

C. Forfeitures and Fines: May be approved as adjudged.

Forfeitures and/or fines, if adjudged, will be disapproved. The Convening Authority agrees to defer adjudged forfeitures from the date they would otherwise become effective until the date of the Convening Authority's action on the sentence. If forfeitures are administratively imposed pursuant to Article 58b, UCMJ, the Convening Authority agrees to defer such administrative forfeitures from the date they would otherwise be imposed until the date of the Convening Authority's action on the sentence. The Convening Authority further agrees to waive all administrative forfeitures imposed pursuant to the operation of Article 58b, UCMJ for a period of six (6) months from the date of the Convening Authority's action on the sentence. Such waived administrative forfeitures will be paid by involuntary allotment to Mrs. I. A. Victim, the spouse of the accused. The Convening Authority is released from the obligation to defer or waive forfeitures if the accused, through operation of law or otherwise, become ineligible for pay under current pay regulations due to expiration of enlistment or for any other reason. The accused waives any claim that [his/her] plea was improvident if deferral or waiver of automatic forfeitures is impossible to effect due to the accused's ineligibility for pay.

D. Reduction in pay grade: May be approved as adjudged.

Reduction in pay grade, if adjudged, will be disapproved. The convening authority agrees to deferment of the imposition of any adjudged reduction in pay grade from the date it would otherwise be imposed until the date of the Convening Authority's action on the sentence.

E. Any other lawful punishment: May be approved as adjudged.

2. If a punitive discharge is adjudged, disapproval of confinement in excess of 60 days in accordance with paragraph 1.B. above is conditioned upon the submission by the accused of a request for placement on voluntary appellate leave immediately after completion of said 60 days confinement. If the adjudged sentence includes a punitive discharge but no confinement, then the accused shall request appellate leave immediately after the court-martial. The accused shall facilitate any actions necessary for placement on appellate leave including, but not limited to a discharge physical and acknowledgement of any appropriate administrative actions.

NAME
RATE, USCG
Accused

DEFENSE COUNSEL
LT, JAGC, USNR
Detailed Defense Counsel

Date

Date

OEGCMJ, RADM, USCG

Date

GENERAL INFORMATION FOR PROSPECTIVE COURT-MARTIAL MEMBERS

Having been selected as a prospective court-martial member by the convening authority, you have been called upon to perform one of the most important duties required of an active duty member of the Coast Guard, that of administering military justice. In an attempt to better prepare you as a prospective court-martial member, the following is presented for your information.

The convening order that appointed you as a prospective court-martial member may be used for one or more courts-martial and you may have to sit as a court-martial member in each of them. Therefore, it is extremely important that you refrain from any conversation regarding alleged violations of the Uniform Code of Military Justice. If anyone begins to tell you about such a violation, cut them off and advise them you cannot discuss the case as you may be a court-martial member.

Your selection as a prospective court-martial member is just that; you are still subject to questioning by the military judge and counsel for both the government and the defense before becoming a member of a particular court-martial. This questioning is known as voir dire and is specifically authorized by law. The purpose of this questioning is to determine whether or not you will sit as a trier of fact and the potential assessor of punishment. The questions that will likely be asked you at trial are not designed to embarrass you, but rather to discover such factors as whether you have any knowledge of the case, any preconceived opinions that you cannot lay aside, or if you have any experience in your personal life that might cause you to be biased in favor of either the prosecution or defense in the case. The court-martial member questionnaire that has been enclosed with this information sheet, which provides preliminary answers for the military judge and counsel, is not intended to be all inclusive but rather addresses certain recurring issues.

Being a prospective court-martial member requires no preparation at all prior to trial. In fact, it is very important that you avoid any preparation. At trial, the military judge will instruct you that he will inform you what the law is in the case and the procedures that you must follow. In this regard, the military judge is the only source of the law and you will be required to follow the law as it is given to you by him, even though you may have some different recollection of what the law is with regard to a particular issue. It is not permissible for you to refer to, examine, or even consult the Manual for Courts-Martial, or any other publication, directive, or writing to acquire independent knowledge of those matters to be dealt with at trial.

