



Rules of Practice before Army Courts-Martial

1 January 2019

UNITED STATES ARMY TRIAL JUDICIARY
RULES OF PRACTICE BEFORE ARMY COURTS-MARTIAL

PREAMBLE

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

Adherence to these rules will promote the orderly, expeditious, and just disposition of courts-martial 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 Army Regulation 27-26, *Rules of Professional Conduct for Lawyers* (RPCL), and current American Bar Association Standards for Criminal Justice, to the extent that the latter apply at courts-martial.

These rules are established to ensure the orderly administration of justice and are promulgated under RCM 108, RCM 801(b), and Chapter 7, Army Regulation 27-10. Counsel must adhere to these rules. However, noncompliance does not give rise to any rights or remedies for an accused. Counsel may be required to explain the failure to comply with these rules and the military judge is empowered to take appropriate action pursuant to applicable law and regulation (see Rules 3.3 and 3.4, RPCL, RCM 109 regarding suspension of counsel from practice in courts-martial, and RCM 809 regarding contempt procedures pursuant to Article 48). A military judge may modify, amend, revoke, or set aside any rule contained herein only with the approval of the Chief Trial Judge, unless otherwise stated herein.

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Colonel, JA
Chief Trial Judge

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RULES OF COURT

Section I. General Provisions.

RULE 1: General.

RULE 1.1: Applicability.

These Rules of Court are applicable to all counsel practicing before Army courts-martial, including accused who choose to proceed *pro se* pursuant to RCM 506(d).

If any rule herein conflicts with Army regulations, case law, the Manual for Courts-Martial, the UCMJ, or the United States Constitution, then that rule must be read in accordance with the law.

RULE 1.2: Duty Days.

For purposes of these rules, a “duty day” is Monday through Friday, unless formally designated as a federal holiday or training holiday approved by the appropriate GCMCA-level senior operational commander. Unless otherwise prescribed by appropriate authority, a “duty day” does not include Saturday and Sunday. In deployed areas, the judge is authorized to declare which day is a “duty day” for purposes of these rules.

RULE 1.3: Signatures.

Documents requiring signatures under these rules or any other provision of law may be signed by hand or by digital signature.

Section II. Pre-referral Judicial Proceedings.

RULE 2: Procedures.

The following procedures apply to requests submitted to a judge for issuance of investigative subpoenas, warrants and orders for wire or electronic communications, requests for relief from investigative subpoenas and other process, and matters referred by an appellate court prior to referral of charges and specifications to a court-martial.

RULE 2.1: Requests from Trial Counsel.

Requests from a trial counsel for investigative subpoenas and warrants/orders for wire or electronic communications must be submitted, in-person or electronically, to the judge with docketing responsibility over the GCM jurisdiction to which the trial counsel is assigned. Requests will include a draft subpoena, warrant, or order, ready for the judge’s approval and signature, along with all other documents in support of the request as required by Army regulations and law.

The judge may request additional information from the trial counsel, if necessary. Any such request and response must be documented as part of the record of the proceedings. Email communications are favored, as such communications are easily documented. Communications in-person or by telephone, while allowed, are disfavored due to the increased difficulty of documenting such communications.

Judges must act on such requests expeditiously, normally within three duty days of receipt. The judge may, with the approval of the Chief Circuit Judge, transfer the request to another judge if the judge is unable to expeditiously act upon it or if otherwise necessary.

RULE 2.2: Requests for Relief from Investigative Subpoenas and Other Process.

Requests for relief from investigative subpoenas and other process, and responses thereto, must comply with the procedures related to motions practice contained in Rule 6. Motions must be filed with the judge that issued the process or, in the case of an investigative subpoena issued by a trial counsel, the judge with docketing responsibility over the trial counsel's command. The person filing the motion will also provide a copy to the trial counsel who issued or served the process. The attorney filing the motion must include his or her name, mailing address, phone number, email address, and state bar membership information.

RULE 2.3: Proceedings and Records.

Proceedings related to requests for investigative subpoenas and warrants/orders for wire or electronic communications will ordinarily be conducted by the judge *ex parte* and *in camera*, without a hearing. The record of proceedings will generally consist of all documents considered or issued by the judge in acting upon such requests. In rare circumstances, the judge may, within his or her discretion, hold a hearing in relation to requests for investigative subpoenas and warrants/orders for wire or electronic communications.

Proceedings related to requests for relief from investigative subpoenas or other process (see Article 46(e) and RCM 309(b)(3)) and proceedings related to pre-referral matters referred by an appellate court (see RCM 309(b)(4)) will ordinarily be conducted in a hearing. The judge has discretion to resolve requests for relief from process and pre-referral matters referred by an appellate court without holding a hearing, if appropriate.

Hearings shall be conducted in accordance with the procedures generally applicable to sessions conducted under Article 39(a) and RCM 803 (see RCM 309(d)). The judge 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 judge 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 judge 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 judge, and any other documents the judge attaches to the proceeding. Documents that are part of the proceeding will be marked as "enclosures" and numbered consecutively with Arabic numbers.

The trial counsel must ensure that the record of proceedings is maintained by the appropriate convening authority or commander (see RCM 309(e)). The judge is not responsible for maintaining the record of proceedings.

Section III. Docketing Procedures and Continuances.

RULE 3: Docketing.

The judge responsible for a case will establish docketing and calendar management for that case to ensure compliance with these rules. Each judge, or the judge's clerk of court (clerk), will maintain a current docket using eDocket, available on the Army Trial Judiciary homepage (www.jagcnet.army.mil/USATJ).

RULE 3.1: Procedure at Preferral and Referral of Charges.

In addition to the RCM 308 requirement for commanders to immediately inform the accused of preferred charges, trial counsel must deliver a copy of preferred charges to the appropriate Trial Defense Service (TDS) field office at the earliest possible date so that military defense counsel

can be appointed and begin case preparation. Absent extraordinary circumstances, within 24 hours of referral, the trial counsel must ensure the charges are served on the accused, with copies provided to defense counsel and the judge. At the same time, trial counsel will provide all applicable convening orders and a complete copy of the accused's Enlisted or Officer Record Brief to the judge and defense counsel. The charge sheet must indicate the date on which the charges were served on the accused. If service has not been completed within 24 hours of referral, upon completion of service the trial counsel must immediately provide the judge with another copy of the charges showing such service. The trial counsel must ensure the copy of the accused's Enlisted or Officer Record Brief provided to the judge contains the following correct and complete information:

1. The accused's date of birth
2. The accused's MOS or Branch Code
3. The accused's marital status
4. The accused's GT score
5. The accused's Basic Active Service Date
6. The accused's gender / redcat
7. The accused's complete civilian education

RULE 3.2: Electronic Docket Request.

