

RULES OF PRACTICE
BEFORE
COAST GUARD COURTS-MARTIAL
(REVISED AUGUST 2022)



PREAMBLE

The Rules of Practice before Coast Guard Courts-Martial (Rules of Practice) supplement the Rules for Courts-Martial (R.C.M.) and, together with the R.C.M., govern trials by courts-martial in the United States Coast Guard. They are effective upon approval by the Chief Trial Judge and supersede all rules previously published as Rules of Practice before Coast Guard Courts-Martial.

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 Coast Guard Legal Professional Responsibility Program, COMDTINST M5800.1 (series) and current American Bar Association Standards for Criminal Justice, to the extent that the latter apply at courts-martial.

These rules are intended to facilitate the orderly administration of military justice. The purpose of military law—and these Rules—is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States. They are promulgated under R.C.M. 108, R.C.M. 801(b), and Section H of Chapter 26, Military Justice Manual (MJM), COMDTINST M5810.1(series). A military judge may modify, amend, revoke, or set aside any Rule of Practice only with the approval of the Chief Trial Judge (CTJ).

T. R. Fowles
Captain, U.S. Coast Guard
Chief Trial Judge

Rules of Practice in Coast Guard Courts-Martial
Summary of Changes (3 August 2022 edition)

While this summary of changes to the Rules of Practice is meant to assist practitioners in identifying the most important changes to those Rules, all practitioners are strongly encouraged to review the entirety of the Rules to ‘refresh your recollection’ of our standard operating procedures in Coast Guard courts-martial.

The following portions of the Rules of Practice underwent significant revision:

- Rule 1.3. All signatures must either be signed by hand or by a full Common Access Card (CAC) generated digital signature.
- Section II and Rule 2. Procedures for the use of PII was moved to the top of the rules to emphasize the importance of protecting and minimizing the use of PII. As a result, many of the previous rules are now renumbered.
- Rule 4.4. Contains the link to the new SharePoint site for docketing cases.
- Rule 4.5 and Appendix A. Contains a revised and shortened version of the Trial Management Order (TMO). Any deadlines previously prescribed by the TMO that were removed are now contained within the Rules of Practice or will be set by the military judge.
- Rule 5.1.1. Requires stipulations of fact in guilty plea cases to be submitted to the military judge no later than fourteen days before trial.
- Rule 5.1.6. Requires witness lists be submitted seven days prior to a 39(a) session or trial.
- Rule 5.1.8. Requires trial documents be submitted 14 days before trial. This includes amended convening orders, seating chart, flyer, and draft findings and sentencing worksheets.
- Rule 7.4. Any pleading that requests an Order must be accompanied by a proposed Order from the moving party.
- Rule 7.5. Pleadings and exhibits must be filed as separate appellate exhibits. For example, if a motion is marked as AE X, any exhibits or evidence submitted in support of the motion will be marked as AE XI. The response will be marked as AE XII. Any exhibits or evidence in support of the response will be marked as AE XIII. All video and audio recordings submitted as evidence on a motion must be accompanied by a verbatim transcript of, at a minimum, the portions of the recordings that are pertinent to the motion.
- Rule 7.9. Motions to reconsider must be filed within fourteen calendar days and based upon either a change to the law, new evidence, or to correct a clear error or prevent a manifest injustice.
- Rule 7.11. Trial counsel must file any Bill of Particulars with the court as an AE.
- Rule 13.2. Proposed individual voir dire questions must be provided to the military judge fourteen days prior to trial.
- Rule 13.3. Member questionnaires must be provided to the military judge and defense counsel fourteen days prior to trial.
- Rule 20.2. Formalizes the process being used by SVC and non-party counsel to object during trial.
- Rule 23. Requests for specialized instructions must be submitted fourteen days prior to trial.
- Rule 29.3. Added in consultation with CG-LMJ and requires trial counsel to review the ROT and transcript prior to submission to the military judge for verification.
- Rule 34.1. Requires that during remote hearings, the accused be physically present with at least one defense counsel.

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RULES OF PRACTICE

Section I. General Provisions

Rule 1.1: Applicability. These Rules apply to all counsel practicing before Coast Guard courts-martial, including accused who choose to proceed *pro se* pursuant to R.C.M. 506(d). If any Rule herein conflicts with Coast Guard regulations, case law, the Manual for Courts-Martial (MCM), the UCMJ, or the United States Constitution, then that Rule must be read in accordance with the law.

Rule 1.2: Non-Compliance. All participants to the court-martial must comply with these Rules. In the case of noncompliance with these Rules or an order from the Court, a military judge may, as appropriate, issue an admonishment on the record, issue appropriate court orders, issue a report to a military counsel's commanding officer, officer-in-charge, or supervisory counsel, or forward information about the matter to a civilian or military counsel's licensing bar. In addition, the court may forward a complaint for processing in accordance with R.C.M. 109, proceed with action for contempt under R.C.M. 809 and Article 48 of the Uniform Code of Military Justice (UCMJ), or fashion other appropriate remedies.

Rule 1.3: Signatures. Documents requiring signatures under these Rules or any other provision of law may only be signed by hand or by a full CAC generated digital signature.

Rule 1.4: Duty Day/Hours. Regular court hours will run from 0830 to 1700, Monday through Friday. Military judges may, after consultation with the parties, alter the hours as needed to ensure the fair and expeditious processing of court proceedings and the interests of justice. If a day extends past 1930, the military judge must notify the CTJ at the earliest possible opportunity.

Section II. Personally Identifiable Information (PII)

Rule 2: Procedures governing the use of PII.

Rule 2.1: Limiting Usage. The use of PII must be eliminated or minimized to the maximum extent possible.

Rule 2.2: Redactions. Unnecessary PII must be redacted in all documents (*e.g.*, pleadings and discovery material) that are electronically transmitted. At a minimum, social security numbers, home addresses, telephone numbers, e-mail addresses, dates of birth, financial account numbers, and names of minors shall be redacted. Medical or psychiatric records must be uploaded directly to the case file OneDrive folder, sent by encrypted e-mail or through a secured access file exchange.

Rule 2.3: Use of names versus initials. While names of witnesses and alleged victims will be used during the course of the trial, all named victims will be identified by their initials on charge sheets and in pleadings, and all witnesses will be identified by their initials in pleadings.

Rule 2.4: PII guidance. All Coast Guard personnel shall comply with Department of Homeland Security Handbook on Safeguarding PII and the Coast Guard's Privacy Incident Response, Notification, and Reporting Procedures for Personally Identifiable Information, Commandant Instruction 5260.5.

Section III. Search Authorization Requests and Pre-referral Judicial Proceedings

Rule 3: Procedures.

The following procedures apply to requests to a military judge for a search authorization under Military Rule of Evidence (M.R.E.) 315 or requests authorized by Article 30a, UCMJ, and matters referred by an appellate court prior to referral of charges and specifications to a court-martial. These procedures do not apply to requests for search authorizations made to Commanders under M.R.E. 315(d)(1).

Rule 3.1: Requests for Search Authorizations. Requests for a search authorization pursuant to M.R.E. 315 shall comply with the procedures contained in Chapter 27 of the MJM, COMDTINST M5810.1(series).

Rule 3.2: Identifying a Military Judge to Consider Search Authorization Requests.

