



RULES OF PRACTICE  
FOR  
EASTERN JUDICIAL CIRCUIT  
U.S. NAVY-MARINE CORPS TRIAL JUDICIARY  
(REVISED ON 16 September 2025)

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## **PREAMBLE**

### **NMCTJ Rules of Practice Preamble**

The Uniform Rules of Practice before Navy and Marine Corps Courts-Martial (Uniform Rules) supplement the Rules for Courts-Martial (R.C.M.) and together with them, govern trials by courts-martial in the Navy and Marine Corps. They are effective upon approval by the Navy-Marine Corps Chief Trial Judge (CTJ) and supersede all rules previously published as Uniform Rules of Practice for the U.S. Navy-Marine Corps Trial Judiciary (NMCTJ).

Local rules of practice in judicial circuits may implement additional rules consistent with the Uniform Rules.

### **EJC Rules of Practice Preamble**

These Eastern Judicial Circuit (EJC) Rules of Practice (EJC Rules) supplement the Uniform Rules. The EJC Rules are promulgated by the Circuit Military Judge (CMJ) of the EJC under Rules for Courts-Martial 108 and 801(b), and pursuant to authority delegated in the Uniform Rules and the professional standards established in the Rules of Professional Conduct established by the Judge Advocate General of the Navy. The Uniform Rules are republished within these EJC Rules with the EJC Rules inserted in appropriate numerical sequence.

These EJC Rules are effective immediately upon dissemination and cancel the EJC Rules previously in effect. The EJC Rules are designed to promote a common understanding of the procedures for the practice of military criminal law in courts-martial within the EJC.

## **Rule 1: APPLICABILITY**

**Rule 1.1:** The Uniform Rules apply to the trial of all general and special courts-martial in which the accused is a member of the naval service. Counsel, court reporters, clerks of court, and bailiffs are required to follow these and local rules.

**EJCR 1.1a:** The EJC Rules apply to 7-day reviews under R.C.M. 305, Article 30a proceedings under R.C.M. 309, and the trial of all general and special courts-martial within the EJC.

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

**EJCR 1.2a:** Local Counsel shall furnish a copy of the EJC Rules to all military counsel from outside the EJC and to all civilian counsel who will make an appearance in an EJC court-martial after such counsel is detailed or retained.

## **Rule 2: PURPOSE**

**Rule 2:** The Uniform Rules are intended to facilitate the orderly administration of military justice. The purpose of military law – and these rules – is to promote justice, assist in maintaining good order and discipline in the armed forces, promote efficiency and effectiveness in the military establishment, and thereby strengthen the national security of the United States.

## **Rule 3: CONSTRUCTION**

**Rule 3.1:** The Uniform Rules will be construed to ensure simplicity, fairness, and efficiency in the timely disposition of courts-martial.

**EJCR 3.1a:** Failure to comply with any EJC Rule does not automatically provide any rights or remedies to any party or participant to a court-martial and these rules shall be applied and interpreted accordingly.

**Rule 3.2:** If any rule herein conflicts with any constitutional provision, statute, the Manual for Courts-Martial (MCM), precedential case law, or any service regulation, the rule must be read in accordance with the law.

## **Rule 4: PRETRIAL CONFINEMENT & REFERRED CHARGES**

**Rule 4.1** In cases of pretrial confinement, the local Region Legal Service Office (RLSO)/Law Center or Special Trial Counsel (STC) Office must make a request for designation of a military judge as an initial review officer under R.C.M. 305(j)(2) with the judicial circuit for the area of responsibility (AOR) of the confinement facility no later than the first day after receiving notification of the confinement. The request shall be made in NCORS, unless local rules for the judicial circuit in the AOR of the confinement facility allow for another filing method. The RLSO/Law Center/STC shall supplement the request with (1) the confinement memorandum produced under R.C.M. 305(i)(2)(C); and (2) a statement from the command, if any, of the operational impact of the situs of the review as soon as they are available. The confinee's command is responsible for the administrative functions related to the pretrial confinement, including but not limited to: requesting the assignment of defense counsel, transporting the confinee from the confinement facility if necessary, providing the confinee with an appropriate uniform, arranging audio/visual communications if the hearing will be remote, and providing a command representative to appear at the hearing if a trial counsel will not be appearing. The military judge will inform both

parties of the situs of the review. The command representative, or trial counsel, if assigned will ensure the victim is notified under R.C.M. 305(j)(2)(A)(iv).

**EJCR 4.1a:** 7-day Review of Pretrial Confinement.

Detailing. In all cases of pretrial confinement, after the Trial Counsel has requested review under R.C.M. 305(j)(2) via NCORS, the Circuit Military Judge details a Military Judge to be the initial review officer for the 7-day review of pretrial confinement.

Situs. All 7-day reviews of pretrial confinement shall be conducted in a courtroom on the earliest Tuesday or Thursday after confinement begins, unless otherwise determined by the Military Judge. The Military Judge shall consider input, if any, from the confinee's commanding officer and military counsel prior to determining the situs of the review. The review may be conducted via remote means at the discretion of the Military Judge. The Military Judge has sole discretion as to the location of the review.

Uniforms. The uniform for all military personnel required for a 7-day review of pretrial confinement is the same as prescribed in Rule 14.1, 14.2 and 14.3 of the Uniform Rules of Practice (i.e. Service "B" or "C," depending on the season).

Coordination.

- (i) In accordance with R.C.M. 304 and 305 and JAGINST 5800.7G, CH 2 (JAGMAN), the officer ordering a person to pretrial confinement shall immediately notify the Officer in Charge of Regional Legal Services, the Regional Defense Counsel, and either the Regional Special Trial Counsel (if the person is alleged to have committed a covered offense) or the Regional Trial Counsel (for any other alleged offenses).
- (ii) In accordance with R.C.M. 305, the Command that ordered pretrial confinement is responsible for the administrative requirements to facilitate a 7-day review of pretrial confinement. These responsibilities include, but are not limited to, the following: drafting the 24-hour report (if necessary), drafting the 72-hour memorandum, transporting the confinee (this requires chasers, a driver, and a government vehicle), and providing the confinee with the appropriate uniform for the review.
- (iii) In accordance with R.C.M. 305, JAGMAN, and SECNAV M-1640.1 (Corrections Manual), the Regional Special Trial Counsel, the Regional Trial Counsel, and/or the Officer in Charge of Regional Legal Services will coordinate with the Command of the confinee, the Military Correctional Facility holding the confinee, the military counsel assigned to the confine, the detailed Victims' Legal Counsel (if applicable), and the Court to conduct the 7-day review of pretrial confinement.

Memorandum. The detailed Military Judge will upload the R.C.M. 305(j)(2)(D) memorandum to NCORS or provide it to the government representative within five days of the review's conclusion.

**Rule 4.2:** After referral of charges, trial counsel must ensure a copy of the charge sheet, convening order, and all applicable allied papers are uploaded into NCORS and that a request for arraignment is sent to the responsible judicial circuit via NCORS as soon as practicable.<sup>1</sup>

**Rule 4.3:** Trial counsel must immediately notify defense counsel, the clerk of court, and the military judge if referred charges have been withdrawn. If a case is withdrawn, documentation of such withdrawal must be uploaded into NCORS. Proper documentation consists of a certificate of withdrawal signed by trial counsel, a withdrawal signed by the convening authority, or a copy of the charge sheet that reflects the withdrawal action. Cases will not be removed from the docket, and counsel will be expected to appear as scheduled, until such written notification of withdrawal is uploaded into NCORS.

**EJCR 4.3a:** Trial counsel shall submit a Notice of Withdrawal<sup>2</sup> to the appropriate electronic file within NCORS for active cases as soon as practicable but no later than **one week** from referred charges being withdrawn.

**Rule 4.4:** After referral of charges, trial counsel must inform the military judge when the case involves classified information, at the earliest practicable opportunity. Trial counsel should normally provide notice when submitting the proposed Trial Management Order (TMO) or making a request for docketing.

**EJCR 4.5:** All changes to a charge sheet shall be initialed and dated by the trial counsel or some other authorized representative of the convening authority. If not accomplished during an in-court proceeding, all modifications to any referred charge shall be uploaded to the appropriate electronic file within NCORS for active cases not later than one week after the date of the change.

### **Rule 5: CIVILIAN DEFENSE COUNSEL**

**Rule 5.1:** If an accused retains civilian defense counsel, detailed defense counsel must furnish civilian defense counsel with a copy of all pertinent rules of court. Prior to appearing in court, civilian defense counsel must file with the Clerk of Court a written Notice of Appearance (NoA). Detailed defense counsel must upload the NoA in NCORS. The NoA will be in the form of a pleading and must contain the following: name of the accused, counsel's name, office address, telephone number(s), e-mail address, and jurisdiction(s) where the civilian defense counsel is currently admitted to practice.

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<sup>1</sup> JAGINST 5813.4K para. 6(d).

<sup>2</sup> EJC Standard Notice of Withdrawal Form is attached to these rules as Enclosure 1.

- ECJR 5.1a:** Prior to appearing in any court-martial proceeding, civilian counsel shall file a notice of appearance via email with the EJC clerk of court at [ejc.clerkofcourt@usmc.mil](mailto:ejc.clerkofcourt@usmc.mil) and the detailed military defense counsel will upload it to the appropriate electronic file within NCORS for active cases.<sup>3</sup>
- Rule 5.2:** Detailed defense counsel must inform civilian defense counsel of the rules of “Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General” as outlined in JAGINST 5803.1E.
- Rule 5.3:** Once civilian defense counsel files a NoA, civilian defense counsel may not withdraw from such representation without permission from the military judge.
- Rule 5.4:** Detailed defense counsel must inform civilian defense counsel of the requirements necessary to obtain a security clearance immediately upon learning classified information may be relevant to a pending case. Civilian defense counsel has an affirmative duty to request a security clearance application from the Government within ten (10) days from notice of appearance where charges involve classified information; within ten (10) days from being notified by the Government that classified information is relevant; or within ten (10) days from determining classified information may be relevant as a result of their own preparation, whichever is earliest. Civilian defense counsel must complete the necessary security clearance application within thirty (30) days of receiving the application from the Government. If civilian defense counsel requires more time to complete the application process, civilian defense counsel must request additional time through the military judge. Requests for additional time will only be granted for good cause shown.
- Rule 5.5:** Civilian defense counsel will be sworn on the record by the military judge when making an initial appearance in every case, even if previously sworn.