Within 24 hours of referral, the trial counsel must initiate an Electronic Docket Request (EDR) (Appendix A) and send it to the detailed defense counsel. The detailed defense counsel must complete Section B and, within three duty days of receipt from the trial counsel, return it to the trial counsel. The trial counsel must complete Section C and forward it to the judge within one duty day of receipt from the defense counsel. The EDR must contain specific, factual support for all requested dates; both parties must include all dates of unavailability for each detailed/retained counsel and approved expert witnesses for at least three months or up to the requested trial date, whichever is later. The parties should request trial dates based on counsel/expert witness availability and trial preparedness, not based on apparent docket availability. The trial counsel must inform the judge in the docketing request if the accused is in pretrial confinement. Normally, within one duty day of receipt of the completed EDR, the judge will set an arraignment and/or trial date, if the judge has not already set such dates. The judge will, within 10 calendar days of service of charges, set a trial date. Any period of delay from the judge's receipt of the referred charges until arraignment is considered pretrial delay approved by the judge per RCM 707(c), unless the judge specifies to the contrary. If counsel are unavailable to proceed on the scheduled date, they must move for a continuance (see Rule 3.4 below). The judge may use a pretrial order (PTO) to establish dates for compliance regarding discovery and notice, sessions, and conferences.

If charges have been referred to a special court-martial consisting of a military judge alone, pursuant to Article 16(c)(2)(A), the accused must indicate in Section B of the EDR, by signature, whether he/she objects to the trial of any particular specification by that forum (see RCM 201(f)(2)(E)). The accused cannot object to the trial in general, but must instead identify each particular specification to which he/she objects. The trial counsel must provide a response to such objections in Section C of the EDR. If the accused does object to the trial of any specification, the judge must determine whether the accused's objection is proper under RCM 201(f)(2)(E)(i). When objections are made, the judge will proceed in one of the following two ways:

1. If the judge believes all objections are proper, and the trial counsel agrees, the judge must notify the convening authority of the objections by completing Section D of the EDR and returning it to the convening authority (via the trial counsel), so as to allow the convening authority the opportunity to decide how to proceed pursuant to RCM 201(f)(2)(E)(ii). A hearing, pursuant to Article 39(a), is not required.

2. If either the judge or trial counsel believe an objection is improper, the judge must conduct an Article 39(a) session to resolve the matter. If after resolving all objections, the judge determines that any objections are proper, the judge must recess the proceeding and allow the convening authority the opportunity to decide how to proceed pursuant to RCM 201(f)(2)(E)(ii). If, on the other hand, the judge determines that none of the objections are proper, the judge must proceed to arraignment and trial.

RULE 3.3: Notice of Classified Information.

When charges are referred, or as soon thereafter as known, trial counsel will notify the judge and defense counsel if the case involves classified information.

RULE 3.4: Continuances.

Motions for continuance must be in writing, unless the 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 has previously been 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 judge states otherwise. The judge may act on the motion without an Article 39(a) session or RCM 802 conference. The judge has sole responsibility to set or change trial dates. Only the judge may grant a continuance. Requests for continuance are not granted until affirmatively acted upon by the judge.

Section IV. Pretrial Practice and Notice Requirements.

RULE 4: Counsel Requirements.

Trial and defense counsel will immediately notify the judge when any detailed counsel is excused from the case and when additional counsel are detailed to the case. See Rule 28 regarding excusal/withdrawal of counsel.

RULE 4.1: Trial Counsel Requirements.

RULE 4.1.1: 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 judge (offer portion only for pretrial agreements). If the agreement includes a stipulation of fact, it must also be provided to the judge (including all enclosures) as soon as completed, but no later than two duty days before trial.

RULE 4.1.2: 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 judge when an offer to plead guilty or a request for discharge/resignation in lieu of court-martial has been submitted. Additionally, trial counsel must notify the judge when the

offer to plead guilty or request for discharge/resignation will be presented to the GCMCA for decision.

RULE 4.1.3: Withdrawal, Dismissal, and Decision to Present No Evidence.

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

Trial counsel must also immediately notify the judge and defense counsel when a decision is made to present no evidence to prove a specification, whether such decision is pursuant to a plea/pretrial agreement or otherwise.

RULE 4.1.4: Witnesses.

Trial counsel is responsible for notifying all requested witnesses of the time, place, and uniform for trial. Witness presence at trial must be arranged to avoid unnecessary delays. The court will cooperate with witnesses whose absence from duty or job is especially disruptive or who provide essential services or missions to the extent that a fair, orderly, and expeditious trial is not sacrificed. Counsel must notify the judge when such witnesses are to be called so that appropriate coordination can be accomplished. Requests for delay to obtain or await arrival of witnesses will not be favorably considered in the absence of prior coordination with the judge. The timing of witnesses is crucial to the orderly presentation of a case.

RULE 4.1.5: Court Members.

Trial counsel is responsible for notifying the members of the time, place, and uniform for trial, in accordance with the 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 4.1.6: Section III Disclosures.

Unless otherwise ordered by the judge, prior to arraignment or not later than two duty days after the trial date is set if arraignment is the day of trial, the government must disclose to the defense that information required to be disclosed under the Military Rules of Evidence (MRE), Section III.

RULE 4.1.7: Witness Lists.

No later than seven duty days prior to an Article 39(a) session or trial, unless otherwise ordered by the judge, the trial counsel must provide the judge, defense counsel, and court reporter a written list containing the full name, 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 4.1.8: Trial Documents.

No later than two duty days before trial, unless otherwise ordered by the judge, the trial counsel must provide the judge and defense counsel all amending court-martial convening orders and, in trials with members, a seating chart, flyer, and draft findings and sentence worksheets (see Rule 24). The judge may also require copies of proposed voir dire questions in writing and completed court member questionnaires.