Counsel will identify military judges using the Search Authorization Call Roster maintained on the Trial Docket Sharepoint site at: [Trial Docket - Documents - All Documents \(sharepoint-mil.us\)](https://sharepoint.mil.us).

Government counsel shall not assume a military judge is unable to hear a request for a search authorization due to a conflict. Any determination regarding a potential conflict will be made by the military judge.

Rule 3.3: Requests for Pre-referral Subpoenas, Orders, Warrants. Requests for a proceeding conducted before referral under Article 30a, UCMJ must be submitted via e-mail to the Chief Trial Judge and the Chief Circuit Judge (*see* Rule 4.2) with docketing responsibility over the General Court-Martial jurisdiction to which the government counsel is located. The request will only include the name and duty station of the subject.

Once a military judge or military magistrate is detailed or designated to preside over a request, government counsel will ensure any requests comply with the procedures outlined in Chapter 7 of the MJM. The military judge or military magistrate may request additional information from

the government counsel, if necessary. Any such request and response must be documented as part of the record of the proceedings.

Military judges and military magistrates must act on such requests expeditiously, normally within three (3) duty days of receipt. If necessary, the military judge or government counsel may request the Chief Trial Judge or Chief Circuit Judge transfer the request to another military judge.

Rule 3.4: Requests for Relief from Investigative Subpoenas and Other Process. An individual in receipt of a pre-referral subpoena, order, or warrant may move the military judge to modify or quash the process on the grounds that compliance is unreasonable, oppressive, or prohibited by law. Requests for relief from investigative subpoenas and other process, and responses thereto, must be served on government counsel, the Chief Circuit Judge of the circuit that issued the process, and the Chief Trial Judge.

Rule 3.5: Proceedings and Records. Proceedings related to requests for investigative subpoenas and warrants/orders for wire or electronic communications will ordinarily be conducted by the military judge *ex parte* and *in camera*, without a hearing. Counsel for the Government must be involved in all communications and is responsible for maintaining all applications and resulting orders and forwarding them to the appropriate convening authority. In rare circumstances, the military judge may, within his or her discretion, hold a hearing related to requests for investigative subpoenas and warrants/orders for wire or electronic communications.

Hearings shall be conducted in accordance with the procedures generally applicable to sessions conducted under Article 39(a) and R.C.M. 803 (*see* R.C.M. 309(d)). The military judge or military magistrate will determine which parties and other interested persons/entities are either entitled to attend and be heard at the hearing or otherwise should be given the opportunity to attend and be heard at the hearing. The military judge or military magistrate will give reasonable notice of the time, date, and location of the hearing to those parties and other interested persons/entities prior to conducting the hearing. The military judge or military magistrate may rely upon the trial counsel to provide the required notice. The record of proceedings when a hearing is conducted will consist of a substantially verbatim recording of the hearing, along with any documents considered or issued by the military judge or military magistrate, and any other documents the military judge or military magistrate attaches to the proceeding. Documents that are part of the proceeding will be marked as “enclosures” and numbered consecutively with Arabic numbers.

Section IV. Docketing Procedures and Continuances

Rule 4: Docketing. The Chief Trial Judge maintains overall responsibility for the docketing of courts-martial and the detailing of military judges.

Rule 4.1: Judicial Circuits. Judicial circuits are the geographic areas of responsibility for the trial judiciary. The Eastern Circuit geographic area of responsibility shall generally correspond with the composition of Atlantic Area as defined in article 1-5-2-A of Coast Guard Regulations 1992, COMDTINST M5800.3B. The Western Circuit geographic area of responsibility shall generally correspond with the composition of Pacific Area as defined in article 1-5-2-B of Coast Guard Regulations 1992, COMDTINST M5800.3B. The alignment of Coast Guard Judicial Circuits shall in no way affect the jurisdiction of any court-martial, and neither creates nor serves as the basis for the assertion of any substantive right by the government or by an accused.

Rule 4.2: Chief Circuit Judge. The Chief Circuit Judge is the General Court-Martial judge permanently assigned to the principal office of that circuit. The Chief Circuit Judge serves as the alternate docketing judge for their assigned circuit and may docket courts-martial within their circuit and may detail any qualified Coast Guard military judge to a proceeding to be held within their circuit. The Chief Circuit Judge shall assist the Chief Trial Judge as required. Chief Circuit Judges are *not* authorized to promulgate local Rules of Court.

Rule 4.3: Detailing of Military Judges. The Chief Trial Judge retains the right of first refusal to detail himself or herself to any case. If the Chief Trial Judge does not detail himself or herself to a case, then the Chief Circuit Judge shall detail a military judge to preside over a court-martial convened within that circuit.

Rule 4.4: Electronic Docketing Request. The trial counsel shall submit an electronic docketing request using the “Docket Request” tool located on the Trial Docket SharePoint site at: [Trial Docket - Trial Docket - All Items \(sharepoint-mil.us\)](#).

Upon submission of the docketing request, trial counsel shall promptly provide a copy by email of the referred charges, and all convening orders and amendments, to any detailed defense counsel or civilian defense counsel representing the accused. If a Special Victims’ Counsel (SVC) is detailed to represent an alleged victim named on the charge sheet, the trial counsel shall promptly forward an electronic copy of the docketing request to SVC.

Rule 4.5: Trial Management Orders. Military judges presiding over arraignments shall use the standard TMO located in Appendix A on the Trial Docket SharePoint site at: [Trial Docket - Documents - All Documents \(sharepoint-mil.us\)](#) .

Rule 4.6: Notice of Classified Information. When charges are referred, or as soon thereafter as known, trial counsel will notify the military judge and defense counsel if the case involves classified information.

Rule 4.7: Requests for Continuances. Motions for continuance must be in writing, unless the military judge states otherwise. The motion must include:

1. The current dates of trial and/or other sessions;
2. A statement of the specific facts supporting the requested continuance;
3. The number of times the case was previously continued;
4. A certification that the moving party conferred, or attempted in good faith to confer, with the opposing party before filing the motion;
5. A statement of whether the motion is opposed; and,
6. Proposed new dates of trial and/or other sessions.

Opposing counsel will provide a written response within 48 hours of receipt of the motion, unless the military judge states otherwise. The military judge may act on the motion without an Article 39(a) session or R.C.M. 802 conference. The military judge has sole responsibility to set or change trial dates. Only the military judge may grant a continuance. Requests for continuance are not granted until affirmatively acted upon by the military judge.

Section V. Pretrial Practice and Notice Requirements

Rule 5.1.1: Plea Agreements and Pretrial Agreements. When the convening authority accepts an accused's offer to plead guilty pursuant to a plea agreement or pretrial agreement, the trial counsel must immediately provide a signed copy of the agreement to the military judge. If the agreement includes a stipulation of fact, it must also be provided to the military judge (including all enclosures) as soon as completed, but no later than fourteen (14) days before trial.

Rule 5.1.2: Notice of Offers to Plead Guilty and Requests for Discharge/Resignation in Lieu of Trial by Court-Martial. To facilitate docket management and trial preparation after referral of charges, trial counsel must immediately notify the military judge when an offer to plead guilty or a request for discharge/resignation in lieu of court-martial is submitted.

Rule 5.1.3: Withdrawal or Dismissal. The trial counsel must immediately notify the military judge and defense counsel when any charge or specification is withdrawn or dismissed by the convening authority. Trial counsel must also provide the military judge and defense counsel copies of any documents showing the convening authority's withdrawal or dismissal of charges.