In short you should scrupulously avoid any contact that in any way deals with issues of military justice that you may be called upon to decide.

Finally, you should be aware that courts-martial routinely extend beyond normal working hours, and may even include weekends. Personnel should make transportation and child care arrangements in advance of trial.

COURT-MARTIAL MEMBER QUESTIONNAIRE

Full Name _____ Rank _____

Date of Rank _____ Source of Commission _____

Branch of Service _____

Years of Service: Active Duty _____ Reserve _____

Prior Enlisted Service _____

How Long _____ Highest Grade _____

Have you served in another Uniformed Service _____

Name of Uniformed Service _____

Enlisted or Commissioned Service _____

Date of Service _____

Highest Rank/Grade Attained _____

Present Duty Station _____

Office Telephone Number: _____

Present Duty Assignment (Description of Job) _____

Present Performance Rating Chain

Supervisor _____

Reporting Officer/Marking Official _____

Reviewing/Approving Official _____

Provide a brief history of your military career

Rptd	Dptd	Unit Name	Job Description
_____	_____	_____	_____
_____	_____	_____	_____

Rptd Dptd Unit Name Job Description

Have you ever convened a court-martial _____

If so, when _____

Have you ever served, in any capacity, on any court-martial _____

Date Type Offense(s)

Have you ever imposed nonjudicial punishment _____

Have you ever served on an administrative discharge board _____

Have you ever served as a juror at a civilian trial _____

Have you ever been a witness at a judicial proceeding _____

Are you a high school graduate _____

Have you attended college (undergraduate) _____

Name(s) of college _____

Location(s) _____

Years of attendance _____

Major fields _____

Degree(s) awarded _____

Have you attended postgraduate school _____

Name(s) of school _____

Location(s) _____

Years of attendance _____

Major fields _____

Degree(s) awarded _____

Have you attended law school or taken law courses _____

Sch./Course Date	Topic of Course
_____	_____
_____	_____

What is your gender ____ Race ____ Date of Birth _____

Marital Status _____ Home of Record _____

Number of Dependents _____ and their

Gender	Age	Relationship
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Have you or a close relative even been the victim of a crime _____

If so, briefly describe _____

Have you or a close relative even been involved in the following:

- ____ Crime Prevention (e.g., police officer, detective)
- ____ Medicine (e.g., doctor, nurse, pharmacist)
- ____ Mental Health (e.g., psychiatrist, psychologist)
- ____ Law (e.g., judge, attorney, law student)
- ____ Forensic Sciences (e.g., chemistry, toxicology)

Is there anything in your background or experience that may affect your serving as an impartial court-martial member?

Date Prepared _____ Signature _____

SAMPLE NOTICE OF PUBLIC TRIAL

Pursuant to RCM 806 of the Manual for Courts-Martial, notice is hereby given that a Special Court-Martial will be held in Room 504, Federal Building, Portsmouth, Virginia at 0900, *date*, in the case of United States v. SN Ivan M. SMITHY, USCG.

The public is invited to and permitted to attend all open sessions of said court-martial unless the military judge shall direct that for national security, or other good cause, the public shall be excluded from certain portions of the trial.

The taking of photographs in the court-room during an open or closed session of the court, broadcasting of the proceedings from the courtroom by radio or television, or the recording of the proceedings by tape or wire recorders or similar devices for public release or broadcast will not be permitted.

GUIDE FOR THE BAILIFF**PREAMBLE**

The trial is the most visible aspect of the military justice system. It is essential that it be conducted in a dignified and orderly manner. Anything that detracts from an atmosphere of respect for the law and the authority of the court is to be avoided.

The trial of a case should not be delayed by minor administrative matters that should have been anticipated and resolved beforehand by a bailiff who has been carefully instructed in the performance of duties in order to avoid such delays.