No later than one duty day 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 4.1.9: 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. Trial counsel will ensure the court reporter is sworn.

RULE 4.1.10: Assimilated Offenses.

In all cases where the government charges assimilated offenses under Article 134, trial counsel must provide the 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 4.2: Defense Counsel Requirements.

RULE 4.2.1: Civilian Defense Counsel.

When retained by an accused, civilian defense counsel must file a notice of appearance with the 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, and email address. The notice of appearance must also state the jurisdictions in which the civilian defense counsel is licensed to practice law, whether the civilian defense counsel is a member in good standing in those jurisdictions, and whether the civilian defense counsel has acted in any manner that might tend to disqualify him or her in the accused's court-martial. The detailed defense counsel must provide a copy of these Rules of Court to the civilian defense counsel immediately after the civilian defense counsel is retained.

Until a notice of appearance is filed, the judge will not consider any pleadings or other requests submitted by the civilian defense counsel.

The judge may excuse the requirement for filing a notice of appearance if the civilian defense counsel appears at an Article 39(a) session or trial and provides the above information on the record.

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 excused by the judge, and may not withdraw from representation of the accused without express permission of the judge.

RULE 4.2.2: Notice of Forum, Pleas, and Motions.

No later than ten duty days before an Article 39(a) session to resolve motions or the date of trial (whichever is earlier), unless otherwise ordered by the judge, the defense counsel will notify the 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 judge and trial counsel of the change.

RULE 4.2.3: 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 4.2.2, above, the actual plea to be entered, unless such plea was provided to the 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 re-written specification which accurately represents the plea. That document will be attached to the record of trial as an appellate exhibit.

RULE 4.2.4: Evidence and Discovery Issues.

No later than ten duty days prior to an Article 39(a) session or trial, unless otherwise ordered by the 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 RCM 703 and any PTO issued by the judge.

Trial counsel denials of defense-requested witnesses or evidence must be furnished to the defense counsel in writing and must contain stated reasons for the denial. If the defense still desires the witness or evidence, the defense counsel must immediately file a motion for appropriate relief, in the form of a motion to compel. 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 judge’s attention.

RULE 4.2.5: Notice of Certain Defenses.

No later than ten duty days prior to an Article 39(a) session or trial (whichever is earlier), unless otherwise ordered by the 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 RCM 701(b)(2).

RULE 4.2.6: Witness Lists and Marking of Exhibits.

No later than seven duty days prior to an Article 39(a) session or trial, unless otherwise ordered by the judge, the defense counsel must provide the judge, trial counsel, and court reporter a written list containing the full name, 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 all exhibits which the defense intends to use during the merits or sentencing phase of the trial (see Rule 17).

RULE 4.3: Special Victim Counsel.

RULE 4.3.1: Definition.

A special victim counsel (SVC) is an attorney who has been designated by 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 4.3.2: Applicability.

Notwithstanding references to "both parties", "counsel for both sides", "party" or words to that effect, all Rules of Court apply to SVCs (whether military or civilian counsel representing victims), including but not limited to the rules on motions practice in Rule 6. However, noncompliance does not give rise to any rights or remedies for an accused.

RULE 4.3.3: Pretrial Notice.

Upon assuming representation, SVCs must provide contact information to the trial counsel for inclusion on the EDR (Appendix A). Trial counsel must provide a copy of the charge sheet to the SVC within 72 hours of referral of charges. Trial counsel must provide notice of the referral with a copy of the referred charge sheet and accompanying documents to the SVC within 24 hours of service of the referred charge sheet on the accused.

RULE 4.3.4: Notice after Referral.

SVCs must file a notice of appearance with the court, stating the applicable case caption, name 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 qualifications to practice before Army courts-martial. The notice must be served on all parties in the case.

During the pendency of a case, SVC must immediately inform the judge, trial counsel, and defense counsel when representation of a client is terminated.

RULE 4.3.5: Trial Counsel Notice to SVC.

Trial counsel must provide the SVC notice of all scheduled sessions of court within twenty-four hours (24) of the order. Additionally, trial counsel must immediately provide the SVC with any rulings on motions involving the SVC's client.

RULE 4.3.6: Right to be Heard.

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

RULE 4.3.7: Service of Motions.

Motions that involve MRE 412, 513, 514, or 615 must be served, by the moving party, on any SVC that has entered a notice of appearance in any particular case. 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 4.3.8: Docketing.

Trial scheduling is within the sole discretion of the judge (see RCM 801). The SVC must communicate his or her schedule to the trial counsel who must then convey it to the 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 judge will consider the schedules of all parties and the SVC in docketing a case, but 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 4.3.9: Presence at RCM 802 Conferences.

Even though SVCs are not parties to the trial (see RCM 103(17)), judges may permit the SVC to attend RCM 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 RCM 802 conference to permit the judge to address other issues with the trial and defense counsel.

RULE 4.3.10: Standing.

SVC/alleged victim standing is determined by the issue under consideration and the right being asserted by the SVC/alleged victim.

RULE 4.3.11: Initial Appearance.

Upon being authorized by the 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 a SVC are the same as those required of a civilian defense counsel (see RCM 502(d)).

RULE 4.3.12: Appearance in Court.

When in the courtroom, the SVC must remain seated behind the bar, except when invited inside the bar by the 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 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 judge has established a remote viewing location for spectators of the trial due to space limitations within the courtroom.

RULE 5: Appointment of a Designee for Certain Alleged Victims.

RULE 5.1: Recommendation.

Within seven duty days after referral, both parties and, if appropriate, the SVC, must notify the judge whether a designee should be appointed for an alleged victim pursuant to Article 6b(c), UCMJ, and RCM 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 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 5.2: Appointment.

The appointment of the designee, if determined necessary by the judge, shall be accomplished at arraignment when practicable. Either party may request, or the 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 5.3: 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 judge. If the designee is excused, the judge may appoint a successor using the procedures established in RCM 801(a)(6).

RULE 6: Motions Practice.

Absent unusual circumstances, such as a particularly complex case, counsel should be prepared to dispose of all motions at one Article 39(a) session. All motions filed late must request leave of court and show good cause for filing out of time.

RULE 6.1: Format of Motions.