Rule 5.1.4: Witnesses. Counsel must ensure their witnesses will be immediately available when called to testify.

Rule 5.1.5: Court Members. Trial counsel is responsible for notifying the members of the time, place, and uniform for trial, in accordance with the military judge's instructions. Members will **not** be informed of the pleas (or anticipated 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 5.1.6: Witness Lists. No later than seven (7) duty days prior to an Article 39(a) session or trial, unless otherwise ordered by the military judge, the trial counsel must provide the military judge, defense counsel, and court reporter a written list containing the initials, unit, and duty location or city and state of residence for each witness the government intends to call to testify. Witness lists for trials must indicate whether the witness will be called during the merits or sentencing phase of trial, or both.

Rule 5.1.8: Trial Documents. No later than fourteen (14) days before trial, unless otherwise ordered by the military judge, the trial counsel must provide the military judge and defense counsel all amending court-martial convening orders and, in trials with members, a seating chart, and flyer (*see also* Rule 23 and 24).

No later than three (3) duty days before trial on the merits, the trial counsel must provide the court reporter all exhibits which the government intends to use during the merits or sentencing phase of the trial (*see* Rule 17).

Rule 5.1.9: Court Reporters. 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 and shall make sure the court reporter has been sworn.

Rule 5.1.10: Assimilated Offenses. In all cases where the government charges assimilated offenses under Article 134, trial counsel must provide the military judge and defense counsel the elements of the offense, definitions, maximum punishment, a copy of the applicable state or federal statute and proposed jury instructions concerning the assimilated offense at the time of referral.

Rule 5.2: Defense Counsel Requirements.

Rule 5.2.1: Civilian Defense Counsel. When retained by an accused, civilian defense counsel (CDC) must file a notice of appearance with the military judge, and provide a copy to the trial counsel. The notice of appearance must state that the civilian defense counsel represents the accused with respect to the referred charges, and must include the civilian defense counsel's full name, mailing address, phone number, email address and jurisdiction(s) where the counsel is admitted to practice.

Rule 5.2.2. Appearances. Once a civilian defense counsel has filed a notice of appearance or appeared during an Article 39(a) or trial session on behalf of an accused, the civilian defense counsel is required to be present at all sessions of court, unless appearance is waived by the accused. Civilian counsel may not withdraw from representation of the accused without express permission of the military judge.

Rule 5.2.4. Security Clearance for CDC. Detailed defense counsel must inform the CDC of the requirements necessary for obtaining a security clearance immediately upon learning that classified information may be relevant to a pending case. CDC has a duty within ten (10) days from notice of appearance to request a security clearance application from the government where charges involve classified information; within ten (10) days from being notified by the government that classified information is relevant; or, within ten (10) days from determining that classified information may be relevant as a result of their own preparation, whichever is earliest. CDC must complete the necessary security clearance application within thirty (30) days of receiving the application from the government. If CDC requires more time to complete the application process, civilian defense counsel must request additional time through the military judge. Requests for additional time will only be granted for good cause.

Rule 5.2.5. Oath by CDC. Civilian counsel will be sworn on the record by the military judge when making an initial appearance in every case.

Rule 5.2.6: Notice of Forum, Pleas, and Motions. No later than ten (10) duty days before an Article 39(a) session to resolve motions or the date of trial (whichever is earlier), unless otherwise ordered by the military judge, the defense counsel will notify the military judge and trial counsel, in writing, of all motions and the accused's choice of forum and plea. 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 must immediately inform the military judge and trial counsel of the change.

Rule 5.2.7: Pleas. If the accused intends to enter a plea other than "guilty" or "not guilty," the defense counsel will specify in the notice in Rule 5.2.6, above, the actual plea to be entered, unless such plea was provided to the military judge previously in a plea/pretrial agreement. If the plea will be to a lesser included offense, defense counsel will also provide a copy of the rewritten specification which accurately represents the plea which will be attached as an appellate exhibit.

Rule 5.2.8: Evidence and Discovery Issues. No later than ten (10) duty days prior to an Article 39(a) session or trial, unless otherwise ordered by the military judge, defense counsel will notify the trial counsel of any witnesses or evidence the defense wants produced at the Article 39(a) session or trial. Requests will comply with R.C.M. 703 and any Trial Management Order issued by the military judge.

Trial counsel denials of defense-requested witnesses or evidence must be furnished to the defense counsel in writing and must contain a thorough explanation for the denial. If the defense still desires the witness or evidence, the defense counsel must immediately notify the military judge that they intend to file a motion for appropriate relief, in the form of a motion to compel.

The military judge will establish a deadline for the motion. If the defense counsel undertakes to obtain a witness on his or her own and such witness does not appear, absent extraordinary circumstances, a continuance will not normally be granted to obtain the presence of such witness.

Counsel for both sides are required to bring any discovery problem immediately to the military judge's attention.

Rule 5.2.9: Notice of Certain Defenses. No later than ten duty days prior to an Article 39(a) session or trial (whichever is earlier), absent good cause shown or unless otherwise ordered by the military judge, defense counsel will notify the trial counsel, in writing, 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 R.C.M. 701(b)(2).

Rule 5.2.10: Witness Lists and Marking of Exhibits. No later than seven (7) duty days prior to an Article 39(a) session or trial, unless otherwise ordered by the military judge, the defense counsel must provide the military judge, trial counsel, and court reporter a written list containing the initials, unit, and duty location or city and state of residence for each witness the defense intends to call to testify. Witness lists for trials must indicate whether the witness will be called during the merits or sentencing phase of trial, or both.

No later than one duty day before trial, the defense counsel must provide the court reporter for marking all exhibits which the defense intends to use during the merits or sentencing phase of the trial (*see* Rule 17).

Rule 5.3: Special Victim Counsel and Other Non-Party Counsel.

Rule 5.3.1: Definition. An SVC, or other non-party counsel, is an attorney who has been designated by a military authority to act as counsel for an alleged victim. The Rules related to SVC apply equally to privately retained attorneys representing alleged victims.

Rule 5.3.2: Applicability. Notwithstanding references to "both parties," "counsel for both sides," "party," or words to that effect, all Rules of Court apply to SVCs.

Rule 5.3.3: Pretrial Notice. Upon assuming representation, SVCs shall file a Notice of Appearance with the Court, stating the applicable case caption, initials of the respective client, and name, rank, address, phone number and email address of the SVC. The notice shall also contain a brief statement as to the SVC's qualifications to practice and status as to oath. The notice must be served on all parties in the case. An SVC who fails to file a Notice of Appearance will not be recognized by the Court.

Rule 5.3.4: Trial Counsel Responsibilities to SVC. Trial counsel must provide the SVC notice of all scheduled sessions of court within twenty-four hours of the session being scheduled. Additionally, trial counsel must immediately provide the SVC with any rulings on motions involving the SVC's client.

Rule 5.3.5: Right to be Heard. In any motion or hearing where an alleged victim has a right to be heard, the military judge shall verify on the record that the alleged victim was notified of the right to be heard.

Rule 5.3.6: Service of Motions. Motions that involve M.R.E. 412, 513, 514, or 615 must be served, by the moving party, on the SVC that has entered a notice of appearance on behalf of the client whose information is being sought in the motion. Service on the SVC must occur at the same time of service on the Court and opposing counsel. Trial counsel must confirm such service.

