

# **SERVING AS A COURT MEMBER**

## **EASTERN JUDICIAL CIRCUIT NAVY-MARINE CORPS TRIAL JUDICIARY (April 2012)**

You have been detailed to sit as a member of a court-martial. Court members serve the same function in a military court-martial as jurors serve in civilian criminal trials. The following are some important facts you should know:

Once detailed to a court-martial, you must avoid speaking to others about upcoming cases. Court members must remain impartial. Any knowledge of the facts of a case may impact your ability to remain impartial.

The uniform for all court sessions is the summer Service C uniform, unless you are informed otherwise. You will be notified of the time and location of court proceedings by the trial counsel, a clerk in the military justice section, or the staff judge advocate's (SJA) office. You should muster at the designated time and location and notify the court bailiff upon your arrival. After trial begins, you will be notified by the bailiff or the military judge when to be present for each subsequent court session.

You may bring a sweater or tanker jacket since the courtrooms can sometimes become cold. You may also bring a drink with a lid, such as water, coffee, or soda, with you into the courtroom. Please ensure that all electronic devices, such as cell phones and Blackberries, are completely turned off while in court (and not simply in silent mode). Remember that your appearance and demeanor should reflect the seriousness with which all trials should be viewed.

At the appropriate time, the bailiff will direct you when to enter the courtroom and the bailiff will direct all personnel to rise. As you enter the courtroom, find your seat in the members' area, and stand behind it. Your seat will be marked with your name and seating is organized by seniority. Once all members have entered the courtroom and found their seats, the military judge will direct everyone to be seated. The military judge will then provide you with further instructions.

Prior to sitting as a member in a court-martial, each member must complete a written questionnaire. This questionnaire provides the military judge and counsel for both sides information about each member's background that assists in determining whether a basis for disqualification exists.

The military judge, as well as both trial and defense counsel, may ask court members questions at trial to ensure that the accused is tried by an impartial court panel. This questioning is referred to as "voir dire," and occurs prior to the court members hearing any evidence in the case. Members are asked questions as a group first, and then each member may be asked to return individually to answer additional questions. Questions by the military judge and counsel are not intended to embarrass you; they are not an attack on your integrity; they are merely asked in order to determine whether a basis for challenge exists. Both the trial and defense counsel can

challenge any member “for cause” and each side is also permitted one “peremptory challenge.” It is no adverse reflection upon a panel member to be excused from a particular case.

After voir dire and excusals, you may generally anticipate the following order of events: opening statements of counsel, presentation of evidence, arguments from counsel, and instructions on the law from the military judge. The court then closes for deliberations. Under the law, the accused is presumed to be innocent. The government has the burden of proving the accused's guilt beyond a reasonable doubt. The accused, through counsel, need not present any evidence during this trial and may rely on that presumption of innocence. You must make your determination of whether the accused is guilty based solely upon the evidence presented in court and the instructions from the military judge. The decision, or verdict, of the court is called the “finding.”

During the trial, the military judge may hold sessions on the record outside the presence of the court members. These are called “Article 39(a) sessions” as they are authorized under Article 39(a), UCMJ. During these sessions, the military judge and counsel discuss legal matters that do not require the presence of the court members. Additionally, the court may take other breaks called “recesses” or “adjournments.” During any 39(a) session or recess, court members may not discuss the case among themselves or with anyone else. You must not listen to or read any account of the trial in the news media or anywhere else or consult any source, written or otherwise, as to matters involved in this case. Do not visit the scene of any alleged incident. You must hold your discussion of the case until you are all together in your closed session deliberations so that all of the members will have the benefit of your discussion. If anyone attempts to discuss the case in your presence during any recess or adjournment, you must immediately tell them to stop and report the occurrence to the military judge at the next session.

Court member deliberations are conducted in secret, and each member takes an oath not to disclose any member’s opinion or vote. Each member has a right to be free from harassment or ridicule based upon that member’s participation as a court member. Furthermore, no member may be compelled to answer questions about the deliberations unless lawfully ordered to do so by a military judge.