#### **Rule 6: DOCKETING/TRIAL MANAGEMENT ORDERS**

- Rule 6.1:** The CMJ of each judicial circuit will establish and promulgate docketing procedures for cases within their circuit. These procedures must utilize NCORS and contain features that ensure positive control over the docketing and processing of courts-martial, and should expedite subpoena, order, and warrant applications as appropriate. Circuit rules must operate to facilitate access to the court upon timely request by any party.
- Rule 6.2:** All circuits will maintain their docket/calendar on the NMCTJ JAG Portal website available at: Judiciary Docket – Calendar.

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<sup>3</sup> EJC Standard Civilian Defense Counsel Notice of Appearance Form is attached to these rules as Enclosure 2.



The Northern Circuit clerk is responsible for coordinating with the OJAG Public Affairs Office to ensure the monthly docket is properly posted in accordance with Article 140a, UCMJ.

**Rule 6.3:** Docketing judges and military judges presiding over arraignments must use the standardized Trial Management Order (TMO), which can also be found at: [http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm). Military judges may amend and alter this TMO as is necessary for individual cases. Once the military judge signs the TMO, it must be marked as an appellate exhibit. The military judge must upload the signed, marked copy to NCORS and order the TMO dates in NCORS.

**EJCR 6.3a:** For cases within the EJC, the Navy-Marine Corps Chief Trial Judge specifically authorizes the use of the EJC-specific TMO (attached as Enclosure 3). Counsel shall use Enclosure 3 when preparing the TMO for the military judge. The detailed military judge may, *sua sponte* or at the request of counsel, schedule additional Article 39(a) sessions of court as may be necessary.

**Rule 6.4:** The CTJ retains initial detailing authority for all reserve military judges. Circuits requesting reserve support on specific cases will forward requests to the CTJ for consideration. Once a detailed reserve military judge reports for AT/ADT/drill period on station, the CMJ may detail additional arraignments and/or Article 39(a), UCMJ, sessions as appropriate.

**Rule 6.5:** No reserve military judge (part-time judge) who serves as a civilian prosecutor, or in any other Government position that could raise a potential conflict of interest, may be detailed to preside over a court-martial where the convening authority or the situs of the trial is located in the same state or federal district where the reserve military judge regularly serves, unless the offense is a uniquely military offense over which there is no comparable federal or state jurisdiction.

#### **EJC – PRETRIAL INFORMATION REPORT (PTIR)**

**EJCR 6.6:** All requested court sessions shall be accompanied by a PTIR<sup>4</sup> and shall only be requested for referred cases or to schedule an Article 30a proceeding. This requirement applies equally to arraignments, court sessions that have been docketed by the military judge at prior court-martial sessions, court sessions scheduled through a Motion for Docketing (MFD)<sup>5</sup>, cases rescheduled through approved continuance requests, and any other requests for Article 39(a) sessions by either party. A PTIR shall be signed by both trial and defense counsel, or by their supervisory counsel if either the trial or defense counsel is unavailable, unless it is a request for an Article 30a proceeding in which only the requesting party's signature is necessary.

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<sup>4</sup> The Standard EJC PTIR is attached to these rules as Enclosure 4.

<sup>5</sup> The Standard EJC MFD is attached to these rules as Enclosure 5.

- EJCR 6.7:** Court sessions ordered by the military judge at a prior session of court that are no longer needed by the parties require a negative PTIR to be filed in accordance with the rules governing docketing procedures. “Negative” PTIRs will be marked “negative” and will include an appropriate explanation as to why the court session is no longer needed.
- EJCR 6.8:** Initial PTIR submissions shall certify that all referred and served charge(s), convening order(s), Article 32 Preliminary Hearing report or waiver, Article 33 and 34 letters, and a proposed TMO have been uploaded to NCORS under the appropriate tabs. As applicable, trial counsel shall also certify that copies of the relevant portions of any military orders, regulations, or directives have been uploaded to NCORS. At a minimum the relevant portions of any military order, regulation, or directives include the cover page, signature page, section alleged to have been violated, and the section allegedly making the order, regulation, or directive punitive. For any alleged state or federal statute violations, trial counsel shall certify that a copy of the state or federal statutes alleged to have been violated, and trial counsel’s proposed elements for such violation has been uploaded to NCORS. Additionally, for any novel specifications alleged, the trial counsel shall certify that a copy of the proposed elements for such violation has been uploaded to NCORS. The defense counsel may, but is not required to, submit such proposed elements.
- EJCR 6.9:** When a victims’ legal counsel (VLC) is assigned to a case, trial counsel shall list the name of that counsel on all PTIRs submitted to the court. Trial counsel shall note in the PTIR the VLC’s input (support or non-concurrence) on the dates in the proposed TMO.
- EJCR 6.10:** The PTIR is used to inform the Court as to the parties’ respective positions regarding the requested trial dates and milestones. Proposed trial dates for offenses referred to general courts-martial shall normally be within **90** days of the date of arraignment, and within **60** days of the date of arraignment for Special Courts-Martial. Special Courts-Martial convened under UCMJ Article 16(c)(2)(A) will normally be docketed within **30** days of the date of arraignment. Contested members trials shall normally be docketed on the TMO for the entire work week (Monday through Friday). When practicable, the parties and military judge should consider conducting panel selection on the Thursday and Friday of the prior week. Judge-alone contested trials shall normally be docketed on the TMO for three business days. The military judge maintains the discretion to deviate from these norms.
- EJCR 6.11:** In any case that is currently docketed with the EJC where the parties reach a plea agreement, the counsel shall notify the Court immediately upon their receipt of the final agreement. Counsel should be prepared to docket the guilty plea in accordance with EJCR 6.12 at the earliest opportunity, unless otherwise requested for a specific reason in the PTIR.

- EJCR 6.12:** A PTIR requesting a guilty plea pursuant to a plea agreement shall certify that a signed copy of the plea agreement, a copy of the convening order to which the case is referred if not previously provided, a signed copy of any stipulation of fact, if applicable and available, and notice of any issues that might affect the accused's ability to plead providently, such as mental responsibility, voluntary intoxication, duress, lack of recall, or any possible defenses, has been uploaded to NCORS. If the agreement requires a later agreed-upon stipulation of fact, the PTIR may be submitted with certification that the signed stipulation of fact shall be uploaded to NCORS as soon as practicable. Once the signed stipulation of fact has been uploaded to NCORS, the government shall immediately provide an email notice of the upload to the Court.
- EJCR 6.13:** Arraignment is the preferred means of setting trial dates and filing deadlines. When pretrial arraignment is impracticable, a MFD is permissible, provided it is unopposed and authorized by the Court. The use of a MFD does not eliminate the need to submit a PTIR for future court sessions.

### **EJC –DOCKETING PROCEDURES**

- EJCR 6.15:** The EJC CMJ may appoint a docketing judge who will serve in that capacity until properly relieved. The EJC clerk of court and the docketing judge, if appointed, shall normally be the EJC's points of contact for all docketing issues.
- EJCR 6.16:** Every week, unless otherwise directed by the CMJ or docketing judge, all supervisory trial counsel (or other designated persons) practicing in the EJC shall submit a proposed docket for the following week to the EJC clerk of court not later than 2359 on Tuesday. Proposed dockets shall be submitted in the format contained in Enclosure 6.
- EJCR 6.17:** If a Trial Services Office does not desire to schedule any cases for the following week, a negative proposed docket must be submitted to the EJC clerk of court in accordance with EJC Rule 6.16.
- EJCR 6.18:** The proposed docket must contain a PTIR for each court session requested to be docketed and each PTIR must be accompanied by the certifications required by these Rules. See EJCRs 6.8, 6.12, and 6.13. PTIRs with missing signatures or incomplete documents will not be docketed without the approval of the CMJ upon a showing of good cause.
- EJCR 6.19:** Counsel should estimate the length of each Article 39(a) session or trial.
- EJCR 6.20:** Docketing requests will be reviewed and an EJC court schedule for the following week will be created and added to the EJC docket. Reasonable effort will be made to schedule cases in accordance with the dates and

locations requested within the PTIR. The docket is electronically posted on the calendar within the docket management Teams channel.

- EJCR 6.21:** Counsel shall promptly review the EJC docket and immediately notify the EJC docketing judge or clerk of court of any conflicts, discrepancies, or requests for modifications of the docket.
- EJCR 6.22** At the earliest opportunity, counsel will notify the docketing judge, detailed military judge, and clerk of court of any change to a previously submitted PTIR (including withdrawal of, or amendments to charges; new motions; forum change; change in pleas; etc.) and requests to change the time, date, or location of the trial. See Rule 11 regarding continuances.
- EJCR 6.23:** “Walk-in” requests will be considered on a case-by-case basis. “Walk-ins” are cases that were not previously docketed through the normal docketing procedures outlined in EJCR 6.16 for the week in which counsel desire the case to be heard. Although discouraged for complex cases and/or issues, counsel may request a “walk-in” Article 39(a) session by submitting a MFD (Enclosure 5) to the detailed military judge (or the EJC CMJ or docketing judge if no military judge has been previously detailed) no later than 48 hours prior to the requested Article 39(a) session. The CMJ will evaluate the request and based on the complexity of the issue, courtroom availability, and the availability of a military judge and court reporter to support the request, will either grant or deny the request. All “walk-in” requests shall otherwise comply with these rules. At a minimum, all “walk-in” requests will conform to EJCR 6.8, 6.12 or 6.13, as applicable.
- EJCR 6.24:** Trial dates and milestones established by the Court are court orders. Counsel will adhere to these dates and milestones and may be called upon to address noncompliance on the record. See Rule 1.2. In the event counsel seek to modify a previously ordered date or milestone, counsel may request leave of court by emailing the detailed military judge. Relief shall be requested prior to that date or milestone coming to pass. Such a request will only be granted when supported by evidence of good cause. Good cause is determined by the military judge. However, when the good cause is not readily apparent, the military judge may order the movant to file a separate *Motion for Appropriate Relief (Continuance)* including specific statements of fact supported by evidence that establishes good cause for why the Court should grant the requested continuance. See Rule 11 regarding continuances. If there are no motions to be litigated, the Counsel for both sides shall alert the Court in writing prior to the deadline passing.
- EJCR 6.25:** Notice of anticipated pleas and forum shall be uploaded to NCORS and apply the standard naming convention under **EJCR 10.2a** pursuant to the TMO deadline and in the format provided in Enclosure 7. After filing the notice of pleas and forum, formal entry of pleas and forum shall be made on the record

at the next session of court unless the military judge finds good cause for entry on the record at another time.