A motion will consist of a written pleading containing:

1. A concise statement of the relief sought and the grounds upon which it is made;
2. Whether the party requests a hearing to present evidence, oral argument, or both;
3. The burden of persuasion and burden of proof;
4. The facts in issue, as supported by the evidence;
5. A list of evidence and witnesses to be presented, if applicable (defense counsel must specifically request any evidence or witnesses it wants the trial counsel to produce);
6. Argument and the legal authority upon which the argument is based, to include contrary legal authority;
7. A conclusion that restates the relief sought; and
8. A draft order for the judge's signature, if the motion requests issuance of an order.

Unless the judge directs otherwise, all pleadings must:

1. Be double-spaced on single-sided, standard letter sized (8 ½ x 11) paper, with all typed matter appearing in at least 12 point font size with a one inch margin on all sides;
2. Contain a caption of the case;
3. State the title of the pleading within the caption;
4. Bear the date when signed by counsel;
5. Be signed by counsel (hand-written or digital signature is acceptable); and
6. Have each page numbered sequentially at the bottom center of each page and contain the total number of pages in the exhibit. For example, "Page 1 of x." Where a motion contains enclosures, treat the entire document as one exhibit so that the total number of pages accounts for both the motion and enclosures. Do not number enclosures separately.

A format for motions is at Appendix B. Unless the judge directs otherwise, both parties must submit all motions in this format.

RULE 6.2: Response to Motions.

Unless otherwise ordered by the judge, the nonmoving party, if opposing the motion, must file a response with opposing counsel and the judge within three duty days after the motion is received or two duty days before any scheduled hearing on the motion, whichever is earlier. The response must follow the format for motions contained in Rule 6.1. The response must be styled as a "Response to" the motion as styled. The judge may consider failure to file a timely response as conceding the merits of the motion. Motions requiring findings of fact must be supported by evidence presented by the parties, which may include written stipulations of fact or expected testimony.

RULE 6.3: Filing of Motions and Responses.

Motions and responses are considered filed with the court when the moving party or responding party has provided the signed original, including any enclosures, to the clerk or court reporter, judge, and opposing counsel (in person or electronically). Motions and responses sent by mail, courier or other carrier are not considered filed until physically received. Counsel must provide a hard copy of the signed motion or response, to include enclosures, to the court reporter prior to the next Article 39(a) session or trial. Once filed, a motion and response, to include any enclosures, will not be altered in any way. A party may request leave of court to file a supplemental pleading to correct errors in or add to a motion or response.

RULE 6.4: Speedy Trial Motions.

Speedy trial motions must contain a stipulated chronology of dates and events to which the parties agree and, if needed, a separate chronology from each party for those dates and events as to which there is no agreement.

RULE 6.5: Stipulations in Motions Hearings.

If a motion does not involve a factual dispute, counsel will, to the extent possible, endeavor to enter into a written stipulation of fact or expected testimony concerning undisputed matters for the limited purpose of obtaining a ruling on a motion or objection.

RULE 6.6: Counsel Certification.

Every pleading submitted to the court by a party will be signed by at least one counsel of record. Counsel's signature constitutes a certification that he or she has read the pleading; that, to the best of the signer's knowledge, or upon information and belief formed after reasonable inquiry, it is well grounded in fact and warranted by existing law or is a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause undue delay.

RULE 7: Pretrial sessions.

RULE 7.1: Requests.

Counsel may request an RCM 802 conference or Article 39(a) session before the scheduled trial date. The request should include:

1. The purpose of the proposed session;
2. The estimated duration of the session, including the number of witnesses to be called;
3. A proposed date and time of the session; and
4. Whether opposing counsel concurs in or objects to the proposed session.

RULE 7.2: Arraignments.

Either party may request, or the 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 8: Punctuality.

Punctuality in all matters affecting the court is required of all parties. When a party is or will be late, or the proceedings will be delayed, the judge must be notified immediately and provided an explanation.

RULE 9: Decorum.

RULE 9.1: General.

Counsel for both sides must assist the 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 rise when the judge enters or leaves the courtroom. All persons, except the 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 judge or panel enters or leaves the courtroom. All parties must remain in place until the judge indicates that all may be seated, or upon the full departure of the 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 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 (except water or other non-alcoholic beverages in unmarked, spill-proof containers for the trial participants). Chewing gum and tobacco products are not permitted in the courtroom at any time.

Absent prior approval by the 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 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 judge's prior approval. Firearms and weapons, except when used as exhibits or otherwise explicitly authorized by the 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.

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 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 unavoidably 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 9.5: Facility Cleanliness.

Trial counsel is responsible for ensuring that the courtroom, deliberation room, waiting rooms, and latrines are clean and in proper order before and after each trial. This includes emptying trash containers in all areas. This responsibility also applies to counsel who serve as U.S. Magistrate Court prosecutors in a courtroom used for Magistrate Court; the courtroom and other areas will be in proper order for courts-martial after each session of Magistrate's Court.

RULE 10: Addressing the Judge.

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

RULE 11: *Ex Parte* Communications.

Except as otherwise authorized by these rules, *ex parte* communications between counsel and the judge concerning any case, except as to docketing and other routine or purely administrative matters, are prohibited. If necessary, counsel may confer with the judge in the presence of opposing counsel (either in person, via telephone conference, or via email with copies furnished to opposing counsel), or request an Article 39(a) session or RCM 802 conference. Counsel may also file a brief or memorandum with the judge and opposing counsel, to be made an appellate exhibit, advising the court of the matter in question. In unusual circumstances, when a communication must be made *ex parte*, it should normally be made in writing. Such writing may, upon good cause, be sealed by the judge.

RULE 12: Courtroom Attire.

Army courts-martial are federal courts, under Article I of the United States Constitution, and are due the same deference as any other federal court. Army courts-martial are formal, dignified proceedings charged with determining significant and weighty issues. Accordingly, the appearance and demeanor of all participants in Army courts-martial (civilian or military, counsel or witness) should reflect the gravity and solemnity of the proceedings.

RULE 12.1: 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 blue jeans, shorts, t-shirts, or tennis shoes. 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 judge.

RULE 12.2: Military Participants.