Rule 5.3.7: Scheduling. Trial scheduling is within the sole discretion of the military judge (*see* R.C.M. 801). The SVC must communicate his or her schedule to the trial counsel who must then convey it to the military judge. Any motion or responsive pleading for a continuance filed by the trial counsel must indicate the SVC's position on the requested continuance. The military judge will consider the schedules of all parties and the SVC in docketing a case, but the military judge will not unreasonably delay any proceeding to accommodate the SVC's schedule. Trial counsel must keep the SVC fully informed of court dates and any changes thereto.

Rule 5.3.8: Presence at R.C.M. 802 Conferences. Even though SVCs are not parties to the trial (*see* R.C.M. 103(17)), military judges may permit the SVC to attend R.C.M. 802 conferences to address issues unique to the alleged victim in order to consider such matters as will promote a fair and expeditious trial. Once the issues relevant to the SVC have been addressed, the SVC will ordinarily leave the R.C.M. 802 conference to permit the military judge to address other issues with the trial and defense counsel.

Rule 5.3.9: Standing. SVC and alleged victim standing is determined by the issue under consideration and the right being asserted by the SVC and alleged victim.

Rule 5.3.10: Initial Appearance. Upon being authorized by the military judge to speak in open court for the first time, the SVC must announce his/her qualifications and whether he/she has acted in any matter inconsistent with representing the alleged victim. The qualifications of an SVC are the same as those required of a civilian defense counsel (*see* R.C.M. 502(d)).

Rule 5.3.11: Appearance in Court. When in the courtroom, the SVC will generally remain seated behind the bar, except when invited inside the bar by the military judge to address the Court. When addressing the Court, the SVC must do so from behind the podium. The SVC may be heard in an Article 39(a) session outside the hearing of the members. It is within the military

judge's discretion to hear from the SVC on each distinct issue separately, to have counsel address all issues at one time, or to require counsel to submit written matters to the court.

The military judge has discretion to allow the SVC or alleged victim to be heard in court via telephone or video teleconference (VTC) during an Article 39(a) session.

SVC and alleged victims will not be allowed to listen remotely to any court proceedings, via telephone, VTC, or otherwise, unless the military judge has established a remote viewing location for spectators of the trial due to space limitations within the courtroom.

Rule 6: Appointment of a Designee for Certain Alleged Victims.

Rule 6.1: Recommendation. Within seven (7) duty days after referral, both parties and, if appropriate, the SVC, must notify the military judge whether a designee should be appointed for an alleged victim pursuant to Article 6b(c), UCMJ, and R.C.M. 801(a)(6). If a party requests such a designation, it must file a written request showing good cause, along with a draft designation order. The request must indicate the following as to the recommended designee: age; relationship to the alleged victim; physical proximity to the alleged victim and the situs of the court-martial; anticipated costs in effecting the appointment; willingness of the proposed designee to serve in such a role; any previous appointment of a guardian by another court of competent jurisdiction; any potential delay in any proceeding that may be caused by the appointment; and any other relevant information. Not later than one duty day after such a request is filed, the other party and, if appropriate, the SVC will either concur or non-concur with the requested designee and may provide the military judge with a written response. The written response may include the name of a designee recommended by the responding party or the SVC; any recommended alternative will include the same information required of the original request.

Rule 6.2: Appointment. The appointment of the designee, if determined necessary by the military judge, shall be accomplished at arraignment when practicable. Either party may request, or the military judge may order, an Article 39(a) session under this Rule in cases where a designee cannot be identified or agreed upon by the parties.

Rule 6.3: Excusal/Replacement. At any time after appointment, an individual shall be excused as the designee upon request by the designee or a finding of good cause by the military judge. If the designee is excused, the military judge may appoint a successor using the procedures established in R.C.M. 801(a)(6).

Rule 7: Motions/Bill of Particulars.

Rule 7.1: Consultation. Counsel are encouraged to discuss motions or potential motions with opposing counsel prior to any Article 39(a) session to determine whether an issue is in fact controverted and to narrow the issues in contention to the maximum extent possible. Counsel

should advise the military judge as early as possible of motions that are likely to arise at trial, including any unusual motions or objections, and of any relevant authority then known to counsel, including contrary authority.

Rule 7.2: Filing. When not prohibited by the military judge, motions and other documents may be filed with the court, opposing counsel, and if applicable, SVC by electronic transmission. It is the filing party's responsibility to ensure that the filing is received by the Court, opposing party, SVC, and appropriate court reporter. In cases where a named complaining witness is not represented by SVC, any notice or motion which implicates an alleged complaining witnesses' rights shall be provided to the individual by trial counsel. As appropriate, electronic mail transmissions used to communicate with the court or with opposing counsel should be maintained by the originator and provided to the court reporter for inclusion in the record of trial. It is the filing party's responsibility to provide a hardcopy of any filing, with all appropriate attachments, to the court reporter for inclusion in the record of trial.

Rule 7.3: Evidence in Support. Each motion must include or be accompanied by evidence, a statement of the specific points of law and authority that support the motion, including, where appropriate, a concise statement of facts, which party bears the burden of production and persuasion and whether oral argument is requested. Counsel should submit motions in the format found in Appendix B and at: [Trial Docket - Documents - All Documents \(sharepoint-mil.us\)](https://sharepoint-mil.us)

Rule 7.4: Proposed Orders and Rulings. Any pleading that requests an Order must be accompanied by a proposed Order. The moving party and any responding counsel will include as part of the pleading proposed Findings of Fact and Conclusions of Law.

Rule 7.5: Marking. Motions and responses will be marked as appellate exhibits. When filing a pleading, a party must file any evidence offered in support of the pleading separately as the next appellate exhibit in order.

(a) For example, if the Defense were to submit a motion to suppress as AE XX, the evidence submitted in support of the motion will be marked as AE XXI. The evidentiary filing must contain a front page that lists the specific evidentiary exhibits. This requirement applies equally to the Government, Defense, and any third-party submissions. Counsel must work closely with the court reporters to ensure that all submissions are marked correctly.

(b) Any supplemental evidence or attachments for a previously marked motion will be included in the applicable appellate exhibit previously marked for the evidence in support of that motion. Using the example above, any supplemental Defense evidence for AE XX that was not originally included in AE XXI will be marked as AE XXI(a), AEXXI(b), etc. The supplemental submission must also include the date submitted.

(c) All electronic media will be provided in a format that can be appended to the record and reviewed by reviewing authorities. All video and audio recordings submitted as evidence on a motion must be accompanied by a verbatim transcript of, at a minimum, the portions of the recordings that are pertinent to the motion.

Rule 7.6: Timeliness of Rulings. Military judges will rule on motions in a timely fashion so as not to create unnecessary delay in court proceedings. In instances when a ruling must be reserved, the military judge shall revisit the issue and Rule when the reason for the reserved ruling is resolved. Military judges are encouraged to issue written rulings where appropriate and/or state their rationale on the record for their decisions.

Rule 7.7: Rulings Adverse to the Government. If the military judge rules adversely to the government and the government contemplates an appeal pursuant to Article 62, UCMJ and R.C.M. 908, the military judge must state on the record the time of the ruling so that the government may compute the 72-hour time period within which to file notice of an appeal. The military judge will also notify the government of how to provide the military judge with written notice of appeal.