#### **Rule 7: PERSONALLY IDENTIFIABLE INFORMATION**

- Rule 7.1:** Use of Personally Identifiable Information (PII) must be eliminated or minimized to the maximum extent possible in all pleadings and documents.
- Rule 7.2:** Unnecessary PII must also be redacted in all documents (e.g., pleadings and discovery material) that are electronically transmitted. At a minimum, social security numbers, home addresses, telephone numbers, e-mail addresses, dates of birth, financial account numbers, and full names of minors must be redacted. Medical/psychiatric records must be sent by encrypted e-mail or through a secured access file exchange.
- Rule 7.3:** While names of alleged victims will be used during trial, all named victims will be identified by their initials in pleadings. Additionally, all named victims will be identified by their initials on charge sheets.
- Rule 7.4:** All personnel will comply with SECNAVINST 5211.5 (series)<sup>6</sup> and JAGINST 5813.2,<sup>7</sup> as well as the requirements of their respective services regarding safeguarding PII. For Navy personnel, the governing service regulation is JAG/CNLSC Instruction 5211.11. For Marines, the governing service regulation is Marine Corps Order 5800.16 (Legal Support and Administration Manual), including Volume 16, Section 0603, and all other relevant sections pertaining to the protection of PII.

#### **Rule 8: PRE-REFERRAL SUBPOENAS, ORDERS, WARRANTS, & OTHER COMMUNICATIONS WITH THE MILITARY JUDGE**

- Rule 8.1:** After referral, conferences between the military judge and trial and defense counsel are authorized by R.C.M. 802. The presence of the accused is neither required nor prohibited. The purpose of such conferences is to inform the military judge of anticipated issues and to expeditiously resolve matters on which the parties can agree, not to litigate or decide contested issues. The military judge must summarize or require a party to summarize all R.C.M. 802 conferences for the record at the next Article 39(a), UCMJ, session of court, including the presence or absence of victim legal counsel (VLC), if applicable. Whenever appropriate, the military judge may, in his/her sole discretion, include the VLC in R.C.M. 802 conferences in which the alleged victim has an identifiable interest. See Rule 36 herein.
- Rule 8.2:** *Ex parte* communication with a military judge concerning a case that is pending before that military judge is prohibited, except for routine

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<sup>6</sup> Department of the Navy Privacy Program.

<sup>7</sup> Public Access to Court-Martial Dockets, Filings, and Records Pursuant to Article 140a, UCMJ, dated 9 Aug 23.

administrative matters, pre-referral matters authorized under R.C.M. 309 and Article 30a, UCMJ, or as otherwise provided by law. Routine administrative matters include, but are not limited to, docketing and logistical matters (e.g., uniform and facility issues and matters that may affect time and duration of court sessions).

**EJCR 8.2a:** In the event that *ex parte* communications with a counsel become necessary as otherwise provided by law (e.g. *ex parte* communications with the VLC for purposes of facilitating *in camera* review of privileged material under M.R.E. 513), the military judge—not the counsel—shall normally initiate the *ex parte* communication. Unless *ex parte* communications are specifically authorized by law or regulation, any request for *ex parte* communication with the military judge shall be made in the presence of all parties.

**Rule 8.3:** Military judges may communicate *ex parte* with Government representatives for the purpose of considering pre-referral subpoenas, orders, and warrants; for other pre-referral judicial proceedings authorized by R.C.M. 309 and Article 30a, UCMJ; or as ordered by an appellate court. Prior to referral of charges, and pursuant to R.C.M. 309 and Article 30a, UCMJ, these sessions may be *in camera* or in an open session of court. Trial counsel must be involved in all communications and is responsible for maintaining all applications and resulting orders and forwarding them to the appropriate convening or referral authority.

**EJCR 8.3a:** Military judges may communicate *ex parte* with Defense counsel for the purpose of considering *ex parte* requests for expert consultants as authorized by R.C.M. 703(d)(2)(A). In the event that *ex parte* communications are necessary for this purpose, a sealed record of such communications will be attached to the record.

**Rule 8.4:** Prior to referral of charges, a military judge may, upon written application by authorized counsel for the Government in connection with an ongoing investigation of an offense or offenses under the UCMJ, consider whether to issue an order or warrant for wire or electronic communications and related information as provided under R.C.M.s 309 and 703A, and Articles 30a and 46(d), UCMJ.

**Rule 8.5:** All requests for pre-referral subpoenas, orders, and warrants shall be filed within NCORS and must include the necessary documentation (e.g., application, draft warrant, order, or subpoena).<sup>8</sup> Use of email or other communications outside of NCORS to request a pre-referral subpoena, order, and warrant are not authorized unless specifically permitted by the military judge for good cause shown by the requesting counsel. When such communications are authorized, the government must preserve copies of the

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<sup>8</sup> See enclosures 8, 9, and 10.

communications together with all the documentation of the R.C.M. 309 and Article 30a matter.

- Rule 8.6:** Trial counsel applying for investigative subpoenas, or orders or warrants for wire or electronic communications will follow the procedures in R.C.M. 703A and Sections 0132a through 0132c of Chapter 1 of JAGINST 5800.7 (series) (JAGMAN). Any such request will be made using NCORS and must use the model application for subpoenas, orders, or warrants (DD Form 453 (Subpoena), DD Form 3057 (Application for Warrant for Electronic Communications), and DD Form 3056 (Warrant for Electronic Communications)) at: <http://www.jag.navy.mil/judiciary.htm>. Military judges will expedite review of investigative subpoenas, orders, and warrant applications as their docket permits, but must complete the review no later than five (5) working days from the date the application is presented to the CMJ via NCORS.
- EJCR 8.6a:** Within the EJC, the CMJ's designee for all pre-referral matters is the duty military judge listed on the EJC docket within Teams. Government counsel applying for investigative subpoenas and warrants/orders for wire or electronic communications shall electronically file the required documentation for the duty military judge's review in accordance with Uniform Rule 8.5 via NCORS.
- EJCR 8.6b:** After charges have been referred, all post-referral applications for a warrant or order for wire or electronic communications pursuant to R.C.M. 703A, or for an investigative subpoena, will be simultaneously served on the detailed military defense counsel.
- Rule 8.7:** Regardless of whether the military judge grants or denies the subpoena, order, or warrant application, the military judge will document the decision in NCORS and, if issued, upload the signed subpoena, order, or warrant, and any necessary supporting documentation into NCORS.
- Rule 8.8:** An individual in receipt of a pre-referral subpoena, order, or warrant may move the military judge to modify or quash the process on the grounds that compliance is unreasonable, oppressive, or prohibited by law. All filings to modify or quash a subpoena, order, or warrant must be filed within NCORS and served on trial counsel, and the CMJ of the circuit that issued the process.
- EJCR 8.8a:** The point of contact for requests to modify or quash any pre-referral subpoena, order, or warrant issued by an EJC military judge will be the trial counsel requesting or applying for the warrant or order.
- EJCR 8.8b:** For the purposes of Rule 8.7, requests to modify or quash any pre-referral subpoena, order, or warrant issued by an EJC military judge will be considered served upon the EJC CMJ when the request is electronically filed within NCORS.

## **Rule 9: DISCOVERY/PROTECTIVE ORDERS**

- Rule 9.1:** Counsel will promptly comply with military law and service regulations concerning discovery.
- Rule 9.2:** Discovery requests should be as specific as possible to avoid misunderstanding and to assist in quickly obtaining the requested information.
- EJCR 9.2a:** Gamesmanship in the discovery process shall not be utilized by any counsel. Discovery requests should normally be answered promptly and in writing. All counsel are expected to adhere to the spirit of military discovery practice and shall promptly turn over all discoverable materials. Discovery deadlines will be established by the TMO or in accordance with trial milestones otherwise ordered by the military judge. The parties shall work together to resolve ongoing discovery matters and bring unresolved discovery issues to the Court for resolution by filing with the Court a Motion for Appropriate Relief.
- Rule 9.3:** A party or person from whom discovery or production is sought may move for a protective order. The motion must include a draft protective order and a certification that counsel for the moving party has in good faith conferred or attempted to confer with counsel for the other party or represented person to resolve the dispute without court action, unless a party believes submission of the matter *ex parte* is appropriate.
- Rule 9.4:** Pursuant to R.C.M.s 701(g)(2) and 806(d) and Military Rules of Evidence (M.R.E.) 505(g) and 506(g), or for other good cause shown, the military judge may enter protective or other orders as may be required in the interests of justice. The military judge may issue whatever protective orders are necessary to protect a party or person as follows:
- (a) When necessary to protect the safety of any person;
  - (b) To protect a party or person from unwarranted invasion of privacy, annoyance, embarrassment, oppression or undue burden;
  - (c) To prevent violations of M.R.E.s 412 and 513;
  - (d) To prevent breach of privilege recognized by an M.R.E. or other laws applicable to courts-martial;
  - (e) To prevent disclosure of classified information or other Government information that is subject to a claim of privilege under M.R.E.s 505 and 506, or other recognized discovery privilege; or
  - (f) To prevent parties and witnesses from making extra-judicial statements that present a substantial likelihood of material prejudice to a fair trial by impartial members.