Trial counsel, military defense counsel, military witnesses, and bailiffs must wear the Service Class A uniform. Military court reporters must wear the Service Class B uniform. Judges must wear the Service Class B uniform with neck tab or necktie. During all proceedings, judges will wear a black judicial robe over the uniform.

Military law enforcement agents and investigators (e.g., CID and MPI) 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 Service Class A uniform.

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

RULE 12.3: Inmate Participants.

Inmates in pretrial confinement and on active duty in the military, whether a witness or an accused, must wear the Service Class A 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 Service Class A uniform 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 12.1).

RULE 12.4: Uniform Exceptions.

Judges may authorize exceptions to the uniforms and attire required by this rule, to include authorizing wear of the combat uniform. In making exceptions, judges must weigh the importance of conducting a formal and dignified proceeding against other competing interests.

Section VI. Trial Procedure.

RULE 13: Pleas.

The accused and defense counsel must stand and face the judge when entering pleas. Defense counsel will enter the accused's plea. If the accused's plea is particularly complex, defense counsel may mark the accused's written plea (see Rule 4.2.3) as an appellate exhibit and when called upon to enter a plea, may announce that the accused pleads as set forth in that appellate exhibit.

RULE 14: 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 14.1: General.

Absent extraordinary circumstances, all stipulations must be in writing.

RULE 14.2: 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 15: Voir Dire and Impanelment.

RULE 15.1: Conduct of Voir Dire.

The judge will ordinarily initiate voir dire examination by asking preliminary questions. The judge may then permit such additional questions by counsel in *en banc* or general voir dire as are deemed reasonable and proper by the judge. The judge may require counsel to submit voir dire questions to the judge in advance of trial.

RULE 15.2: Individual Voir Dire.

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

RULE 15.3: Questionnaires.

To expedite voir dire, the trial counsel should provide new members with questionnaires before trial under RCM 912 and provide those to the judge and, upon request, the defense counsel. 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 judge.

RULE 15.4: Challenges.

Counsel must not state challenges, or lack thereof, in the presence of court members.

RULE 15.5: Random Assignment of Numbers. [applicable only to charges referred on or after 1 January 2019].

The court reporter is the judge's designee for purposes of randomly assigning numbers to members pursuant to RCM 912(f)(5). During a recess, the court reporter must use the panel member random number generator software, provided by the Office of the Judge Advocate General, to assign numbers to the remaining members. Trial and defense counsel must be permitted to observe the court reporter while assigning numbers, if desired. At an Article 39(a) session following the assignment of numbers, the results will be attached to the record as an appellate exhibit. The judge may alter the procedure for the random assignment of numbers, within the judge's discretion.

If additional members are detailed following the exercise of peremptory challenges (because the court is reduced below the number of members required by Article 16, or because the one-third enlisted requirement is not satisfied pursuant to Article 25), numbers must be randomly assigned to the additional members who remain after challenges for cause have been exercised against the additional members. The judge must follow the same procedure above in randomly assigning numbers to these additional members. The numbers assigned to the additional members will begin with the next number following those numbers assigned to the original members. The original members will retain the numbers they were previously assigned.

RULE 16: 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.

RULE 17: Exhibits.**RULE 17.1: 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. Appellate exhibits will be numbered consecutively with Roman numerals. Generally, those exhibits that are to be considered on either the merits of the case or in sentencing will be marked as prosecution or defense exhibits; all others should be marked as appellate exhibits (such as those used during motions hearings). Victim unsworn statements will be marked as appellate exhibits.

To the extent possible, counsel should consider the order in which the exhibits are to be referenced and make every effort to have those exhibits marked sequentially consistent with their use during the trial or hearing. Counsel must consult in advance with the court reporter on the means to mark exhibits not readily amenable to marking which may require tagging, stickers, or other atypical marking for identification. When questioning a witness or addressing the court about an exhibit, counsel shall specify the exhibit number or letter. Any exhibit shown to a witness must be marked and previously shown to opposing counsel before being used with that witness. Prosecution and defense exhibits will be referred to as "for identification" until the judge admits the exhibit into evidence. Once counsel has concluded examination on or use of an exhibit, it shall immediately be returned to the court reporter's custody. Under no circumstances may a counsel or witness maintain control of an original exhibit after it has been marked as an exhibit without the

express permission of the judge. Likewise, neither a counsel nor a witness may mark or in any way alter an exhibit after it has been admitted into evidence without the express permission of the judge.

RULE 17.2: 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 17.3: 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 judge, when appropriate.

RULE 17.4: Presentation Before Trial.

The trial counsel must show prosecution exhibits to defense counsel before trial. Defense counsel must similarly show defense exhibits to trial counsel before trial, unless otherwise granted an exception by the judge.

RULE 17.5: 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 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 17.6: Safeguarding Evidence and Firearms.

The counsel offering physical evidence is responsible for safeguarding that evidence until it is released to the court reporter or to an evidence custodian at the end of trial. 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 17.7: Sealed Exhibits.

When the 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 judge and attached as an appellate exhibit (see *generally* RCM 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 separate sealed envelope (i.e., multiple items of sealed matter will not be conglomerated into one envelope).

RULE 18: Witnesses.

RULE 18.1: Presence in the Courtroom.

Witnesses generally should not sit in the courtroom prior to their testimony. Unless the judge excludes them pursuant to MRE 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 judge will follow Article 6b(a)(3), MRE 615, and other applicable law in deciding whether alleged victims may be excluded from proceedings.

RULE 18.2: 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 arrange before a trial session for witnesses to be immediately available when called to testify. Military witnesses must not salute the judge or president of the court in the courtroom.

RULE 18.3: Oaths and Identification.

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. Trial counsel must not announce the witness' social security number or require the witness to do so. The trial counsel should identify the witness in his initial leading question, as in the following examples:

1. Are you Staff Sergeant Will E. Peters, of Battery A, 2d Battalion, 7th Air Defense Artillery, 11th Air Defense Artillery Brigade, Fort Bliss, Texas?
2. Are you Mrs. June A. Cleaver, of Smithville, Georgia?

Witnesses who do not wish to disclose their home town 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. The form at Appendix D may be used to provide such information to the court reporter.

RULE 18.4: Gestures or Actions by Witnesses.

If a witness makes gestures having evidentiary value or engages in other nonverbal conduct, 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 19: Conduct of Counsel.