The bailiff should seek from the trial counsel specific instruction regarding duties and for directions before and after each session of the court. While the court is in session, the bailiff is under the supervision of the military judge and should assist the military judge and counsel in the conduct of an orderly trial. The bailiff should be familiar with the location of the principal offices and facilities that may be used during the trial. Prior to the commencement of trial, the bailiff should ask the judge if there is to be any deviation from the procedure suggested in the Bailiff Guide.

DUTIES OF THE BAILIFFPrior to Trial

1. The bailiff shall report to the trial counsel in the uniform of the day at least 30 minutes before the commencement of each day's proceedings, and to the military judge 15 minutes before the commencement of the day's proceedings.
2. The bailiff shall ensure that the courtroom, including the spectator area and the deliberation room for court members, has a neat and orderly appearance, and shall place the furniture in proper arrangement.
3. The bailiff shall ensure that the judge has the desk supplies desired and that the court members have pencils and paper. In addition, fresh water should be available for the judge, members, counsel, and accused.

Entry and Departure of Military Judge

4. When counsel for both sides, the accused, the reporter, and, when appropriate, the court members, are all present in the courtroom, the bailiff shall so notify the military judge. Immediately prior to the judge entering the courtroom, the bailiff shall state, "All persons please rise." When the military judge announces a recess or adjournment, the bailiff should again state, "All persons please rise." The military judge should advise the bailiff if there is to be any departure from this procedure.
5. Unless instructed otherwise by the military judge, the court shall be formally opened upon entry of the judge at the commencement of each day of the trial. On those occasions the bailiff shall state:

"All persons please rise. A (general)(special) court-martial convened by _____ is now in session, Military Judge _____, (Captain)(Commander), U. S. Coast Guard, presiding."

Entry of Court Members

6. When the court members stand to be sworn, the bailiff shall announce, "Everyone, please stand," in a voice that can be heard by all spectators. This will also be done each time members enter and leave the courtroom while other parties remain.

Spectators and Members of News Media

7. Military trials are normally open and spectators and members of the news media are welcome in the courtroom to hear and observe the trial proceedings. The bailiff should assist them in entering the courtroom, being seated and leaving quietly while the court is in session.

8. Picture taking or any type of broadcasts are not permitted in the courtroom. The bailiff shall not permit that type of equipment to be taken into the courtroom. Any problems concerning this matter should be brought immediately to the attention of the trial counsel.

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

10. Weapons are not permitted in a courtroom. Be particularly aware of any law enforcement officers or special agents who might be armed. If you observe any weapons, bring the matter to the immediate attention of the trial judge.

11. Anyone talking or making noise in adjoining rooms or corridors that is distracting in the courtroom shall be informed by the bailiff that the court is in session and requested to stop.

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

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

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

15. If the bailiff is requested to deliver any item or message to the court members in

closed session, he or she must first inform the judge and obtain approval.

Miscellaneous Duties During the Trial

16. The bailiff shall be prepared to furnish the following services:

- a. Summon the court members to the courtroom at the beginning of each session of court when advised by the military judge or trial counsel.
- b. Collect written questions from the court members upon the judge's request and hand them to the judge or trial counsel as instructed.
- c. Summon witnesses to the courtroom when requested by counsel.
- d. Deliver findings and sentence worksheets to the **president of the court when instructed to do so**.
- e. Deliver items of evidence to the deliberation room, if instructed to do so by the military judge, when the court members retire to the deliberation room.
- f. Perform administrative errands during the trial as requested by the military judge and counsel.
- g. Be alert to assist in the handling of evidence during the trial.

Attitudes and Relation of the Bailiff to
the Issues and Parties of the Trial

17. The bailiff should remain neutral throughout the trial of a case. That is, he or she should not assume a partisan attitude toward either side--the prosecution or the defense. The bailiff shall never participate in any discussion of the merits of the case and shall never attempt to predict the outcome of the trial. The bailiff should also avoid making any comments on the performance of counsel for either side or on the testimony of witnesses. Particular attention must be given to avoid discussing anything about the case or courtroom activities with any prospective witnesses or members. Avoid discussions with all other people during the course of the court.