“Good cause” is shown when a party demonstrates, with specificity, that disclosure will cause a clearly defined and serious injury. The military judge may deny, restrict, or defer discovery or inspection, order certain documents or materials be withdrawn from a party or be otherwise protected, issue orders that parties or potential witnesses not make extra-judicial statements, and/or issue such other order as is just under the circumstances. A model protective order is located at:

<https://portal.secnnav.navy.mil/orgs/JAG/52/SitePages/Home.aspx>.

**EJCR 9.5:** Upon notice to opposing counsel, a party may request an *in-camera* review by the Court of potentially discoverable material at any time.

### **Rule 10: MOTIONS/BILLS OF PARTICULARS**

**Rule 10.1:** Counsel are encouraged to discuss motions or potential motions with opposing counsel prior to any Article 39(a), UCMJ, session to determine whether an issue is, in fact, controverted and to narrow the issues in contention to the maximum extent possible. As early as practicable, counsel should advise the military judge in an R.C.M. 802 conference of motions that are likely to arise at trial, including any unusual motions or objections, and any relevant authority then known to counsel, including contrary authority.

**Rule 10.2:** All motions, supporting documents, and attachments must be properly marked, filed, and made available to opposing counsel and VLC, if applicable, through NCORS. It is the filing party’s responsibility to ensure the filing is properly uploaded in NCORS and made available to the intended court, opposing party, VLC, and the appropriate court reporter. In cases where a named victim is not represented by VLC, any notice or motion which implicates an alleged victim’s rights must be provided to the alleged victim by the trial counsel. As appropriate, electronic mail transmissions which are not captured by NCORS must be maintained by the originator and provided to the court reporter for inclusion in the record of trial.

**EJCR 10.2a:** All motions and other documents will be filed electronically as PDF files and electronically signed. Non-PDF filings and any documents signed “//s//” will not be accepted. The only exception is that draft orders will be submitted as Microsoft Word documents. It is the filing party’s responsibility to obtain the correct Appellate Exhibit number from the detailed court reporter prior to uploading their filing to NCORS, and to identify the filing using the standard naming convention. Amendments and supplements to existing filings will be identified using the original Appellate Exhibit number and alphabetized subscript. The following naming convention will be used: Appellate Exhibit number – Accused Last Name – Filing Title (using abbreviations) – Filing Party and response status. E.g.:

AE IV – Jones – MFAR 412 – Def;

AE V – Jones – MFAR 412 – Def Encls;  
AE Va – Jones – MFAR 412 – Def Encls as Amended;  
AE Vb – Jones – MFAR 412 – Def Encls Supp.;  
AE VI – Jones – MFAR 412 – Gov Resp;  
AE VII – Jones – MFAR 412 – VLC Resp;  
AE VIII – Jones – Pleas and Forum – Def.

**EJCR 10.2b:** NCORS is the primary e-filing medium for all EJC courts-martial. All motions and other documents will be uploaded to the appropriate electronic file within NCORS for active cases using the “Appellate Exhibit” naming convention. After filings have been uploaded to NCORS, the submitting counsel will notify the Court (detailed judge and clerk of court), opposing party, VLC, and the court reporters via e-mail that a filing has been made. For courts-martial involving sister service counsel, civilian defense counsel, or other counsel without access to NCORS, e-mail filings are required. The trial counsel will ensure that an e-mail filing is uploaded to the appropriate electronic file within NCORS, using the required naming convention.

**Rule 10.3:** Each motion must include or be accompanied by evidence, a statement of specific points of law, and authority that supports the motion. This includes, where appropriate, a concise statement of facts, which party bears the burden of production and persuasion and whether oral argument is requested. Counsel should submit motions in the format found at: [http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).<sup>9</sup>

**EJCR 10.3a:** Counsel will make their best effort to thoroughly research all relevant issues and provide the court with the most recent case law on point. Contrary authority on point must also be cited by counsel. If, during argument, counsel refer to an appellate court decision not previously cited in their written pleadings, counsel shall provide the complete case name and cite when referring to the decision during argument.

**Rule 10.4:** For a pleading requiring an order, the moving party will include a draft proposed order with the pleading. If required by the military judge, the moving party and any responding counsel will include proposed Findings of Fact and Conclusions of Law.

**EJCR 10.4a:** Testimonial evidence in support of a motion or response will be presented in-person unless the detailed military judge specifically approves otherwise.

**EJCR 10.4b:** If the defense desires government production of a witness for the purpose of offering testimony in support of a pretrial motion or response, the written

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<sup>9</sup> The standard EJC motion format is attached to these rules as Enclosure 11.

motion or response shall include such a request. The request shall be accompanied by sufficient detail supporting the relevance and necessity of the witness's production to enable the government to grant or deny the request. If production is requested, the government shall grant or deny the request in its responsive filing.

**Rule 10.5:** Motions will be marked as appellate exhibits. When filing a pleading, a party must file any evidence offered in support of the pleading separately as the next appellate exhibit in order.

- (a) For example, if the Defense were to submit a motion to suppress as AE XX, the evidence submitted in support of the motion must be submitted as AE XXI. The evidentiary filing must contain a front page that lists the specific evidentiary exhibits. This requirement applies equally to the Government, Defense, and any third-party submissions. Counsel must work closely with the court reporters to ensure all submissions are marked correctly.
- (b) Any supplemental evidence or attachments for a previously marked motion will be included in the applicable appellate exhibit previously marked for the evidence in support of that motion. Using the example above, any supplemental Defense evidence for AE XX that was not originally included in AE XXI will be marked as AE XXI(a), AEXXI(b), and so forth. The supplemental submission must also include the date submitted.
- (c) All electronic media will be provided in a format that can be appended to the record and reviewed by reviewing authorities. All video and audio recordings submitted as evidence on a motion must be accompanied by a verbatim transcript of, at a minimum, the portions of the recordings that are pertinent to the motion. The verbatim transcript must be uploaded to NCORS.

**EJCR 10.5a:** "Verbatim" transcripts need to fairly represent the audio recording, however, there is no requirement that a verbatim transcript be certified by a transcriptionist. In most cases, a computer generated transcript will suffice. If the content of the transcript is disputed, counsel should submit separate versions.

**Rule 10.6:** Military judges must rule on motions and upload the ruling into NCORS in a timely fashion to avoid unnecessary delay in court proceedings. In instances when a ruling must be reserved, the military judge must revisit the issue and rule when the reason for the reserved ruling is resolved. Military judges are encouraged to issue written rulings where appropriate and/or state their rationale on the record for their decisions.

**Rule 10.7:** If the military judge rules adversely to the Government and the Government contemplates an appeal pursuant to Article 62, UCMJ, and R.C.M. 908, the

military judge must state on the record the time of the ruling to allow the Government to compute the 72-hour time period within which to file a notice of appeal. The military judge will also notify the Government of how to provide the military judge with the written notice of appeal.

**Rule 10.8:** Unless good cause is shown, motions must be filed in accordance with the TMO. Good cause is determined by the military judge. Supervisory counsel are not a party to the trial; therefore, supervisory counsel must not make, or be required to make, statements/certifications regarding timeliness of motions or whether good cause has been shown on the record.

**EJCR 10.8a:** Early Filing. Any counsel may file pleadings in advance of the filing deadline. In addition, either side may request an Article 39(a) session for the purpose of litigating any motion prior to the motions hearing date ordered by the Court.

**EJCR 10.8b:** Late Filing. Should counsel desire to file any pleading after a court-ordered trial milestone has passed, counsel may request leave of court by emailing the detailed military judge. Such a request will only be granted when supported by evidence of good cause. Good cause is determined by the military judge. However, when the good cause is not readily apparent, the military judge may order the movant to file a separate *Motion for Leave to File Out of Time* containing a specific statement of facts supported by evidence that establishes good cause for why the Court should accept such late filing.<sup>10</sup>

**Rule 10.9:** Parties seeking reconsideration of a military judge's written ruling or order must file a motion within fourteen (14) days after the ruling or order is filed, unless the court extends the time for good cause shown. A motion to reconsider must be based on:

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

**Rule 10.10:** In such cases where the Defense moves to dismiss charges and specifications on the grounds of a speedy trial violation, trial counsel will prepare a written chronology of events prior to trial.<sup>11</sup>

**Rule 10.11:** When trial counsel serves a Bill of Particulars on the defense, it must be marked as an appellate exhibit and filed with the court via NCORS.

### **Rule 11: CONTINUANCES**

**Rule 11.1:** Continuance requests will ordinarily be made by written motion via NCORS. The motion must state the specific reason for the request and be accompanied

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<sup>10</sup> The model format for a Motion for Leave to File Out of Time is attached to the rules as Enclosure 13.

<sup>11</sup> See *United States v. Ramsey*, 28 M.J. 370, 372 (C.M.A. 1989) (commending use of chronology in deciding speedy-trial motions).

by a proposed order. The proposed order must contain a place for indicating the new trial date as well as any other proposed changes to the TMO. Counsel must be prepared to fully justify each continuance request.

**Rule 11.2:** All continuance motions must cite the number of previous continuances, who sought the continuances, whether opposing counsel consents, the proposed trial date, and dates counsel and witnesses are available for trial. In cases involving VLC, the moving party must certify the motion was served on the VLC. In cases involving a named victim not represented by VLC, trial counsel must certify the motion was served on the named victim. A model motion for a continuance and a proposed order can be found at:  
[http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).<sup>12</sup>

**Rule 11.3:** If the accused is in pretrial confinement, Defense motions for continuance and concurrences to Government motions for continuance must be in writing and include a certification by defense counsel that the accused consents to the continuance request.

### **Rule 12: SITUS/HOURS**

**Rule 12.1:** Unless otherwise directed by the convening authority pursuant to R.C.M. 504(d)(1)(B), the military judge will designate the situs of trial.

**EJCR 12.1a:** The military justice officer (or other designated person) may identify and propose specific EJC courtrooms in their proposed docket submission that are most appropriate given the nature of the proceeding, the number of counsel and other participants involved, the convenience of the participants, and other pertinent logistical factors. The court will consider, but is not bound by, such proposals in making docketing decisions.