RULE 19.1: Standing.

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

RULE 19.2: 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 19.3: Undue Familiarity.

During court proceedings and recesses, counsel must refrain from any undue familiarity with opposing counsel, the judge, court members, and witnesses.

RULE 19.4: Treatment of Witnesses and Positioning.

Counsel must conduct questioning of witnesses and arguments to the court at a reasonable distance from the witness or court. This reasonable distance will be from a relatively fixed location (e.g., from counsel table, a lectern, or the end of the panel box). Counsel must not roam, pace, or aimlessly wander throughout the courtroom. Counsel must not take a position that blocks the view between a witness and other trial participants. Witnesses will be treated with fairness and consideration – they will not be crowded, shouted at, ridiculed, humiliated, or otherwise abused. All witnesses, except children, will be referred to by their surnames and titles, as applicable.

RULE 19.5: Double-Teaming.

Only one counsel per side may examine any one witness or address the court on any particular issue, motion, argument, or objection, unless the judge indicates otherwise.

RULE 19.6: Conduct of Opposing Counsel.

During argument or examination of a witness, opposing counsel shall remain seated at counsel table, except when rising to state an objection. Opposing counsel shall not engage in conduct that diverts attention from counsel's argument or examination.

RULE 19.7: Sidebar Conferences.

Sidebar conferences will not be used. If matters should be discussed out of the presence of the court members, counsel must request an Article 39(a) session.

RULE 19.8: Offers of Proof.

Offers of proof are not evidence. A 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 MRE 103(a)(2).

RULE 19.9: Judicial Notice.

Counsel must advise the judge and opposing counsel in writing, as soon as possible and preferably before trial, of any requests for judicial notice. Counsel must provide a copy of the applicable law, regulation, order or other source to be used in determining whether to take judicial notice, which will be appended to the record of trial as an appellate exhibit, unless it can be

reasonably anticipated to be readily available to any possible reviewing authority. This is especially important in Article 92 and Assimilative Crimes Act cases where local regulations and state statutes may not be readily available to the appellate courts.

RULE 20: Court Reporter.

Each time the court convenes or reconvenes, the court reporter shall note in the record the presence or absence of the trial participants and the time at which the court convenes or reconvenes. The court reporter shall also note the time at which recesses are taken and the time of closing and of adjournment. Court reporters shall ensure that the name and rank of all military parties to the trial and the name and address of civilian counsel are properly noted in the record.

RULE 21: Objections.

When counsel initially enters an objection, he or she will state only "Objection, Your Honor." Counsel shall not provide a specific basis for the objection unless asked by the judge. Opposing counsel must immediately cease examination and await the judge's resolution of the objection. Before making any argument on an objection, counsel must request permission from the judge. 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 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 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 MRE 103(e)).

RULE 22: Closing Arguments.

In closing argument, 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 23: Instructions.

Any request for specialized instructions (those not contained in 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 judge and opposing counsel at least two duty days prior to the date set for trial, unless the 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 judge and opposing counsel at least two duty days prior to trial, unless the 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: Announcement of Findings and Sentence.

The accused and defense counsel will stand and face the president of the court or judge, as appropriate, prior to announcement of the findings and sentence.

RULE 26: Trial Procedure Guide.

Unless otherwise modified by the judge, the trial guide in DA Pamphlet 27-9, *Military Judges' Benchbook* with approved interim changes, will be used.

RULE 27: Restraint of the Accused and Witnesses.

RULE 27.1: Accused.

While in court, the accused must not be physically restrained unless the 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 judge outside the presence of members.

RULE 27.2: Witnesses.

Inmate witnesses may be restrained during their testimony within the discretion of the judge. The trial counsel should inform the judge, prior to the trial or Article 39(a) session, of the need to restrain an inmate during testimony and the justification therefore. The 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 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 28: Withdrawal by Counsel.

RULE 28.1: 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.

RULE 28.2: Detailed Defense Counsel.

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

RULE 28.3: 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 judge's approval, whether or not the accused wishes to release the counsel. Approval will take into consideration compliance with RCM 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 29: 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 RCM 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 judge at the start of sentencing proceedings, after the court reporter has marked it as an appellate exhibit.

RULE 30: Records of Trial.

RULE 30.1: Original Documents Related to the Case.

After referral and service of the charges on the accused and before arraignment, trial counsel shall submit original signed documents pertaining to the case to the court reporter. This includes, but is not limited to, the DA Form 5112 and magistrate's memorandum approving or disproving pretrial confinement, charge sheet, forwarding recommendations, Article 32 preliminary hearing report (if applicable), pretrial advice, and convening authority referral documents. Trial counsel should make a working copy of all documents, but should ensure all work product and matters which may not be admissible (e.g., counseling statements) and matters not related to offenses charged are not placed in the original files. If and when additional documents pertaining to the case are created after referral (e.g., discharge/resignation in lieu of court-martial, withdrawal of charges, motions, judicial orders or requests for deferment) counsel are obligated to deliver the original of these documents to the court reporter for inclusion in the record as soon as possible. The assigned court reporter will maintain all original documents until the record of trial is assembled. Once delivered to the court reporter, no one may remove original documents from the original file without the express permission of the judge. Likewise, after delivery to the court reporter original documents and exhibits may not be altered, amended, removed or marked on in any way without the express permission of the judge.

RULE 30.2: Records of Trial for Charges Referred Prior to 1 January 2019.

RULE 30.2.1: Counsel Review.

The trial counsel must supervise the court reporter in preparing the record of trial. Prior to submitting the record of trial to the judge for authentication, the trial counsel must review the record of trial to ensure it complies with the requirements of RCM 1103, RCM 1103A, and any regulatory requirements imposed by the Secretary of the Army. As part of this review, the trial counsel must read the verbatim or summarized transcript to ensure it accurately reflects the proceedings of the court-martial.

Prior to submitting the record of trial to the judge for authentication, the trial counsel must provide a copy of the record of trial to the defense counsel for review in accordance with RCM 1103(i)(1)(B). Defense counsel will verify, by signature, on the authentication sheet the date the record of trial was received for review and the date examination was completed.

Requested corrections to the record of trial, to include the transcript, must be submitted by the trial counsel or defense counsel to the court reporter. Counsel must use an errata sheet to record requested corrections.