Rule 7.8: Good Cause. Unless good cause is shown, motions must be filed in accordance with the TMO. Good cause is determined by the military judge.

Rule 7.9: Motions to Reconsider. Parties seeking reconsideration of a military judge's written pre-trial ruling or order must file a motion within fourteen (14) days after the pre-trial ruling or order is filed, unless the court extends the time for good cause shown. A motion to reconsider must be based on:

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

Rule 7.10: Motions for Speedy Trial Violations. In such cases where the defense moves to dismiss charges and specifications on the grounds of a speedy trial violation, the trial counsel will prepare a written chronology of events prior to trial. *See United States v. Ramsey*, 28 M.J. 370, 374 (C.M.A. 1989).

Rule 7.11: Bill of Particulars. When a trial counsel serves a Bill of Particulars on the defense, it shall also be filed with the court and marked as an appellate exhibit.

Rule 8: Pretrial sessions.

Rule 8.1: Conferences. In all courts-martial, the military judge may, pursuant to R.C.M. 802, conduct a Scheduling Conference as soon as practicable. This may occur in-person,

telephonically, or by e-mail, preferably within seven duty days of the docketing request. Upon request from the military judge, trial counsel will coordinate all conference communications. Additional 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 shall be summarized on the record.

Rule 8.2: Trial Management Order. After the initial R.C.M. 802 conference, the military judge will, except where found to be unnecessary, issue a Trial Management Order to establish timelines, resolve issues, and ensure the orderly administration of justice. Appendix A contains a sample Trial Management Order which can be found at: [Trial Docket - Documents - All Documents \(sharepoint-mil.us\)](#).

Rule 8.3: Use of Video Capabilities. In accordance with Rule 34, use of video teleconferencing capabilities in accordance with these Rules and the MCM is authorized for all preliminary matters, to include any arraignment or motion practice. If either party proposes to use alternatives to testimony after the court is assembled, such as VTC (or other audiovisual) technology, in accordance with R.C.M. 703(b)(1), 804(b), 805(a), 805(c), and/or R.C.M. 914B (and COMDTINST M5810.1(series)), the proponent shall serve notice of its intent on the court and opposing counsel not later than (10) days prior to trial. Any objection shall be filed within two (2) days of receipt.

Rule 8.4: Arraignments. Either party may request, or the military judge may direct *sua sponte*, an Article 39(a) session solely for arraignment. Counsel must be prepared for arraignments shortly following service of the referred charges.

Section V. Decorum and Conduct

Rule 9 Decorum.

Rule 9.1: General. Counsel for both sides must assist the military judge with maintaining a solemn and dignified atmosphere throughout the trial. As a traditional mark of respect for the judicial system, all persons in the courtroom, regardless of rank or grade, except the court reporter, must always rise when the military judge enters or leaves the courtroom. All persons, except the military judge and court reporter, must rise when the panel enters and leaves the courtroom. The trial counsel is responsible for saying (or having the bailiff say) “All rise” whenever the military judge or panel enters or leaves the courtroom. All parties must remain in place until the military judge indicates that all may be seated, or upon the full departure of the military judge and members.

Rule 9.2: Bar of the Courtroom. No one other than a trial participant is allowed inside the bar of the courtroom without the military judge's permission when Court is in session. When Court is not in session, supervisory attorneys and paralegals are allowed inside the bar.

Rule 9.3: Prohibitions.

Eating and drinking are not permitted in the courtroom during open sessions. Trial participants may consume water or other non-alcoholic beverages in unmarked, spill-proof containers.

Chewing gum and tobacco products are not permitted in the courtroom at any time.

Absent prior approval by the military judge, written and verbal communication between trial participants and the gallery is prohibited.

Photography, video recording, audio recording (except recording by the detailed court reporter or otherwise authorized by the military judge), and radio and television broadcasts from the courtroom are not permitted. Unless otherwise authorized by the military judge, all electronic devices, to include but not limited to cell phones, smart phones, tablets, and laptop computers, will be turned off while inside the courtroom.

No explosives, flammable liquids, caustic materials, or other hazardous materials will be brought into the courtroom without the military judge's prior approval. Firearms and weapons, except when used as exhibits or otherwise explicitly authorized by the military judge (*e.g.*, civilian law enforcement personnel or courtroom security officers), are not permitted in the courtroom.

The prohibitions contained in this Rule will be posted near the entry of the courtroom and inside the courtroom by or at the direction of the trial counsel.

Rule 9.4: Spectators.

Rule 9.4.1: General. Spectators are encouraged to attend courts-martial and shall be permitted to observe all trial proceedings, unless otherwise determined by the military 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 be graphic, vulgar, or obscene.

Rule 9.4.2: 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 9.4.3: Sanctions. Spectators who violate these Rules may be excluded from the courtroom, held in contempt, or both. A copy of Rule 9.4.2 will be posted near the entry to the courtroom and inside the courtroom to place spectators on notice of these Rules.

Rule 10: Courtroom Attire.

Rule 10.1: Civilian Participants.

Civilian counsel and civilian court reporters must wear conservative business clothing (e.g., a suit or coat/tie for men, and a suit or dress for women).

Civilian witnesses must wear conservative business clothing, if possible. Civilian witnesses must not wear shorts, t-shirts, or other inappropriate attire. Counsel must inform witnesses about appropriate attire, as prescribed by this Rule.

Civilian law enforcement officer witnesses may wear their duty uniform but may not carry a firearm or other service-weapon in the courtroom unless authorized to do so by the military judge.

Rule 10.2: Military Participants.

The default military uniform for all courts-martial is Service Dress Blue “Bravo.” The military judge may, however, designate an alternate uniform. Trial counsel will ensure all parties receive timely notice.

The military judge shall wear the judicial robe. Each military judge will be issued a robe by CG-LPD upon being certified as a military judge.

Military law enforcement agents and investigators (e.g., Coast Guard Investigative Service agents) may wear civilian clothing commensurate with the attire of civilian counsel, as stated in Rule 12.1.

Retirees recalled to active duty for court-martial must wear the military uniform designated for the court-martial.

Retirees not recalled to active duty, but being tried by court-martial, may wear the military uniform designated for the court-martial or civilian clothing commensurate with the attire of civilian counsel, as stated in Rule 12.1.

The accused and defense counsel are responsible for ensuring that the accused is properly attired.

Rule 10.3: Inmate Participants.

An accused in pretrial confinement and on active duty in the military, whether a witness or an accused, must wear the military uniform designated for the court-martial. The government is responsible for ensuring that the accused in pre-trial confinement is in the appropriate uniform.

Inmates in post-trial confinement, called to testify as a witness, must wear the prison uniform or clothing prescribed by the confinement facility.

An accused or appellant who is an inmate in post-trial confinement and on active duty (i.e., not yet discharged from the military) must wear the military uniform designated for the court-martial for new trials and rehearings. However, for post-trial Article 39(a) sessions only, without the presence of members, such an accused or appellant must wear the prison uniform or other clothing prescribed by the confinement facility.

An accused who is an inmate in post-trial confinement and no longer on active duty (i.e., has been discharged from the military) must wear appropriate civilian clothing (see Rule 10.1).

Trial counsel is responsible for ensuring all security and facility access issues related to inmate, court appearances are addressed well in advance of trial.