**Rule 12.2:** Regular court hours will run from 0830 to 1700, Monday through Friday. Military judges may, after consultation with the parties, alter the hours as needed to ensure the fair and expeditious processing of court proceedings and the interests of justice. If a day extends past 1930, the military judge must notify the CMJ at the earliest possible opportunity.

**EJCR 12.2a:** Pursuant to administrative and logistical constraints of the EJC, regular court hours will run from 0900 to 1600, Monday through Friday.

### **Rule 13: COURTROOM SECURITY**

**Rule 13.1:** The presiding military judge may prescribe rules in any case to establish courtroom security as necessary.

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<sup>12</sup> See enclosure 12.

- Rule 13.2:** The Government is responsible for ensuring the courtroom facility complies 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.
- EJCR 13.2a:** Courtroom security and the health and safety of all participants and observers is a matter of the highest priority for all trial participants. Potential security risks include spectators, witnesses, and the accused. Health and safety concerns may be posed by any trial participant or observer. Any matter that might affect courtroom security or the health and safety of the trial participants or observers will be reported immediately to the presiding military judge. If trial is in progress when such information is discovered, counsel will immediately request a recess and advise the presiding military judge. In any case involving a potential security or health and safety concern, the CMJ will be advised and will make a risk assessment. In any case in which it is determined that a security concern exists or where a security risk or potential risk is present, the trial counsel will ensure a courtroom security officer is appointed and a courtroom security plan is developed. In any case in which it is determined that a health or safety concern exists, in conjunction with the Regional Law Center-East Officer-in-Charge, the CMJ and/or the presiding military judge will develop and implement an appropriate mitigation plan. Court-martial proceedings may be delayed until the presiding military judge is satisfied that the court-martial can proceed in a safe and secure manner for all trial participants, court personnel, and trial observers.
- EJCR 13.2b:** Trial counsel will ensure that witnesses and spectators supporting respective parties are provided separate waiting areas when waiting to testify or enter the courtroom. Trial counsel will ensure all spectators and witnesses are informed of the general rules regarding courtroom security, health and safety mitigation requirements, and proper decorum.
- Rule 13.3:** The CMJ will annually review the security plan for the courtroom facilities within the circuit with the Government representative responsible for courtroom security at each installation.
- Rule 13.4:** The wearing or carrying of weapons in the courtroom is prohibited except when authorized by the presiding military judge for good cause shown. Most courtrooms in the naval service are not stand-alone courtrooms and are located in multi-purpose buildings. The military authorities responsible for building entry may impose more restrictive rules prohibiting firearms from entering a building, even if a military judge were to permit wearing or carrying a firearm inside the courtroom itself.

**EJCR 13.5:** Personnel assigned to escort the accused, or other court participants, shall remove their covers and duty belts when directed by the presiding military judge.

#### **Rule 14: UNIFORMS**

**Rule 14.1:** During winter months, the prescribed uniform for military personnel is Service Dress Blue for Navy personnel and Service “B” for Marine personnel. During summer months, the prescribed uniform is Summer White (E-7 and above)/Service Dress White (E-6 and below) for Navy personnel and Service “C” for Marine personnel. The date for the shift of seasonal uniforms is set by service guidelines or at the direction of the area uniform coordinator, as applicable. Utility uniforms will not be designated as the uniform unless the court is convened at sea or in an operational setting. The presiding military judge retains the authority to modify the proper uniform to be worn by military personnel in a particular case. When considering what uniform will be worn by military personnel, the presiding military judge will carefully consider the seriousness with which the proceedings are viewed, customs and traditions of the naval service, as well as the potential for publicity. This rule applies equally to military personnel who are detailed to the court-martial as counsel, the accused, members, the bailiff, the court reporter, other official roles, and witnesses.

**Rule 14.2:** The accused must wear the insignia of grade and may wear any decorations, emblems, or ribbons to which entitled. The accused and defense counsel are responsible for ensuring that the accused is properly attired; however, upon request, the accused’s commander must render such assistance as may be necessary to ensure the proper uniform. When the accused is in pretrial confinement, the Government is responsible for ensuring the accused is in the appropriate uniform. Confinement uniforms are not appropriate courtroom attire. No accused or witness will wear any tag or symbol that identifies the person as being in custody while in open court.

**Rule 14.3:** Physical restraints will not be imposed on the accused or any witness during sessions of the court-martial unless prescribed by the military judge. The Government will inform the military judge of efforts made to prevent the members from seeing the accused in restraints while the accused or members are transiting the building.

**Rule 14.4:** *[The judicial robe will be worn by the military judge in all Department of the Navy courts-martial, including during hearings on interlocutory matters. For hearings under R.C.M. 305 the designated military judge may choose not to wear the robe if the hearing is conducted outside of a courtroom.]*

**EJCR 14.4a:** **Rule 14.4** has been superseded by JAG ltr 5800 Ser 00/0087 of 7 August 2025. The wearing of judicial robes is not permitted.

**Rule 14.5:** For R.C.M. 305(j) hearings, each circuit military judge may prescribe rules setting the uniform requirements for participants, but in no event shall a hearing be delayed beyond the time limits of R.C.M. 305(j) because the confinee does not have the proper uniform.

### **Rule 15: SPECTATORS**

**Rule 15.1:** The military judge is responsible for maintaining the dignity and decorum of the proceedings, for courtroom security generally, and for controlling spectators and ensuring their conduct is appropriate. Spectators will appear in the gallery in the uniform of the day or appropriate civilian attire. The military judge may issue such orders as are deemed just to ensure a fair trial.

**Rule 15.2:** Spectators may attend any sessions of the court-martial unless otherwise determined by the military judge. In accordance with R.C.M. 806, courts-martial are public and must be open subject only to those limited exceptions provided for in law. The military judge must make case-specific findings on the record justifying any courtroom closure regardless of whether there is an objection by a party. Supervisory counsel and support personnel may attend closed hearings to supervise and assist their counsel at the discretion of the military judge.

**Rule 15.3:** Counsel must ensure the military judge is advised if there is a likelihood that any spectator is to be called as a witness. Subject to the exceptions outlined in M.R.E. 615 and Article 6b, UCMJ, spectators who may be called as witnesses on the merits will be excluded upon motion by trial counsel or defense counsel. Sentencing witnesses are often permitted to observe the trial but may also be excluded due to objection from either side. Alleged victims may only be excluded pursuant to M.R.E. 615 if the military judge determines by clear and convincing evidence their testimony will be materially altered if the alleged victim were to hear the testimony at that hearing or proceeding.

**Rule 15.4:** All personnel are forbidden from recording any of the proceedings. See Rules 23.2 and 23.3 herein.

**Rule 15.5:** VLC may attend court proceedings remotely via telephone or by other remote means. Absent good cause, VLC must provide the military judge notice no later than three (3) business days before the hearing that the VLC intends to attend remotely.

**Rule 15.6:** Alleged victims may attend court proceedings remotely via telephone or by other remote means if the military judge confirms that the following conditions have been met:

(a) The alleged victim is participating onboard a military installation;



- (b) The alleged victim is joined in the same physical location by the alleged victim's actual VLC, a substitute VLC who has agreed to attend the proceeding with the alleged victim, or a substitute Government representative – approved by the military judge – who has agreed to attend the proceedings with the alleged victim; and
- (c) The VLC or Government representative joining the alleged victim establishes to the military judge's satisfaction the alleged victim is attending in compliance with the remaining rules set forth herein.

The military judge has discretion to modify any of the requirements set forth in this rule on a case-by-case basis if the alleged victim establishes good cause to do so.

**Rule 15.7:** Spectators are forbidden from disturbing the proceedings of the court-martial, using any menacing word, sign or gesture in the presence of the military judge, or demonstrating agreement or disagreement, either verbally or by non-verbal conduct (e.g. shaking or nodding of head), with testimony or other trial procedures. Spectators who violate this rule may be excluded from the courtroom or, in aggravated cases, held in contempt. Counsel are responsible for advising their clients, witnesses, friends of the alleged victim, other spectators, and other counsel of the decorum required in the courtroom.

**EJCR 15.8:** Spectators are any member of the general public and any individual not specifically detailed to a court-martial, including, but not limited to: command representatives, the accused's family members and supporters, members of the press, trial team support staff, and supervisory counsel.

**EJCR 15.9:** Civilian spectators must wear appropriate civilian attire that is not disruptive or offensive, and that respects the seriousness of the proceedings. Attire that displays wording or depictions intended to influence the conduct of the trial or the due administration of justice is not permitted in the courtroom or judicial spaces. Covers, hats, or other head coverings shall not be worn by anyone in the courtroom unless authorized by the presiding military judge.

**EJCR 15.10:** Disruptive whispering, gesturing and other demonstrations and interplay between counsel and those in the gallery during the course of trial is prohibited. Absent the expressed permission of the presiding military judge, no person, to include supervisory counsel, may pass notes across the bar to their counsel litigating the case.

**EJCR 15.11:** Counsel who become aware of potential media interest or presence at any session of court shall inform the presiding military judge as soon as possible. Trial counsel and court security personnel shall ensure no unauthorized video or audio recording devices enter the courtroom. Trial counsel shall coordinate with the cognizant public affairs officer regarding any media presence and/or interest.

### **Rule 16: PUNCTUALITY**

**Rule 16:** Punctuality in all court matters is required of all parties and reflects preparation and professionalism. If a party is unavoidably late, or proceedings will be delayed, the military judge must be notified immediately and provided an explanation.

**EJCR 16.1:** Trial counsel shall notify the accused's command of the place, date, and time of all sessions of the accused's court-martial, that the presence of the accused is required, the prescribed uniform for the accused during the proceedings, and that appropriate transportation to the situs of the court-martial proceeding shall be arranged for the accused. Generally, trial counsel is responsible for ensuring the timely arrival of the accused to the situs of the court-martial proceeding for an accused under any form of pretrial restraint. However, after the accused arrives at the situs of the court-martial proceeding, defense counsel is responsible for the timely presence of the accused in the courtroom. An accused's command and the accused's defense counsel are responsible for the timely presence of an accused that is not in pretrial restraint.