Corrections to the record of trial, to include the transcript, must be made prior to submission of the record of trial to the judge for authentication. If there is a dispute regarding a requested correction, the matter must be submitted to the judge for resolution.

RULE 30.2.2: Time for Review.

Counsel will expeditiously review records of trial. Except in extraordinary circumstances, counsel should be able to review at least 150 pages of the transcript per calendar day while they are at home station and not on leave or pass, or in trial or conducting an Article 32 preliminary hearing. Counsel must communicate with the court reporter regarding any expected delays in completing the review.

If defense counsel fails to complete the review in a reasonable time, the trial counsel may consult the judge and, with the judge's approval, forward the record of trial to the judge for authentication.

RULE 30.2.3: Judge Review and Authentication.

The judge must review the record of trial to ensure it is complete and accurate, as required by RCM 1103, RCM 1103A, and any regulatory requirements imposed by the Secretary of the Army. The judge may review either a hard copy or electronic copy of the transcript. The judge will indicate needed corrections directly on the copy of the transcript the judge reviews and will indicate the page numbers associated with those corrections on an errata sheet. The judge will authenticate the record of trial, as required by RCM 1104, when satisfied that the record of trial is complete and accurate.

The court reporter must ensure that any corrections made by the judge are reflected in the original and all copies of the record of trial.

RULE 30.3: Records of Trial for Charges Referred on or after 1 January 2019.

RULE 30.3.1: Trial Counsel Review.

Prior to submission of the record of trial and transcript to the judge for review pursuant to Rule 30.3.2, 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 verify 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 30.3.2: Judge Review.

Prior to the court reporter's certification of the record of trial and transcript, the judge will review both to ensure compliance with RCM 1112(b) and RCM 1114. The judge will attest, by signature and date, that the record of trial and transcript comply with RCM 1112(b) and RCM 1114.

In reviewing the record of trial, the judge must verify that all required contents listed at RCM 1112(b) are properly included and reflected in the record of trial. While the judge must verify that

a recording of the proceedings has been included pursuant to RCM 1112(b)(1), the judge is not required to listen to the recording to ensure that it is a substantially verbatim recording of the proceedings.

In reviewing any transcript required by RCM 1114, the judge will verify that it is a verbatim transcript of the proceedings. The judge will correct any legally significant errors contained in the transcript. The judge is not required to review for, or correct, minor errors in grammar, spelling, or punctuation that are legally insignificant. The judge may review either a hard copy or electronic copy of the transcript. The judge will indicate needed corrections directly on the copy of the transcript the judge reviews and will indicate the page numbers associated with those corrections on an errata sheet. The court reporter must ensure that any corrections made by the judge are reflected in the original and all copies of the transcript.

If more than one judge presided over the proceedings, each judge will review that portion of the transcript for the proceedings over which that judge presided. Only the judge present at the end of the proceedings will review the record of trial for compliance with RCM 1112(b).

Section VIII. Supporting Trial Personnel.

RULE 31: Bailiff.

Unless the judge directs otherwise, the 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 Soldiers (E-4 and below) will not serve as bailiffs. The bailiff will obtain witnesses as they are called to testify, call everyone to rise when the judge or the entire panel enters or leaves the courtroom, and take care of administrative errands during trial as directed by the judge, judge's clerk, or court reporter. The bailiffs' job is to assist the 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 noncommissioned officer. Trial counsel is responsible for briefing the bailiff as to the bailiff's duties and providing the bailiff a copy of Appendix C. If a bailiff is not present, trial counsel will perform the bailiff's duties.

RULE 32: Guards.

Unless otherwise directed by the judge, soldiers assigned to guard the accused, if necessary, will not be permitted inside the bar of the courtroom. Guards may not carry firearms inside the courtroom, unless authorized by the judge. In forward deployed areas where soldiers normally carry firearms / weapons, the judge may set special rules for firearms or weapons in the courtroom.

RULE 33: Courtroom Security.

Courtroom security must be provided in accordance with AR 27-10, Chapter 7, and the judge's instructions or orders. When used, courtroom security officers will be military law enforcement personnel or United States Marshals attired as the judge directs (which may include their regular uniform, carrying a loaded sidearm and other equipment designated by the Provost Marshal where the trial is held). Use of a courtroom security officer is not an indicator that the accused presents a security or flight risk. An instruction to members to that effect may be appropriate in the judge's discretion.

Section IX. Effective Date.

RULE 34: Effective date.

The foregoing Rules of Practice before Army Courts-Martial are approved and effective on 1 January 2019.

Mark A. Bridges

MARK A. BRIDGES
Colonel, JA
Chief Trial Judge

Anticipated forum: MJ alone: Off Panel: Enl Panel

Anticipated pleas: Guilty: Not Guilty: Mixed:

Anticipated motions:

Estimated number of days for trial:

Civilian counsel (Name, address, phone, e-mail address and fax):

Detailed Defense Counsel (Name, phone, and e-mail address):

IMC (Name, phone, and e-mail address):

Objections to trial of any specification by SPCM-JA, with explanation (must be signed by accused):

Date:

SECTION C

(To be completed by Trial Counsel and delivered to the judge **on the first duty day after return from the Defense Counsel.**)

Contents of Section B are noted. The prosecution:

does not oppose the trial date requested by the defense.

opposes the earlier trial date or delay requested by the defense for the following reasons:

Estimated number of days for trial:

Response to objections by accused to trial of any specification by SPCM-JA:

Date:

SECTION D

(To be completed by the judge and delivered to the convening authority if the judge determines, without the need for an Article 39(a) session, that the accused has properly objected to trial of specifications by SPCM-JA)

The accused has properly objected to trial of the following specifications by SPCM-JA:

The referred charges are returned to the convening authority for his consideration, pursuant to RCM 201(f)(2)(E)(ii).

Signature of judge: _____.

Date:

APPENDIX B

MOTION AND RESPONSE FORMAT

UNITED STATES OF AMERICA)	
)	
v.)	(Prosecution)(Defense) Motion
)	(for Appropriate Relief)
(Last Name), (First Name)(MI))	(to Dismiss)
(Rank), U.S. Army,)	(<i>in Limine</i>)
(Company))	
(BN), (BDE))	(Date)
10th Mountain Division)	
Fort Drum, New York 13603)	

RELIEF SOUGHT

A concise statement of the relief sought and the grounds upon which it is made. E.g., The (Prosecution) (Defense) requests that the Court (compel the Government to produce Defense requested witnesses) (dismiss Specification 1 of Charge II for failure to state an offense) (prevent the Defense from admitting inadmissible hearsay testimony) (_____).