Rule 10.4: Uniform Exceptions. Military judges may authorize exceptions to the uniforms and attire required by this Rule, to include authorizing wear of the Operational Dress Uniform. In making exceptions, military judges must weigh the importance of conducting a formal and dignified proceeding against other competing interests.

Section VI. Trial Procedure

Rule 11: Pleas.

The accused and defense counsel must stand and face the military judge when entering pleas. Defense counsel will normally enter the accused's plea. If the accused's plea is particularly complex, defense counsel may announce that the accused pleads as set forth in the written plea agreement.

Rule 12: Stipulations.

If an issue arising during trial does not involve a factual dispute, counsel shall endeavor, to the extent possible, to enter into a stipulation of fact or expected testimony prior to trial concerning the undisputed facts. Counsel may enter stipulations for the limited purpose of obtaining a ruling on a motion or objection.

Rule 12.1: General. Absent extraordinary circumstances, all stipulations must be in writing.

Rule 12.2: Marking. Stipulations will be marked as Prosecution, Defense, or Appellate Exhibits, as appropriate. Stipulations of expected testimony will be read to the trier of fact, but

not taken into the deliberation room. Stipulations are not to be mentioned to court members unless previously received into evidence at an Article 39(a) session.

Rule 13: Voir Dire.

Rule 13.1: Conduct of Voir Dire. The military judge will ordinarily initiate voir dire examination by asking preliminary questions. The military judge may then permit such additional questions by counsel in *en banc* or general voir dire as are deemed reasonable and proper by the military judge. Counsel will submit any proposed general voir dire questions to the military judge fourteen (14) days in advance of trial.

Rule 13.2: Individual Voir Dire. Any proposed individual voir dire questions by counsel will be submitted to the military judge fourteen (14) days in advance of trial. .

Rule 13.3: Questionnaires. To expedite voir dire, the trial counsel should provide all members with questionnaires before trial under R.C.M. 912 and provide those to the military judge and defense counsel fourteen (14) days prior to trial. No post-trial questionnaires or surveys will be sent to any member nor will any post-trial assessment be requested from any court member except upon approval of the military judge.

Rule 14: Opening Statements.

Opening statements may address the evidence counsel expect to be offered, which they believe in good faith will be available and admissible, and a brief statement of the issues in the case. Counsel may not argue or instruct as to the law. Counsel may not show the members evidence that has not been admitted. Opening statements shall not exceed 15 minutes unless leave of the Court is granted based upon good cause shown.

Rule 15: Judicial Notice.

Counsel will advise the military judge and opposing counsel of any intended requests for judicial notice in their written pretrial matters in accordance with the TMO.

Rule 16: Trial Exhibits.

Rule 16.1: Marking. The court reporter will mark all exhibits “for identification” prior to trial. Prosecution exhibits will be numbered consecutively with Arabic numbers. Defense exhibits will be labeled consecutively with capital letters. The first twenty Appellate exhibits will be numbered consecutively with Roman numerals and then transition to Arabic numerals.

Rule 16.2: Publishing to Members. When a counsel requests to publish a document admitted in evidence to the members, other than by electronic means, that counsel will have previously

made copies for each member and opposing counsel will have previously confirmed those copies are accurate reflections of the original.

Rule 16.3: Demonstrative Evidence. Photographs, charts, maps, diagrams, and similar testimonial aids should be large enough and positioned for all parties to see. Copies of photographs or other aids (including electronically presented exhibits) may be furnished to each trial participant, in the sole discretion of the military judge, when appropriate. Any item of demonstrative evidence that has not been offered or admitted as a prosecution or defense exhibit shall be attached to the record as an appellate exhibit. If a piece of demonstrative evidence is not easily attached, a photograph of the exhibit shall be taken and attached as an appellate exhibit per Rule 16.4. The counsel using the demonstrative aid is responsible for ensuring compliance with this Rule.

Rule 16.4: Substitution. If an item of evidence is inappropriate for inclusion in the record, or when counsel would like a copy/reproduction substituted in the record (e.g., original personal records of an accused or original family photographs, original checks or other negotiable instruments), the proponent must be prepared with an exact copy/reproduction or accurate representation when offering the exhibit. Counsel offering the item must request that a suitable substitute (e.g., a photograph) be inserted in the record. This request must be made when the exhibit is offered into evidence or before the court-martial is adjourned. If the military judge approves the request, the trial counsel must ensure that a suitable substitute is included in the record of trial. If a copy of a document must be substituted in the record of trial, a legible photocopy may be used. If an exhibit is in color, the copy must be in color. If photographs are substituted for an exhibit, the photograph must clearly and accurately reflect the evidentiary value of the exhibit (e.g., signatures on a urine bottle or the serial number on a weapon).

Rule 16.5: Safeguarding Evidence. The counsel offering physical evidence is responsible for safeguarding that evidence until it is released to the court reporter. Evidence that has not been admitted or has been rejected shall remain out of the members' sight. For safety reasons, if firearms are marked as exhibits, the trial counsel must ensure that they are rendered inoperable in a manner that does not alter their evidentiary value (e.g., a locking device or plastic flexi-cuff through the magazine well and chamber while the slide is locked to the rear). Exhibits which could be used as a weapon, such as a knife or pair of scissors, must be attached to an evidence board.

Rule 16.6: Sealed Exhibits. When the military judge orally orders any portion of the record sealed, the trial counsel will ensure that a written sealing order is prepared and signed by the military judge and attached as an appellate exhibit (*see generally* R.C.M. 1113). This includes exhibits actually admitted into evidence. The trial counsel must ensure the sealed matters are not further reproduced or copied and will remain only in the original record of trial. Each sealed

exhibit, or portion of the transcript or recording of trial, will be placed in a separate sealed envelope (i.e., multiple items of sealed matter will not be conglomerated into one envelope). When counsel provide the court-martial notice of appeal under R.C.M. 908 or notice of petition for an extraordinary writ, the sealing order shall be automatically lifted only to the extent necessary for counsel to file the appeal or writ petition.

Rule 17: Witnesses.

Rule 17.1: Presence in the Courtroom. Witnesses generally should not sit in the courtroom prior to their testimony. Unless the military judge excludes them pursuant to M.R.E. 615, witnesses who will testify only on sentencing may observe the trial on the merits or guilty plea providence inquiry. After witnesses have been permanently excused, they may remain as spectators. The military judge will follow Article 6b(a)(3), M.R.E. 615, and other applicable law in deciding whether alleged victims may be excluded from proceedings.

Rule 17.2: Preparation. Trial counsel must 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 must ensure witnesses will be immediately available when called to testify. Military witnesses must not salute the military judge or president of the court in the courtroom.

Rule 17.3: Oaths and Identification. In accordance with R.C.M. 807, trial counsel must 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 Article 39(a) session. If a witness is later permanently excused and recalled, the witness must be sworn again. If a witness is later temporarily excused and recalled, the witness must be asked if they are the same person who previously testified in the court-martial and must be reminded he/she is still under oath. The trial counsel should identify the witness in their initial leading questions, as in the following examples:

1. Are you Petty Officer Hopley Yeaton of USCGC FORWARD, Portsmouth, VA?
2. Are you Mrs. Ida Z. Lewis, of Newport, Rhode Island?
3. Are you the accused in this case?

Civilian witnesses who do not wish to disclose the city where they reside in open court are not required to do so. In such cases, trial counsel must state, after the witness has given his or her name, that the other identifying information has already been provided to the reporter for inclusion in the record, if the identification does not otherwise appear in the record.