### **Rule 17: BAILIFF**

**Rule 17.1:** Unless otherwise directed by the CMJ or presiding military judge, a bailiff must be present at all contested courts-martial with members, as well as any other court-martial proceeding as may be directed by the presiding military judge, to enhance courtroom security and the efficient administration of the Court.

**Rule 17.2:** Trial counsel must personally ensure bailiffs are thoroughly briefed on their duties and are provided a copy of the Bailiff Handbook, found at: [http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).<sup>13</sup>

**ECJR 17.3:** If a bailiff's presence is required at a court-martial proceeding other than a contested trial, the detailed military judge will inform the trial counsel no later than one business day prior to the date of the proceeding of the need to have a bailiff present.

**ECJR 17.4:** A bailiff detailed to a court-martial proceeding shall not be a witness in that proceeding and cannot be someone who has been assigned as the unit escort or guard for the accused. If the presiding military judge excuses the presence of the bailiff, the trial counsel will perform the bailiff's duties.

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<sup>13</sup> See enclosure 14.

### **Rule 18: GUARDS**

- Rule 18:** When appropriate, a guard or guards will be detailed to ensure proper custody of the accused and to assist the court in preserving order and decorum. However, this rule is subject to Rule 13.4 regarding weapons in the courtroom and Rule 14.3 regarding physical restraints.
- EJCR 18.1:** Unless otherwise directed by the military judge, guards will not be permitted inside the bar of the courtroom.

### **Rule 19: COURT REPORTERS**

- Rule 19.1:** Trial counsel shall ensure the court reporter has been properly sworn.
- Rule 19.2:** Each time the court convenes or reconvenes, the court reporter must note in the record the presence or absence of the parties and the time at which the court convenes or reconvenes. The court reporter must note the time at which recesses are taken and the time of adjournment.
- Rule 19.3:** Court reporters must ensure 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 of trial.
- Rule 19.4:** Court reporters will maintain a complete list of all exhibits marked, those offered and those admitted.
- Rule 19.5:** Trial counsel are responsible for keeping the Clerk of Court and/or the court reporter apprised of the status of all docketed cases, to include, but not limited to: anticipated delays, continuances, withdrawal of charges, changes of courtroom or location, changes in anticipated pleas and forum, and the need for court reporter support in unscheduled hearings.
- EJCR 19.6:** The EJC clerk of court can be notified at [ejc.clerkofcourt@usmc.mil](mailto:ejc.clerkofcourt@usmc.mil). The court reporter can be notified at [LSSSECourtReporters@usmc.mil](mailto:LSSSECourtReporters@usmc.mil).

### **Rule 20: ENTRY & DEPARTURE OF MILITARY JUDGE**

- Rule 20:** Without regard to rank or grade, all persons in the courtroom, except the court reporter must rise when the military judge enters or leaves the courtroom.
- EJCR 20.1:** The trial counsel, court reporter, or bailiff are responsible for announcing, “all rise,” whenever appropriate for the military judge.

## **Rule 21: ENTRY & DEPARTURE OF MEMBERS**

- Rule 21:** Without regard to rank or grade, all persons, other than the military judge and court reporter, must rise when the members, as a panel, enter or leave the courtroom.
- EJCR 21.1:** The trial counsel or bailiff are responsible for announcing, “all rise,” whenever appropriate for the members.
- EJCR 21.2:** In consideration for members’ time, when a case is to be tried before a court with members, trial counsel must ensure the members are notified of the time, place, and uniform for the trial. Reporting times for court members will be scheduled to minimize their waiting time. Members may be placed on standby or “on call” as deemed necessary by the detailed military judge.

## **Rule 22: VOIR DIRE**

- Rule 22.1:** In accordance with R.C.M. 912(d), the military judge determines the procedure for conducting voir dire. Voir dire examination must be limited to matters relevant to a member’s fairness and impartiality and to determining whether to remove a member for cause. The military judge must ensure the privacy of the prospective members is reasonably protected. All group voir dire questions, and individual voir dire questions counsel seek to ask of all members, must be submitted in writing to the military judge prior to trial.
- EJCR 22.1a:** Generally, the detailed military judge will conduct all general voir dire. All group voir dire questions, and individual voir dire questions counsel seek to ask of all members, must be submitted as an Appellate Exhibit and filed with final pretrial matters in accordance with EJCR 10.2a. Unless good cause is shown, counsel shall be limited to no more than twenty-five (25) proposed general voir dire questions. Upon a showing of good cause, the military judge may permit counsel to propose additional questions.
- EJCR 22.1b:** All questions asked by counsel must be relevant to determining the qualifications of the members to sit on the court-martial. Individual voir dire should be limited to a member’s responses made during group voir dire or answers on the members’ questionnaire and should be directly focused on developing information for the intelligent exercise of challenges.<sup>14</sup>
- Rule 22.2:** Members’ questionnaires shall be phrased and organized to facilitate an accurate screening of the members. The questionnaires must seek information essential to determine: (1) whether a person meets the Article 25, UCMJ, criteria for eligibility; and (2) the existence or nonexistence of facts which may disclose a proper ground for a challenge for cause. A copy

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<sup>14</sup> See R.C.M. 912(d), *Discussion*.

of a model questionnaire can be found at:  
[http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).<sup>15</sup>

**Rule 22.3:** Before voir dire, trial counsel will provide the military judge with a combined list of the full name and unit or city and state of residence of each witness. The list must include witnesses whose testimony will be presented by stipulation of expected testimony.

**EJCR 22.3a:** Counsel shall provide the Court with a list of witnesses each side intends to call with their final pretrial matters in accordance with the TMO.

**Rule 22.4:** For charges referred on or after 1 January 2019 and arraigned on or after December 2023, before assembly of the court-martial, the court reporter must randomly assign numbers to the members detailed by the convening authority in accordance with R.C.M. 911. The preferred method for assigning the random numbers is to use the Army Trial Judiciary's "Randomizer" found on their website. As a backup method of assigning random numbers, the court reporter may use the Navy Excel random number generator located at [http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm). Counsel for all sides may view the random number generation. When the court reporter completes the random number generation, a copy of the results will be printed and marked as an appellate exhibit.

**Rule 22.5:** If, after peremptory challenges are exercised, the panel falls below quorum, new members must be added. Prior to questioning and challenges of new members, the court reporter must randomly assign numbers to the new members using the process in Rule 22.4 beginning with the next number following those assigned to the original members. Those members previously given numbers will retain the numbers they were assigned.

**EJCR 22.7:** In cases where the court-martial is composed of members, trial counsel shall ensure that a trial folder for each member is prepared for distribution to the members prior to voir dire. The contents of the folder will include the convening order and modifications, a cleansed charge sheet, the respective member's questionnaire, blank question forms, and note paper. Prior to the first session of court with members, defense counsel shall inspect the folders and when necessary, bring to the attention of trial counsel and the military judge any discrepancy or objection to the contents of the folder.

### **Rule 23: PROHIBITED ITEMS IN THE COURTROOM**

**Rule 23.1:** Eating, chewing gum, and using tobacco products are not permitted in the courtroom. Weapons and objects that may be used as weapons, including potential exhibits, are not permitted in the courtroom without specific authorization by the military judge.

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<sup>15</sup> See enclosure 15.

- EJCR 23.1a:** Members, accused, counsel, and spectators are permitted to have covered drinks in the courtroom.
- EJCR 23.1b:** If firearms are to be used as exhibits, the trial counsel shall ensure that they are inspected by knowledgeable law enforcement or security personnel to ensure that they are in a clear and safe condition. When possible, trigger locks, cables, and other safety devices shall be used.
- Rule 23.2:** Except for the court reporter and as authorized by the CMJ, no person shall use electronic devices (e.g. laptops or tablets) to audio or video record any courtroom session or to take photographs of the courtroom during or between courtroom sessions. No person in the courtroom may use any such electronic devices to transmit email, text messages, or social media messages.
- Rule 23.3:** Cellular or mobile telephones are only permitted for detailed counsel and supervisory counsel in the courtroom unless otherwise permitted or restricted by the military judge. When cellular telephones are in the courtroom, they must be placed in silent mode. Trial counsel will post signs prohibiting cell phones outside the courtroom where spectators and the court members enter.

#### **Rule 24: COUNSEL DECORUM**

- Rule 24.1:** Counsel's decorum in the courtroom must be conducive to a dignified judicial atmosphere.
- Rule 24.2:** Counsel must stand when addressing the bench or members and when examining a witness, unless otherwise authorized by the military judge.
- Rule 24.3:** Unless specifically authorized by the military judge, only one counsel per side may question a witness, address the court on a motion or issue, make an opening statement, or make a closing argument.
- Rule 24.4:** Counsel must address all remarks, arguments, and questions to either the court or the witness testifying and must refrain from addressing opposing counsel directly.
- EJCR 24.5:** Counsel shall not interrupt or talk over opposing counsel unless making an objection. Counsel shall not interrupt or talk over the military judge.

#### **Rule 25: COUNSEL CONDUCT**

- Rule 25.1:** During trial, counsel must not state or allude to any matter counsel has no reasonable basis to believe is true and relevant to the case.
- Rule 25.2:** During trial, counsel must not assert any personal knowledge of the facts in issue, except if testifying as a witness. Counsel will not assert a personal opinion as to the justness of a cause, the credibility of a witness, or the guilt or innocence of the accused, except counsel may argue for any position or

conclusion based on an analysis of the evidence with respect to the matter stated.

