

**COURT RULES OF PRACTICE AND PROCEDURE**  
**BEFORE**  
**COAST GUARD COURTS-MARTIAL**  
**(REVISED JANUARY 2019)**

**PREAMBLE**

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

Adherence to these rules will promote an orderly, expeditious, and just disposition of court-martial cases, and provide for more efficient application of judicial and legal resources. Counsel, as officers of the court, are ethically obligated and expected to be familiar with and follow these rules, as well as, 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.

M. J. Fay  
Captain, U.S. Coast Guard  
Chief Trial Judge

## **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 Coast Guard courts-martial, including accused who choose to proceed *pro se* pursuant to RCM 506(d).

If any rule herein conflicts with Coast Guard 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: Signatures.**

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

##### **RULE 1.3: Duty day defined.**

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

### **Section II. Pre-referral Judicial Proceedings.**

#### **RULE 2: Procedures.**

The following procedures apply to requests submitted to a military judge or military magistrate 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 Government Counsel.**

Requests from a government counsel for investigative subpoenas and warrants/orders for wire or electronic communications must be submitted via e-mail to the Chief Trial Judge and the Chief Circuit Judge (*see* Rule 3.2) with docketing responsibility over the General Court-Martial jurisdiction to which the government counsel is located. The Chief Trial Judge or Chief Circuit Judge will then detail a military judge or military magistrate to preside over the request.

Once a military judge or military magistrate has been detailed or designated to preside over a

request, government counsel will forward a draft subpoena, warrant, or order, ready for the military judge or military magistrate's approval and signature, along with all other documents in support of the request as required by Coast Guard regulations and law.

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 duty days of receipt. The military judge may request the Chief Trial Judge or Chief Circuit Judge transfer the request to another military judge if the military judge or military magistrate if they are 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 military judge or military magistrate that issued the process or, in the case of an investigative subpoena issued by a government counsel, the Chief Trial Judge. The person filing the motion will also provide a copy to the government 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 military judge *ex parte* and *in camera*, without a hearing. The record of proceedings will generally consist of all documents considered or issued by the military judge in acting upon such requests. 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.

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 military 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 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.

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

### **Section III. Docketing Procedures and Continuances.**

#### **RULE 3: Docketing.**

Docketing of courts-martial and detailing of military judges is a judicial function. The Chief Trial Judge maintains overall responsibility for the docketing of courts-martial and detailing of military judges.

#### **RULE 3.1: Judicial Circuits.**

Judicial circuits are the geographic areas of responsibility for the trial judiciary. The Eastern Circuit shall have its principal office in Norfolk, VA and its 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 shall have its principal office in Alameda, CA and its 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 3.2: 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 3.3: 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 3.4: Electronic Docketing Request.**

The trial counsel shall submit an electronic docketing request using the “Docket Calendar” tool located on the Chief Trial Judge sharepoint site

(<https://cg.portal.uscg.mil/units/cg094/cg094j/CMDocket/Lists/Docket/Docket%20List.aspx>) within one duty day of referral. Trial counsel shall ensure they click “send request” and “save” to ensure the docketing request is properly submitted. Trial counsel will be copied on the docketing request e-mail that is automatically generated by the electronic docketing tool. If trial counsel do not receive an e-mail within thirty minutes of submitting a docketing request, they shall notify the Chief Trial Judge and Chief Circuit Judge where the court-martial has been convened by e-mail.

Upon submission of the docketing request, trial counsel shall promptly provide a copy of the referred charges, and all convening orders and amendments, to the Chief Trial Judge and Chief Circuit Judge where the court-martial has been convened. Additionally, the trial counsel shall promptly forward the docketing request e-mail and a scanned electronic copy of the docketing request that was submitted to any detailed defense counsel or civilian defense counsel representing the accused. If a special victim counsel is detailed to represent an alleged victim named on the charge sheet, the trial counsel shall promptly forward the docketing request e-mail and a scanned electronic copy of the docketing request that was submitted to that special victim counsel.

A military judge will not normally be detailed to the case until after receipt of the appropriate charge sheet(s) and convening order. Once the trial date is established, the trial judge shall post the trial date along with the charge sheet on the military judges’ shared docketing calendar. (<https://cg.portal.uscg.mil/units/cg094/cg094j/Lists/Calendar/calendar.aspx>)

**RULE 3.5: 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 3.6: 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 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 military judge states otherwise. The military judge may act on the motion without an Article 39(a) session or RCM 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 IV. Pretrial Practice and Notice Requirements.**

##### **RULE 4: Counsel Requirements.**

Trial and defense counsel will immediately notify the military judge when any detailed counsel is excused from the case and when additional counsel are detailed to the case. *See* Rule 29 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 military judge (offer portion only for pretrial agreements). 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 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 military 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 military judge when the offer to plead guilty or request for discharge/resignation will be presented to the convening authority for decision.

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

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.