HEARING

State whether a hearing is requested and the purpose for the hearing. E.g., A hearing [is requested to present (evidence) (oral argument)] [is not requested].

BURDEN OF PERSUASION AND BURDEN OF PROOF

State which party has the burden and the applicable standard.

FACTS

State only the facts relevant to the motion. This section should make clear which facts the parties agree upon. The parties may also enter into stipulations of fact to save time and resources.

WITNESSES/EVIDENCE

Clearly state the witnesses that will be called and the evidence that will be presented.

LEGAL AUTHORITY AND ARGUMENT

Apply the law to the facts, drawing appropriate conclusions to support the pleading. Cite the legal authority relied upon within the body of the argument. Include contrary legal authority, if aware.

CONCLUSION

A concise restatement of the relief sought. E.g., Based on the above, the (Prosecution) (Defense) requests that the Court (compel the Government to produce Defense requested witnesses) (dismiss Specification 1 of Charge II for failure to state an offense) (prevent the Defense from presenting inadmissible hearsay testimony) (_____).

(Name of Counsel)
(Rank), JA
(Trial)(Defense) Counsel

[A CERTIFICATE OF SERVICE IS NOT REQUIRED.]

I certify that I have served or caused to be served a true copy of the above on the (Trial) (Defense) Counsel on _____20__.

(Name of Counsel)
(Rank), JA
(Trial)(Defense) Counsel

APPENDIX C

BAILIFF'S DUTIES

1. Uniform for Bailiff. The bailiff must wear the Service Class A uniform, unless otherwise directed by the judge.

2. Duties.
 - a. The bailiff will report to the trial counsel in the courtroom 45 minutes before the court start time to help the trial counsel set up the courtroom.

 - b. The bailiff is the only link between the trial participants (judge, counsel, accused, court reporter, and court members) and anyone else when the court is in session. The bailiff will deliver any necessary messages to the trial participants during trial.

 - c. The bailiff will ensure that the court members remain sequestered during deliberations. The bailiff will post himself or herself outside the door of the deliberation room and will let the parties know when the court members are ready to have the court reconvene.

 - d. The bailiff will remain alert at all times.

 - e. During trial, the bailiff will position himself or herself so that he or she not only observes the parties, but also any spectators. The bailiff will ensure a quiet and orderly atmosphere exists in the waiting room area and spectator gallery at all times. The bailiff will politely escort loud, disruptive, or sleeping spectators from the courtroom. Children may observe trials. If they become disruptive, the bailiff will ensure that they leave the courtroom.

 - f. Food, chewing gum, beverages (other than water), cameras, tape recorders, videocameras, and weapons (unless authorized by the judge) are not permitted in the courtroom. The judge may permit parties (counsel and the accused) and court members to have a beverage (e.g., a cup of coffee or water) in the courtroom. Photographs, video and sound recordings (except those by the detailed court reporter or otherwise authorized by the military judge), and radio and television broadcasts shall not be made in or from the courtroom during any trial proceedings. Cell phones, radios, iPods, BlackBerrys, pagers, and similar devices that make noise are not allowed in the courtroom, unless they are completely turned off. The bailiff will assist the court in enforcing these prohibitions in a dignified, professional fashion. Absent a situation involving self-defense or defense of another, a bailiff shall not make physical contact with anyone in the gallery.

 - g. Witnesses are not allowed to sit as spectators before they testify unless permitted by the military judge. If the witness is present only to testify during the sentencing phase of the trial, however, the witness may observe the findings portion of the trial before testifying.

 - h. The bailiff will loudly announce "ALL RISE" on the following occasions:
 - (1) Each time the judge enters or leaves the courtroom while wearing the judicial robe.

 - (2) Each time the court members collectively enter or exit the courtroom.

i. The bailiff will ensure the members are in proper order before they enter the courtroom. Members should refer to the seating chart posted in the deliberations room, for reference.

j. As counsel call for a witness, the bailiff will quickly leave the courtroom to obtain the witness and escort the witness into the courtroom. Counsel should provide to the bailiff a list of witnesses and the order in which they are to be called, so the bailiff can position the next witness close to the courtroom (in the event the witness waiting area is located some distance from the courtroom). After the witness testifies, the bailiff will escort the witness from the courtroom while obtaining the next witness.

k. The bailiff will not discuss the testimony of witnesses or the happenings within the courtroom with the court members, with other witnesses, spectators, or anyone else while the trial is ongoing.

l. After each trial day and after the trial terminates, the bailiff will assist the trial counsel in restoring the courtroom, deliberation room, waiting room area, and latrines to a neat and orderly appearance. This duty may include emptying the trash containers in these rooms and ensuring each latrine contains an adequate supply of toilet paper, paper towels and soap.

m. After trial concludes, the bailiff is responsible for entering the deliberations room and recovering all notes, slips of paper and other written documents. The bailiff will not read any of these documents, but will take them directly to the nearest shredder and destroy them.

n. The bailiff's duties continue until the trial counsel releases the bailiff after trial.

APPENDIX E

AUTHENTICATION OF THE RECORD OF TRIAL

IN THE CASE OF

[NAME, SSN, RANK]

[UNIT AND ADDRESS]

I received the completed record of trial for review and authentication on _____ (date) _____.

(Name of Military Judge)
(MAJ)(LTC)(COL), JA
Military Judge

DATE: _____

ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION

I received the record of trial for review in the foregoing case on _____ (date) _____.

(Name of Defense Counsel)
(CPT)(MAJ)(LTC), JA
Defense Counsel

DATE: _____

The record of trial was served on defense counsel on _____ (date) _____. After verifying receipt with defense counsel on _____ date _____ and conferring with the military judge on review by defense counsel on _____ date _____, the record was forwarded for authentication without completion of defense counsel's review.

(Name of CoJ)
(CPT)(MAJ)(LTC), JA
Chief, Military Justice