- Rule 25.3:** In presenting a matter to the court-martial, counsel must disclose legal authority in the controlling jurisdiction known to counsel to be directly contrary to their position and which is not disclosed by opposing counsel.
- Rule 25.4:** Counsel will not leave the courtroom during trial without first obtaining the military judge's permission.
- EJCR 25.5:** Counsel shall limit their opening statements to what they expect the issues in the case will be and the evidence will show. Counsel will not use the opening statement to argue the case or to instruct as to the law.
- EJCR 25.6:** Arguments should be limited to matters in evidence and all inferences fairly and reasonably drawn from the evidence, together with reference to matters of common and everyday knowledge.
- EJCR 25.7:** Counsel are prohibited from making extrajudicial statements about any person or case pending or at court-martial that a reasonable person would expect to be disseminated by means of public communication if that counsel knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding or an official review process thereof, unless otherwise permitted.<sup>16</sup>

### **Rule 26: WITNESSES**

- Rule 26.1:** Trial counsel must swear each witness called to testify and must ensure that the following information is announced in court depending on the witness's status.
- (a) For a military witness, his or her name, rate or rank, service, and current duty station; or
  - (b) For a civilian witness, his or her name and city and state of residence.
- Rule 26.2:** Counsel must ensure their witnesses understand the physical arrangements of the courtroom, where they should go, and how they must conduct themselves.
- EJCR 26.2a:** Witnesses shall be instructed by the counsel calling the witness concerning appropriate attire and decorum to include that, when testifying, they must not chew gum or use tobacco, wear dark glasses, or use slang expressions or profanity, except as may be required in the presentation of the case. Witnesses

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<sup>16</sup> See Rule 3.6 of the Rules of Professional Conduct for further elaboration.

shall be informed not to engage court members or the military judge in casual conversation.

- Rule 26.3:** Counsel must ensure their witnesses will be immediately available when called to testify.
- EJCR 26.3a:** Counsel shall inform the witness of the time, location, as well as making any arrangements necessary to allow a civilian witness to come aboard the installation where the proceeding is to be held. A witness shall be informed, by the party intending to call the witness, of appropriate civilian attire with sufficient time to afford the witness a reasonable opportunity to comply with the standard. The fact that the government has agreed to or has been ordered to produce a witness on behalf of the defense, does not relieve the defense counsel of these requirements for defense witnesses. Counsel shall coordinate with each other and the presiding military judge to reduce, when possible, the amount of time a witness is required to wait prior to testifying. Counsel will confirm their witnesses are in receipt of travel orders or prepared to testify on the scheduled dates of trial no later than the day before final pretrial matters are due to the Court. Counsel will also include a certification to the Court that all witnesses have been advised of the time and location of trial.
- Rule 26.4:** Counsel will question witnesses from a reasonable distance. Before approaching the witness, counsel must obtain permission of the military judge. Counsel and witnesses should avoid positioning themselves in a way that obstructs the view of the military judge, members, the accused, or counsel.
- Rule 26.5:** Not later than ten (10) business days prior to trial, counsel who intend on using an interpreter during the trial will notify the presiding military judge and opposing counsel of the interpreter's identity and provide a brief summary of the interpreter's qualifications. Any objection to the interpreter will be provided to the presiding military judge as soon as practicable, but no later than five (5) business days before the date of trial.
- EJCR 26.6:** Appropriate civilian attire for witnesses is business casual.
- EJCR 26.7:** Absent agreement of the parties, the live, in-person testimony of a witness is required during trial on the merits. See R.C.M. 703(b)(1). The court will cooperate with witnesses whose absence from duty or job is especially disruptive to mission accomplishment or essential services, so long as a fair, expeditious trial is not sacrificed. Failure to timely litigate denials of witness requests is not considered proper cause for requesting remote testimony. If either side desires to call a witness to testify remotely, counsel shall notify the military judge by the motions filing deadline so that appropriate rulings and coordination may be made. Nothing in this rule shall be construed to limit or alter the military judge's discretion or responsibilities under M.R.E. 611. See Rule 32 below for further guidance on remote testimony.



## **Rule 27: OBJECTIONS**

- Rule 27.1:** Counsel must succinctly state the nature and basis of an objection. After the military judge rules on an objection, counsel may only make comment or further argument with permission from the military judge.
- EJCR 27.1a:** Argument on objections shall be direct and succinct. An objection or argument for the purpose of making a speech, restating testimony, attempting to guide a witness, or improperly influence a member is prohibited.
- Rule 27.2:** Should a non-party legal counsel, such as a VLC, deem it necessary to object or otherwise be heard at trial, the non-party legal counsel must stand until recognized by the military judge. The counsel must not speak until recognized by the military judge. When recognized, the non-party legal counsel must enter the well and speak from the podium.
- EJCR 27.3:** The non-party legal counsel may verbally alert the presiding military judge if the non-party legal counsel has stood for a reasonable amount of time and has not been recognized.

## **Rule 28: STIPULATIONS**

- Rule 28.1:** Counsel will attempt to narrow the issues to be litigated as much as possible using stipulations of fact and expected testimony. If a motion, or any other issue, involves only a dispute between the parties as to the law or any ultimate question of fact, and does not involve the underlying facts, counsel should consider entering into stipulations of fact or expected testimony covering those matters.
- Rule 28.2:** Stipulations must be in writing and prepared prior to trial.
- Rule 28.3:** Stipulations may be made for the limited purpose of obtaining a ruling on a motion or other pleading.
- Rule 28.4:** In a trial before members, stipulations are evidence and will be read to the members.
- (a) *Stipulations of fact.* Stipulations of fact will be provided to the members for use in deliberations like all other admitted evidence. Written stipulations of fact must be marked as a “Prosecution Exhibit” or “Defense Exhibit.”
- (b) *Stipulations of expected testimony.* Stipulations of expected testimony will not be provided to the members for use in deliberations. Written stipulations of expected testimony must be marked as an “Appellate Exhibit.”

### **Rule 29: OFFERS OF PROOF**

**Rule 29:** Absent a stipulation, an offer of proof is not evidence upon which a finding of fact may be based.

### **Rule 30: JUDICIAL NOTICE**

**Rule 30:** Counsel will advise the military judge and opposing counsel of any intended requests for judicial notice in their written pretrial matters in accordance with the TMO.

**EJCR 30.1:** Copies of all directives, regulations, orders, and state or federal statutes of which the military judge has taken judicial notice shall be marked as appellate exhibits unless otherwise offered and admitted as a prosecution or defense exhibit.

### **Rule 31: TRIAL EXHIBITS**

**Rule 31.1:** Prosecution exhibits will be identified by Arabic numerals. Defense exhibits will be identified by capital letters. Appellate exhibits will be identified by Roman numerals.

**EJCR 31.1a:** Counsel shall file their respective final pre-trial matters in accordance with EJCR 10.2a. Hardcopies of Prosecution and Defense Exhibits shall be marked by the court reporter, not the counsel, prior to trial or during recesses. Prosecution and Defense exhibits will initially be marked “for identification” or “FID” until admitted into evidence.

**Rule 31.2:** If an exhibit is not compatible for inclusion in the record of trial, counsel who offered the exhibit must prepare an appropriate substitute for inclusion in the record, such as a photograph or reduced-size copy of the exhibit.

**Rule 31.3:** Any offered exhibit discussed on the record will be appended to the record even if not introduced into evidence.

**Rule 31.4:** All audio recordings and video recordings that contain audio portions must be transcribed before trial by the party offering such a recording unless the military judge orders otherwise. If a portion is inaudible, the transcript must so state. A copy of the transcript will be served on opposing counsel before trial in sufficient time to allow for ascertaining the accuracy of the transcript. The recording or a copy thereof will be made available to opposing counsel upon request. The transcript must be marked as an appellate exhibit and uploaded into NCORS in accordance EJCR 10.2a.

**EJCR 31.4a:** Any exhibits (including computer generated exhibits or any other exhibits or demonstrative aids prepared prior to trial) or evidence intended for use during

argument or opening statement, must first be shown to opposing counsel and then be approved for use by the military judge. Further, the court reporter and presiding military judge shall ensure the exhibits are properly represented by hard-copy printouts where appropriate in the record of trial.

**EJCR 31.4b:** The Government is responsible for ensuring the safeguarding and storage of all physical (non-documentary) evidence, offered or admitted, during and after trial. This includes all breaks, recesses, and adjournments.

### **Rule 32: REMOTE REQUIREMENTS**

**Rule 32.1:** *Hearings.* Remote hearings occur when the military judge is located in a different site than the accused and court reporter. Consistent with the R.C.M.s and applicable Department of the Navy instructions, a military judge may conduct remote hearings as needed to complete Article 30a, UCMJ, sessions for pre-referral subpoenas, orders, and warrants, and Article 39(a), UCMJ, sessions for arraignments, motions practice, and any other session permitted by the military judge subject to the following rules:

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

**Rule 32.2:** *Testimony.* Separate from remote hearings, and consistent with the R.C.M.s, the military judge may permit witnesses to testify via electronic means. The court reporter will transcribe the witness's testimony in the same manner as though the witness were present in court.

**Rule 32.3:** *Appearances.* The military judge may allow counsel to appear via electronic means. The court reporter will transcribe the counsel's statements in the same manner as though the counsel were present in court.

**EJCR 32.3a:** Pursuant to the requirements of Rule 32.1 the military judge has discretion to allow counsel to appear in court via remote electronic means. Absent good cause, counsel must make a request for remote appearance to the presiding military judge no later than three business days before the proceeding. Requests to appear remotely should ordinarily be included in the PTIR.

**Rule 32.4:** *Attendance.* VLC and alleged victims may attend court proceedings via electronic means in accordance with Rules 15 and 36 herein.

**Rule 32.5:** Remote sessions are open to the public at the site designated by the presiding military judge consistent with the 6th Amendment and R.C.M.s 504(d)(1) and 804.

### **Rule 33: FINDINGS & SENTENCING INSTRUCTIONS**

**Rule 33:** Trial and defense counsel will make appropriate recommendations as to specific instructions for the military judge to provide to the members. Requests for special instructions, modifications to standard instructions, or a summarization of the evidence relevant to an instruction, must be submitted in writing and in accordance with the TMO to the military judge and opposing counsel.

**EJCR 33.1:** Proposed instructions will be included in each party's submission of final pretrial matters to the Court and filed in accordance with EJCR 10.2a. These submissions *shall* include the full verbiage requested and not simply numerical indications of the requested instructions.