Rule 17.4: Gestures or Actions by Witnesses. If a witness makes gestures having evidentiary value or engages in other nonverbal conduct, e.g., hand motions, the counsel examining the witness must concisely and accurately describe the witness' actions for the record. If not done

contemporaneously with counsel examination, counsel should request the military judge's permission to describe such gestures or actions for the record.

Rule 17.5: 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 18: Counsel Decorum

Rule 18.1: Standing. Unless the military judge indicates otherwise, counsel must stand when addressing the military judge (to include when making objections), court members, and witnesses.

Rule 18.2: Demeanor. Counsel must not indicate, in any manner inconsistent with the dignified nature of a court-martial, agreement or disagreement with testimony, argument by opposing counsel, a court ruling, or other procedures at trial, except by proper objection or motion.

Rule 18.3: Undue Familiarity. During court proceedings and recesses, counsel must refrain from any undue familiarity with opposing counsel, the military judge, court members, and witnesses.

Rule 18.4: "One counsel" Rule. Only one counsel per side may examine any one witness or address the court on any particular issue, motion, argument, or objection, unless the military judge permits otherwise.

Rule 18.5: Offers of Proof. Offers of proof are not evidence. A military judge's essential findings cannot be based on offers of proof. Offers of proof will be used only in those rare circumstances set forth in M.R.E. 103(a)(2).

Rule 19: Court Reporters.

Rule 19.1: Swearing. Trial counsel shall ensure that the court reporter has been sworn. Preferably, all court reporters should be sworn prior to the commencement of trial.

Rule 19.2: Start of each session. Each time the court convenes or reconvenes, the court reporter must note in the record the presence or absence of the parties and the time at which the court convenes or reconvenes. The court reporter must note the time at which recesses are taken and the time of adjournment.

Rule 19.3: Counsel noted in the Record of Trial (ROT). Court reporters must ensure that the name and rank of all military parties to the trial and the name and address of civilian counsel are properly noted in the ROT.

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

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

Rule 20: Objections.

Rule 20.1: Stating an objection. Counsel must succinctly state the nature and basis of an objection. Counsel shall not provide additional argument in support of an objection unless asked to do so by the military judge. Opposing counsel must immediately cease examination and await the military judge's resolution of the objection. Any argument must be direct and succinct. Motions *in limine* are encouraged regarding evidentiary issues counsel believe are likely to be contested at trial. After the military judge rules on an objection or makes any other ruling, counsel shall not make further argument or comment, except with the express permission of the military judge. After a ruling, counsel may, however, make offers of proof to preserve an objection or issue for appellate purposes or request reconsideration. In trials with members, such offers of proof should normally be made in an Article 39(a) session (*see* M.R.E. 103(e)).

Rule 20.2: Objections by non-party counsel. Should a non-party legal counsel, such as an SVC, deem it necessary to object or otherwise be heard at trial that counsel shall stand until recognized by the military judge. The counsel shall not speak until recognized by the military judge. When recognized, the non-party legal counsel shall enter the well, and speak from the podium

Rule 21: Closing Arguments.

In closing arguments, counsel may make reasonable comment on the evidence, challenge the veracity of a particular witness, and draw such inferences from the testimony as will support the party's theory of the case. Counsel shall not assert a personal belief in the justness of a particular cause, the guilt or innocence of the accused, or the credibility of a witness, including the accused.

Rule 22: Rebuttal Arguments.

Trial counsel may, if the defense counsel presents argument on findings, make a rebuttal argument. R.C.M. 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, trial counsel may, in the discretion of the military judge, be permitted to make a rebuttal argument after the defense presents a sentencing argument. R.C.M. 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 23: Instructions.

Any request for specialized instructions (those not contained in Department of the Army (DA) Pamphlet 27-9, *Military Judges' Benchbook* or any approved interim change to the *Benchbook*), must be submitted in writing with supporting authority, if any, to the military judge and opposing counsel at least fourteen (14) duty days prior to the date set for trial, unless the military judge directs otherwise.

Rule 24: Findings and Sentence Worksheets.

In trials with members, trial counsel must prepare tailored findings and sentence worksheets, using the formats in DA Pamphlet 27-9, *Military Judges' Benchbook*, and submit them to the military judge and opposing counsel at least fourteen (14) duty days prior to trial, unless the military judge directs otherwise. Any lesser included offenses likely to be in issue will be reflected on the findings worksheet to reflect a proper finding as to the lesser included offense.

Rule 25: Restraint of the Accused and Witnesses.

Rule 25.1: Accused. While in court, the accused must not be physically restrained unless the military judge approves the restraint in advance. If defense counsel have a concern with regard to the nature of restraint of the accused, it shall be brought to the attention of the military judge outside the presence of members.

Rule 25.2: Witnesses. Inmate witnesses may be restrained during their testimony within the discretion of the military judge. Trial counsel should inform the military judge, prior to the trial or Article 39(a) session, of the need and justification to restrain an inmate while testifying. The military judge must seriously consider the need for restraint of inmate witnesses, and the justifications provided by the trial counsel and/or confinement authorities, prior to determining what restraint will be allowed, if any. When restraint of inmate witnesses is allowed, the military judge should make every effort to ensure that the inmate testimony is presented in a way that prevents or minimizes the members' ability to observe the restraint.

Rule 26: Withdrawal by Counsel.

Rule 26.1: Trial Counsel. After referral, trial counsel shall not be permitted to withdraw unless substitute qualified counsel is detailed prior to or simultaneously with the relief of the withdrawing counsel and the detailing memo has been provided to the military judge.

Rule 26.2: Detailed Defense Counsel. After referral, detailed military defense counsel may not withdraw from representation of the accused without the military judge's approval, whether or not the accused wishes to release the detailed military counsel. Approval will take into consideration compliance with R.C.M. 505(d)(2), R.C.M. 506(b)(3), and R.C.M. 506(c), as applicable.

Rule 26.3: Individual Military Counsel and Civilian Defense Counsel. Once individual military counsel or civilian defense counsel enters an appearance (to include a written notice of appearance), such counsel may not withdraw from representation of the accused without the military judge's approval, whether or not the accused wishes to release the counsel. Approval will take into consideration compliance with R.C.M. 506(c), as applicable. 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. However, the mere failure to pay the fee does not terminate the attorney's obligations as an officer of the court. Approval of the request to withdraw will take into consideration 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 counsel without undue prejudice to the accused or the Government; and
3. The interests of justice and orderly administration of justice are advanced.

Section VII. Post-Trial Matters.

Rule 27: Post-trial and Appellate Rights.

The defense counsel must explain to the accused his or her post-trial and appellate rights, to include the rights contained in R.C.M. 1010, prior to trial with the aid of an applicable form tailored to the level of court-martial. The defense counsel and accused should ordinarily not sign or date the form until the date the sentencing phase begins. The defense counsel must submit the completed and signed form to the military judge at the start of sentencing proceedings, after the court reporter has marked it as an appellate exhibit.

Rule 28: Statement of Trial Results.

As soon as practicable after the adjournment of the court-martial, the trial counsel will provide a draft Statement of Trial Results to the military judge. Once the military judge signs the Statement of Trial Results, trial counsel will furnish copies to the court reporter, defense counsel, SVC, and (if applicable) the confinement facility.

