



UNITED STATES MARINE CORPS

EASTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
67 VIRGINIA DARE DRIVE, SUITE 145
CAMP LEJEUNE, NORTH CAROLINA 28547

IN REPLY REFER TO:
5810
EJC
21 NOV 13

EASTERN JUDICIAL CIRCUIT RULES OF PRACTICE

From: Circuit Military Judge

Subj: ADDITION OF RULE 41 TO EASTERN JUDICIAL CIRCUIT RULES OF PRACTICE

Ref: (a) Eastern Judicial Circuit Rules of Practice dated 31 Mar 2013
(b) R.C.M. 108, Manual for Courts-Martial (2012 Edition)
(c) R.C.M. 801(b), Manual for Courts-Martial (2012 Edition)
(d) NMCTJINST 5813.4A, dtd 26 JAN 09 (Navy-Marine Corps Trial Judiciary Standard Operating Procedures Manual)
(e) JAGINST 5813.4G, dtd 10 Feb 06 (Navy-Marine Corps Trial Judiciary)
(f) JAGINST 5803.1C, dtd 9 Nov 04 (Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General)

Encl: (1) Rule 41, NONPARTY LEGAL COUNSEL

1. **Purpose:** To publish Rule 41, NONPARTY LEGAL COUNSEL, as an additional rule to the current Eastern Judicial Circuit Rules of Practice, reference (a).

2. **Cancellation:** None.

3. **Background:** Recent changes in the legal rights and benefits afforded to victims have necessitated the implementation of additional rules governing the participation of nonparty legal counsel in courts-martial.

4. **Action:**

a. Military judges within this Circuit shall ensure enforcement of the rules contained in the enclosure.

- b. Counsel practicing before this Circuit shall become familiar with and comply with the references and the enclosure.
- c. Commanding Officers, Officers-in-Charge, and Supervisory Attorneys of cognizant legal providers shall ensure distribution to, and compliance by, all affected counsel.

5. **Effective Date:** Rule 41 is effective immediately and shall remain effective until cancelled or otherwise modified by higher authority.



D. M. McCONNELL

Rule 41: Nonparty Legal Counsel

Rule 41.1: Nonparty or Third Party legal counsel (LC) may be heard before this court to a limited extent as allowed by applicable law, subject to rulings and direction of the military judge. LC must file a Notice of Appearance with the court, stating the court circuit, case caption, name of the respective client, and name, rank, address, phone number and email address of the LC. Said notice must also contain a brief statement as to the qualifications to practice and oath status of the LC. Said notice must be served on all parties in that case. See R.C.M. 103(16).

Rule 41.2: All LC are subject to all rules of ethics and procedure applicable. Military LC will be attired in the proper uniform required of trial and defense counsel.

Rule 41.3: The MJ has the discretion to allow LCs to be heard in court via telephone or Video Teleconference (VTC). When appearing in the Courtroom, LC(s) should be seated behind the bar except when addressing the court. Legal Counsel may be heard in an Article 39(a) outside the hearing of the members. The LC will be brought forward at the appropriate time(s) and will only address the court from the podium. It is within the MJ's discretion to hear from the LC on each distinct issue separately or to have the LC address all the issues at one time. The right to be heard can be accommodated orally on the record, by telephone or VTC, or by requiring written submissions to the court. Within the discretion of the judge, LC may be seated at a third table inside the court well during motions to quash government subpoenas or other lengthy or highly complex hearings.

Rule 41.4: LC may file such motions and other papers with the court as they deem proper to protect their client's interests in the format prescribed by the court. Copies of all filings must be served on all counsel participating in the case.

Rule 41.5: Ordinarily, LC may have an interest in hearings regarding M.R.E. 412, 513 and 514. As such LC must be provided with copies of the relevant Prosecution and Defense filings within 24 hours of said filings. The trial counsel is responsible for serving said pleading on the LC. LCs are encouraged to provide written motions and proposed rulings in advance to assist the court in clarifying the issues.

Rule 41.6: The LC may move pursuant to M.R.E. 615 to close the court proceedings during such motion, in order to protect the privacy and dignity of the 3d Party. The military judge may grant this motion in their discretion. A court session may be closed over the objection of the accused or the public, upon meeting the constitutional standard set forth in M.R.E. 615. For hearings under M.R.E. 412, the MJ must conduct a closed hearing. When operating under M.R.E. 514(e)(2), the MJ "may" order the hearing closed.

Rule 41.7: If LC has filed a Notice of Appearance, trial counsel must provide the LC notice of all sessions of court at least seven days prior to the session of court, unless, for good cause shown, the military judge permits a different time for such notice. Trial counsel must immediately provide copies of any case management order ordered by the court and any rulings on motions involving the alleged victim to the LC.