Trial counsel must also immediately notify the military 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 military 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 military 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 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 4.1.6: Section III Disclosures.**

Unless otherwise ordered by the military 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 military judge, the trial counsel must provide the military 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 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, flyer, and draft findings and sentence worksheets (*see* Rule 25). The military 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 prior to the first Article 39(a) session the court reporter will participate in.

**RULE 4.1.10: 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 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 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, 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 military judge will not consider any pleadings or other requests submitted by the civilian defense counsel.

The military 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 military judge, and may not withdraw from representation of the accused without express permission of the military 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 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 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 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 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 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 RCM 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 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 military 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), 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 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 military judge, the defense counsel must provide the military 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 electronic docketing request. Trial counsel must provide a copy of the charge sheet to the SVC within 72 hours of preferral 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 Coast Guard courts-martial. The notice must be served on all parties in the case.

During the pendency of a case, SVC must immediately inform the military 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 military 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 military judge (*see* RCM 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 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)), military 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 military 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 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 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 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 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 military 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 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 5.2: 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 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 military judge. If the designee is excused, the military 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 military judge's signature, if the motion requests issuance of an order.

Unless the military 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 (Courier New or Times New Roman) 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.
7. Be filed in Microsoft Word or PDF format.

**RULE 6.2: Response to Motions.**

Unless otherwise ordered by the military judge, the nonmoving party, if opposing the motion, must file a response with opposing counsel and the military 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 military 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, military judge, and opposing counsel (in person or electronically). The electronic filing of motions and responses is strongly encouraged. 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. Should a motion submitted to the military judge be altered or amended in any way from the motion provided to the court reporter, the heading of the motion must identify it as a “corrected copy” and reflect the date of correction. The corrected copy of the motion is considered filed under the same circumstances as above.

**RULE 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: Conferences.**

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

**RULE 7.2: Article 39(a) Sessions.**

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

**RULE 7.3: 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. However, due to the limited number of military judges, an Article 39(a) session to be held solely for arraignment is disfavored.

## **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 military judge must be notified immediately and provided an explanation.

### **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 (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 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 9.5: Facility Cleanliness.**

Trial counsel is responsible for ensuring that the courtroom, deliberation room, waiting rooms, and heads are clean and in proper order before and after each trial. This includes emptying trash containers in all areas.

**RULE 10: Addressing the Military Judge.**

Counsel and other persons connected with the trial, including court members, witnesses, court reporters, accused, and spectators, must address the military judge as “Judge,” “Your Honor,” or “Sir” or “Ma’am” in the courtroom. Unless otherwise directed, counsel shall stand when addressing the military judge. While not in session, counsel should bear in mind the circumstances and presence of others when addressing the military judge.

**RULE 11: *Ex Parte* Communications.**

Except as otherwise authorized by these rules, *ex parte* communications between counsel and the military judge concerning any case, except as to docketing and other routine or purely administrative matters, are prohibited. If necessary, counsel may confer with the military 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 military 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 military judge.

**RULE 12: Courtroom Attire.**

Coast Guard courts-martial are federal courts, under Article I of the United States Constitution, and are due the same deference as any other federal court. Coast Guard courts-martial are formal, dignified proceedings charged with determining significant and weighty issues. Accordingly, the appearance and demeanor of all participants in Coast Guard 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 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 12.2: 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. Trial counsel shall be responsible for the ensuring a judicial robe is available for use by the 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 12.3: Confinees and 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 12.1).

**RULE 12.4: 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 13: Pleas.**

The accused and defense counsel must stand and face the military 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 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. The military judge may require counsel to submit voir dire questions to the military 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 military 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 military 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 military 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 U.S. Army 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 military judge may alter the procedure for the random assignment of numbers, within the military 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 military 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. Opening statements shall not exceed 15 minutes unless leave of the court is granted based upon good cause shown.

**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. The first twenty Appellate exhibits will be numbered consecutively with Roman numerals and then transition to Arabic 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 military 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 military 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 military 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 military 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 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 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 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* 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). When counsel provide the court-martial notice of appeal under RCM 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 18: Witnesses.**

**RULE 18.1: Presence in the Courtroom.**

Witnesses generally should not sit in the courtroom prior to their testimony. Unless the military judge excludes them pursuant to 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 military 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 military judge or president of the court in the courtroom.

**RULE 18.3: Oaths and Identification.**

In accordance with RCM 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. 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 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 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.

**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 18.5: 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 18.6: Unsworn Statement by the Accused.**

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

**RULE 19: Conduct of Counsel.**

**RULE 19.1: 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 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 military 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 ranks/titles, as applicable.

**RULE 19.5: “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 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 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 MRE 103(a)(2).

**RULE 19.9: Judicial Notice.**

Counsel must advise the military 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 military judge. Opposing counsel must immediately cease examination and await the military judge's resolution of the objection. Before making any argument on an objection, counsel must request permission from the military 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 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* 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: Rebuttal Arguments.**

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

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

**RULE 24: 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 two duty days prior to the date set for trial, unless the military judge directs otherwise.