GUIDANCE FOR CONTRACT COURT REPORTERSEXHIBITS

Appellate exhibits are marked in the lower right-hand corner using "AE" and a Roman number (e.g. "AE I"). They are not marked "for identification." They are not "admitted into evidence," but simply attached to the record.

Prosecution exhibits are marked in the lower right-hand corner using "PE" and an Arabic number (e.g. "PE 1"). Prosecution exhibits are marked "for identification" until admitted into evidence (e.g. "PE 1 for ID" or "PE 1 for identification"). When admitted into evidence, the words "for identification" should be lined out.

Defense exhibits are marked in the lower right-hand corner using "DE" and a letter (e.g. "DE A"). Defense exhibits are marked "for identification" until admitted into evidence (e.g. "DE A for ID" or "DE A for identification"). When admitted into evidence, the words "for identification" should be lined out.

The numbering and lettering sequence continues into the sentencing portion of the trial (i.e. the exhibits do not begin anew with the sentencing hearing).

If an exhibit is offered but not admitted, the document retains the number or letter assigned to it (along with the words "for identification") and it is attached to the end of the record.

When assembling the record, place exhibits in the following order:

- Prosecution exhibits admitted into evidence
- Defense exhibits admitted into evidence
- Appellate exhibits
- Prosecution exhibits offered but not admitted
- Defense exhibits offered but not admitted

Two items are inserted directly into the transcript, at the point where the judge so states: the Convening Order (at the beginning of the trial) and the Charge Sheet (a little later, during arraignment). These items are not marked as exhibits.

When putting together the record, do NOT punch holes in exhibits unless you are sure the holes will fall in blank spaces or otherwise be harmless.

LABELS FOR PERSONS SPEAKING

The defendant should be referred to as "Accused" when he/she is speaking on the record (except when actually testifying as a witness, in which case the defendant is referred to the same way as any other witness). In particular, upon a guilty plea, when the judge is asking the accused questions about the offense (called the "providency inquiry"), the Accused is not considered a witness.

The judge should be captioned "Military Judge."

Counsel may be referred to as "TC" (trial counsel) (prosecutor) and "DC" (defense counsel). If there are more than two counsel, ask the trial counsel how to refer to them. The trial counsel represents the government or the prosecution (not the "plaintiff"). The defense counsel, of course, represents the accused or the defense.

"Court members" or "members" correspond to jury members in the civilian system. During "voir dire" they answer questions, but they are not considered witnesses. Because there are several of them, usually it is necessary to use their names. The most convenient source of members' names is the convening order, from which spellings can be taken.

COMMON CITATIONS

UCMJ (Uniform Code of Military Justice) is the body of statutes underlying our system. Sections of the code are referred to as Articles.

RCM (Rules for Courts-Martial) are the procedural regulations. A typical citation is "RCM 707" or "Rule 707."

MRE (Military Rules of Evidence) are the evidentiary regulations. A typical citation is "MRE 403" or "Rule 403." Similarly, sometimes we refer to FRE (Federal Rules of Evidence).

In general, a letter following an Article number or a Rule number should be in parentheses. Examples: Article 39(a), RCM 1001(b)(5), MRE 305(d)(1)(A).

(However, if the case involves UCMJ Article 112a or 123a, the "a" following Article 112 or 123 is not in parentheses.)

Some persons may refer to citations such as "Article 27 Bravo" or "Article 42 Alpha." This simply means Article 27(b) or Article 42(a). It may be rendered either way in the transcript.

MISCELLANEOUS

When breaks are taken in the trial, they are usually called recesses. However, when the court is closed for deliberations (during which the attorneys, accused and court reporter are apparently in recess), it is "closed," not "in recess."

[If you expect the court reporter to include times of recesses and other events, be sure to discuss this beforehand. Most non-military reporters are not accustomed to doing this, except for the beginning and end of the day.]

[A list of common military terms, acronyms and abbreviations likely to occur in the trial should be given to the reporter. For example, the term "OOD" may be rendered as "OD" if the reporter is not alerted to it. Likewise, the reporter will do better with enlisted ratings if given notice of them.]