Rule 29: Records of Trial.

Rule 29.1: Entry of Judgment. In accordance with R.C.M. 1111, upon receipt of the convening authority's action, the military judge (or the Chief Circuit Judge if the Chief Trial Judge determines the military trial judge is unavailable) will enter the judgment of the court-martial. Entries of judgment will be signed by the military judge as soon as practicable, but no later than ten (10) days after the receipt of the convening authority's action.

Rule 29.2: Certification of the Record by the Court Reporter. Pursuant to R.C.M. 1112, upon receipt of the entry of judgment, the court reporter will compile the record of trial (ROT) for certification. The certified record of trial is the official record of the proceedings of a court-martial. Once the record of trial is compiled in accordance with R.C.M. 1112(b), the court reporter will certify the ROT pursuant to R.C.M. 1112(e).

The court reporter will further prepare the certified record of trial for appellate review in accordance with R.C.M. 1112(f), to include the verbatim transcript. The verbatim transcript will be prepared in accordance with R.C.M. 1114 and pursuant to the Military Justice Manual, COMDTINST M5810.1 (series). The court reporter will certify that the written transcript is a true, accurate, and complete copy of the audio or other electronic recording of the court-martial proceeding in the case. Certification of the record should occur within one hundred twenty days after the completion of trial.

Rule 29.3: Review of the Record by Trial Counsel prior to Submission to the Military Judge. Prior to submission of the record of trial and transcript to the military judge for review pursuant to Rule 29.4, the trial counsel must review the record of trial and transcript to ensure compliance with RCM 1112(b) and RCM 1114.

In reviewing the record of trial, the trial counsel must provide a signed verification that all required contents listed at RCM 1112(b) are properly included and reflected in the record of trial. The trial counsel must ensure that the recording required by RCM 1112(b) is a substantially verbatim recording of the proceedings.

In reviewing any transcript required by RCM 1114, the trial counsel must verify that it is a verbatim transcript of the proceedings. The trial counsel must correct all errors contained in the transcript, to include errors in grammar, spelling, and punctuation. The trial counsel must ensure that the court reporter makes any necessary corrections to the record of trial and transcript prior

to submission to the judge for review. Counsel must use an errata sheet to record necessary corrections to the transcript.

Rule 29.4: Verification of the Record. Pursuant to the Military Justice Manual, COMDTINST M5810.1 (series), the military judge will verify the record of trial within twenty (20) days of receipt of the certified record, including the verbatim transcript. “Verifying” the record of trial ensures the record is complete, all of the exhibits and enclosures are appropriately included in accordance with R.C.M. 1112, the pleas, findings, and sentence are accurately reflected in the transcript accompanying the record of trial, and the verbatim transcript is suitable for appellate review.

Section VIII. Supporting Trial Personnel

Rule 30: Bailiff.

Unless the military judge directs otherwise, trial counsel must ensure a bailiff is present at every Article 39(a) session at which witnesses will be called and at every trial. Junior enlisted Coast Guardsmen (E-4 and below) will not serve as bailiffs unless otherwise permitted by the military judge. The bailiff will obtain witnesses as they are called to testify, call everyone to rise when the military judge or the entire panel enters or leaves the courtroom, and take care of administrative errands during trial as directed by the military judge, judge’s clerk, or court reporter. The bailiffs’ job is to assist the military judge to ensure the orderly conduct of the trial and that participants and spectators comply with these Rules. The bailiff must not be a witness, unit escort, or guard for the accused. Likewise, a bailiff should neither have an interest in the case nor a close association with the accused or an alleged victim of a charged offense. The bailiff will ordinarily be a senior petty officer. Trial counsel is responsible for briefing the bailiff as to the bailiff’s duties. If a bailiff is not present, trial counsel will perform the bailiff’s duties.

Rule 31: Guards.

The physical location of guards inside the courtroom shall be approved by the military judge. If the accused is in pretrial confinement or restriction, the guard will typically sit in the gallery directly behind the accused. In all other cases, the guard will typically sit on the side of the court with direct access to the accused but in a manner that is least disruptive to the proceedings.

Rule 32: Courtroom Security.

Rule 32.1: Military Judge’s Authority. The presiding military judge may prescribe Rules in any case to establish courtroom security as necessary.

Rule 32.2: Government Responsibility. The government is responsible for ensuring the courtroom facility is in compliance with all applicable orders and directives governing courtroom safety requirements. Notwithstanding such orders and directives, counsel must inform the

military judge whenever they believe extra precautions and/or security measures should be implemented.

Rule 32.3: Weapons. The wearing or carrying of weapons in the courtroom by any personnel, to include guards, is prohibited except when authorized by the detailed military judge. Most courtrooms used in the Coast Guard are not stand-alone courtrooms and are located in multi-purpose buildings. The federal or military authorities responsible for building entry may impose more restrictive Rules prohibiting firearms from entering a building, even if a military judge were to permit wearing or carrying a firearm inside the courtroom itself.

Section IX. Miscellaneous

Rule 33: Remote Requirements.

Rule 33.1: Hearings. Consistent with the Rules for Courts-Martial and applicable Coast Guard instructions, a military judge may conduct remote hearings as needed to complete Article 30a sessions for pre-referral subpoenas, orders, or warrants, or Article 39(a) sessions for arraignments, motions practice, and any other sessions permitted by the military judge. Remote hearings occur when the military judge is located in a different site than the accused and court reporter.

- (a) The accused must be physically located with at least one defense counsel during any remote hearing at which the accused is entitled to be present.
- (b) Guilty pleas will not be accepted remotely.
- (c) Two-way audio and visual transmissions (in color) shall be utilized to conduct remote sessions of court.
- (d) The Government will ensure that all sites satisfy technology and security requirements.
- (e) Knowledgeable support personnel shall be available at both locations to assist with technical issues that may arise.

Rule 33.2: Testimony. Separate from remote hearings—and consistent with the Rules for Courts-Martial—the military judge may permit witnesses to testify via electronic means. The court reporter will transcribe the witness’ testimony in the same manner as a normal witness.

Rule 33.3: Appearances. The military judge may allow a counsel to appear via electronic means. The court reporter will transcribe the counsel’s statements in the same manner as though the counsel was present in court.

Rule 33.4: Attendance. SVC and (alleged) victims may attend court proceedings via electronic means in accordance with Rule 8.3.

Rule 33.5: Public Access. Remote sessions are open to the public at the site designated by the presiding military judge consistent with the 6th Amendment, R.C.M. 504(d)(1) and R.C.M. 804.

Rule 33.6: 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 34: Contempt Proceedings

Rule 34.1: Authority. Military judges are empowered to punish persons in accordance with Article 48, UCMJ, and R.C.M.s 801(b), and 809 for direct or indirect contemptuous behavior. Such contempt power is to be exercised with restraint and in strict compliance with the statute and the implementing Rule for Court-Martial.

Rule 34.2: Notification. If a military judge intends to hold a contempt proceeding under R.C.M. 809(b)(2), the military judge shall notify the subject of the proceeding in writing, notwithstanding the provision in the Rule allowing for oral notification.

Section X. Effective Date

Rule 35: Effective date.

The foregoing Court Rules of Practice and Procedure before Coast Guard Courts-Martial are approved and effective 03 August 2022.

T. R. Fowles
Captain, U.S. Coast Guard
Chief Trial Judge