**RULE 25: 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 two 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 26: Announcement of Findings and Sentence.**

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

**RULE 27: Trial Procedure Guide.**

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

**RULE 28: Restraint of the Accused and Witnesses.**

**RULE 28.1: 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 28.2: Witnesses.**

Inmate witnesses may be restrained during their testimony within the discretion of the military judge. The trial counsel should inform the military judge, prior to the trial or Article 39(a) session, of the need to restrain an inmate during testimony and the justification therefore. 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 29: Withdrawal by Counsel.**

**RULE 29.1: 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 29.2: 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 RCM 505(d)(2), RCM 506(b)(3), and RCM 506(c), as applicable.

**RULE 29.3: 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 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 30: 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 military judge at the start of sentencing proceedings, after the court reporter has marked it as an appellate exhibit.

### **RULE 31: Records of Trial.**

#### **RULE 31.1: Records of Trial for Charges Referred Prior to 1 January 2019.**

##### **RULE 31.1.1: 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 military 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. 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 military 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 the means directed by the military judge 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 military judge for authentication. If there is a dispute regarding a requested correction, the matter must be submitted to the military judge for resolution.

##### **RULE 31.1.2: Time for Review.**

Counsel will expeditiously review records of trial.

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

##### **RULE 31.1.3: Military Judge Review and Authentication.**

The military 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. The military judge may review either a hard copy or electronic copy of the transcript. The military judge will

indicate needed corrections directly on the transcript. The military 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 military judge are reflected in the original and all copies of the record of trial.

**RULE 31.2: Records of Trial for Charges Referred on or after 1 January 2019.**

**RULE 31.2.1: Entry of Judgement.**

In accordance with RCM 1111, upon receipt of the convening authority's action, the military judge (or his or her 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 31.2.2: Certification of the Record.**

Pursuant to RCM 1102, 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 RCM 1112(b), the court reporter will certify the ROT pursuant to RCM 1112(e).

The court reporter will further prepare the certified record of trial for appellate review in accordance with RCM 1112(f), to include the verbatim transcript. The verbatim transcript will be prepared in accordance with RCM 1114, and pursuant to the Military Justice Manual, COMDTINST M5810.1 (series), will be prepared for all courts-martial but acquittals. The court reporter will certify that this written transcript is a true, accurate, and complete copy of the audio or other electronic recording of the court-martial proceeding in the case. Certification of the record should occur within one hundred twenty (120) days after the completion of trial.

**RULE 31.2.3: 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 32: Bailiff.**

Unless the military 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 Coast Guardsmen (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 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 33: Guards.**

Unless otherwise directed by the military judge, Coast Guardsmen 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 military judge.

**RULE 34: Courtroom Security.**

**RULE 34.1: Military Judge Authority.**

The presiding military judge may prescribe rules in any case to establish courtroom security as necessary.

**RULE 34.2: 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 34.3: Weapons.**

The wearing or carrying of weapons in the courtroom is prohibited except when authorized by the detailed military judge for good cause shown. Most courtrooms 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 of carrying a firearm inside the courtroom itself.

**Section IX. Miscellaneous**

**RULE 35: Personally Identifiable Information.**

**RULE 35.1: Minimize Use of PII.**

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

**RULE 35.2: Redacting PII.**

Unnecessary PII must be redacted in all documents (e.g., pleadings, discovery material) that are electronically transmitted. At a minimum, social security numbers, home addresses, telephone numbers, e-mail addresses, dates of birth, financial account numbers, names of minors, and names of alleged victims in all sexual assault cases, shall be redacted.

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

**RULE 35.3: Names of Minors and Certain Victims.**

While names of minors will be used during the course of the trial, all named minor victims will be identified by their initials on the charge sheet and in pleadings. Alleged victims of sexual assault shall also be identified by their initials on the charge sheet and in pleadings.

**RULE 36: Use of Technology/Remote Means.**

**RULE 36.1: General.**

In accordance with RCM 804(b), remote means may be used to conduct Article 39(a) sessions for arraignments, motions practice and any other sessions permitted by the military judge. “Remote means” are defined as video teleconference, closed circuit television, or similar technology. Such means do NOT include telephone.

**RULE 36.2: Location of Parties.**

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

**RULE 36.3: Spectators.**

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

**RULE 36.4: Loss of Communications.**

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

**RULE 37: Contempt Proceedings**

**RULE 39.1: Authority.**

Military judges are empowered to punish persons in accordance with Article 48, UCMJ, and RCMs 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 RCM

**RULE 39.2: Notification.**

If a military judge intends to hold a contempt proceeding under RCM 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 40: Effective date.**

The foregoing Court Rules of Practice and Procedure before Coast Guard Courts-Martial are approved and effective 01 January 2019.

M. J. Fay  
Captain, U.S. Coast Guard  
Chief Trial Judge