### **Rule 34: RECORD OF TRIAL/APPELLATE RIGHTS/STATEMENT OF TRIAL RESULTS/ENTRY OF JUDGMENT/SEALING ORDERS**

**Rule 34.1:** A complete and accurate record of the proceedings is required to protect the rights of all parties. During trial, counsel must ensure uncommon names, places, and words are spelled out on the record, witnesses respond verbally, and descriptions of size, distance, and location are clear.

**Rule 34.2:** At the conclusion of the trial, defense counsel will ensure the accused understands his/her post-trial and appellate rights and specifically designates who he/she wants to receive the Entry of Judgment, record of trial, and any matters submitted by the victim. The accused must include such decisions in the written acknowledgement of appellate rights. Counsel must use the model Appellate Rights Statement found at Enclosure 16.<sup>17</sup>

**Rule 34.3:** Immediately upon adjournment of the court-martial, trial counsel must cause a Statement of Trial Results (SOTR) to be prepared for the military judge's signature in accordance with R.C.M. 1101.<sup>18</sup> A draft of the SOTR must be prepared by trial counsel, except for the findings and sentence, and submitted to the military judge in every contested case prior to the commencement of trial on the deadline set in the TMO for final pre-trial matters, or if no date is set, then three (3) days before the date set for the commencement of trial. In a guilty plea case, the draft SOTR, except for the sentence, must be provided to the military judge no later than the day before trial. The military judge must sign only the SOTR and not the confinement

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<sup>17</sup> The model Appellate Rights Statement is also attached to these rules as Enclosure 16.

<sup>18</sup> See JAG/CNLSCINST 5814.1D (Post-Trial Processing).

order. Trial counsel shall upload the completed SOTR to NCORS after the military judge signs it.

**EJCR 34.3a:** The most current edition of the Statement of Trial Results (SOTR) form shall be used.<sup>19</sup>

**Rule 34.4:** *Sealing Orders Required.* Pursuant to M.R.E.s 412, 505, 513, and 514, and R.C.M.s 701(g)(2) and 1113, all motions, responses, enclosures and other papers relating to motions and responses, rulings and orders, and portions of the record of trial of closed or *ex parte* sessions of court for hearings conducted pursuant to M.R.E.s 412, 505, 513, and 514, and where the military judge has granted relief after an *ex parte* hearing conducted pursuant to R.C.M. 701(g)(2) must be ordered sealed by the military judge at such time as the military judge must direct and no later than the certification of the record of trial. Exhibits containing child pornography must also be sealed by order of the military judge. Sealing must be implemented to prevent unauthorized access or disclosure, while also ensuring it does not unduly or unfairly restrict proper trial preparation by counsel.

**EJCR 34.4a:** Pursuant to R.C.M. 703(d)(2)(A), defense *ex parte* filings requesting the assistance of expert consultation will be sealed.

**Rule 34.5:** *Sealing for Good Cause Shown.* Upon good cause shown by either party, medical records, mental health records that have been voluntarily disclosed by a person otherwise entitled to claim the patient-psychotherapist privilege, autopsies, materials containing pornography or erotica, and other material which the military judge determines should be sealed upon a showing of good cause may be ordered sealed by the military judge prior to certification of the record of trial. Pursuant to M.R.E. 506, all motions, responses, enclosures, and other papers relating to motions and responses, rulings and orders, and those portions of the record of trial of closed or *ex parte* sessions of court for hearings conducted pursuant to M.R.E. 506 concerning disclosure of non-classified Government information that may be detrimental to the public interest must be ordered sealed by the military judge prior to verification of the record of trial.

**Rule 34.6:** The court reporter must ensure the record of trial is prepared so that sealed materials are clearly marked. As an example, the exhibits or the pages of the record of trial ordered sealed may be placed in an 8.5 by 11-inch envelope, two hole-punched at the bottom with the opening of the envelope at the bottom of the record of trial for easy removal of sealed materials, and the sealing order or a copy affixed to the envelope in the original record of trial (or substituted for the sealed materials in the copies of the record of trial).

**Rule 34.7:** Court reporters will ensure the sealed matters are not further reproduced or copied and remain only in the original record of trial. All exhibits, documents,

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<sup>19</sup> The current edition is attached as Enclosure 17.

and portions of the record of trial ordered sealed, to include videos and images of child pornography, will be appended to the original record of trial as set forth in Rule 34.6 and will be sent to the Clerk of Court for the Navy-Marine Corps Court of Criminal Appeals (NMCCA) for inspection in accordance with that court's rules.

**Rule 34.8:** For cases in which child pornography is introduced into evidence in a digital format and published to the military judge or members on a computer monitor, trial counsel will provide to the court reporter a password protected compact disc, digital versatile disc, or other electronic storage device containing the electronically formatted evidence for inclusion in the record of trial. In cases in which the evidence of child pornography is introduced in printed format, trial counsel will scan the evidentiary exhibit or exhibits into a portable document format (.pdf) onto a password protected compact disc, digital versatile disc, or other electronic storage device, which will then be substituted in the record of trial for the original evidence. The original evidence should then be returned to the Naval Criminal Investigative Service, United States Marine Corps Criminal Investigation Division, or other cognizant law enforcement agency, as appropriate, for storage as evidence until final action on the record of trial and completion of appellate or other review. Under the terms of a sealing order issued by the military judge, the password to any protected compact disc, digital versatile disc, or other electronic storage device in the record of trial must be provided by trial counsel to those with record of trial responsibilities including the trial military judge who must forward it via email to the Clerk of Court for the NMCCA in accordance with JAGINST 5813.1D.

**Rule 34.9:** All documents and materials which are reviewed by the military judge pursuant to an *ex parte* request or an *in camera* review and not ordered disclosed must be sealed and attached to the record as an appellate exhibit. This includes any motions or other writings or statements requesting *ex parte* review.<sup>20</sup>

**Rule 34.10:** *Certification of the Record.* Pursuant to R.C.M. 1112 and JAG/CNLSCINST 5814.1D, the court reporter will compile the record of trial for certification. The certified record of trial is the official record of the proceedings of a court-martial. Once the record of trial is compiled in accordance with R.C.M. 1112(b), the court reporter will certify the record of trial pursuant to R.C.M. 1112(c). The court reporter will further prepare the certified record of trial for appellate review in accordance with R.C.M. 1112(f), to include the verbatim transcript. The verbatim transcript will be prepared in accordance with R.C.M. 1114 and pursuant to JAG/CNLSCINST 5814.1D for all courts-martial except acquittals. The court reporter will certify this written transcript is a true, accurate, and complete copy of the audio and/or other electronic recording of the court-martial proceeding in the case. The certified record of trial, together with all required attachments, must be forwarded as soon as practicable after the Entry of Judgment to OJAG Administrative Support

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<sup>20</sup> See R.C.M. 701(g)(2).

Division (Code 40). In all cases, the certified record of trial and all required attachments must be completed and forwarded for appellate review within 120 days of the announcement of sentence.<sup>21</sup>

**Rule 34.11:** *Verification of the Record and Entry of Judgment.* Pursuant to JAG/CNLSCINST 5814.1D, 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 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. As with the SOTR noted in Rule 34.3 herein, trial counsel or designee must cause the Entry of Judgment to be prepared for the military judge’s signature in accordance with R.C.M. 1111. Additionally, in accordance with R.C.M. 1111 and JAG/CNLSCINST 5814.1D, the military judge (or his or her substitute if the CTJ determines the military trial judge is unavailable and details a separate military judge) will enter the judgment of the court-martial as soon as practicable, but no later than 20 days after the military judge receives the complete record of trial and verbatim transcript.

### **Rule 35: DOCUMENTS & PLEADINGS**

- Rule 35.1:** All pleadings and documents, except for large video and audio files, must be filed in NCORS. Large video and audio files not supported by NCORS must be delivered to the court as directed by the CMJ or presiding military judge. Counsel must demonstrate good cause and request leave of the court to submit pleadings and documents outside of NCORS. Detailed military counsel must file matters on NCORS on behalf of civilian counsel.
- Rule 35.2:** All motions will be filed in the standard form found at: [http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).
- Rule 35.3:** All pleadings filed must have one-inch margins and use Times New Roman or Courier New and 10 to 12 point font.
- Rule 35.4:** All pleadings will be filed in the Portable Document Format (PDF). They must be signed and prepared in such a way that the text in the document is searchable.
- EJCR 35.4a:** The filing party is responsible to ensure that all filed material is uploaded in NCORS and is legible.

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<sup>21</sup> *United States v. Rivera*, 81 M.J. 741, 744 (N-M. Ct. Crim. App., 2021).

## **Rule 36: VICTIM LEGAL COUNSEL & OTHER NON-PARTY COUNSEL**

- Rule 36.1:** Victim Legal Counsel (VLC), or other non-party legal counsel, may be heard before the court to the extent authorized by applicable law. Prior to appearing before the court, non-party counsel must file an NoA with the court.<sup>22</sup> This NoA must state the judicial circuit, applicable case caption, name of the respective client (using only the client's initials if the client is a minor), and name, rank, address, phone number and email address of the non-party counsel. The NoA must also contain a brief statement as to the non-party counsel's qualifications to practice and status as to oath. The NoA must be uploaded into NCORS. A non-party counsel who fails to file a NoA will not be recognized by the court.
- Rule 36.2:** If an alleged victim retains civilian counsel, trial counsel must furnish the civilian VLC with a copy of the Uniform Rules and any local rules. The civilian VLC's NoA must acknowledge familiarity with the Uniform Rules and local rules.
- EJCR 36.2a:** Retained civilian VLC shall file via email a notice of appearance with the EJC Clerk of Court at [ejc.clerkofcourt@usmc.mil](mailto:ejc.clerkofcourt@usmc.mil) within five (5) business days of being retained.<sup>23</sup>
- Rule 36.3:** All non-party counsel are subject to these Uniform Rules, the Rules of Professional Conduct,<sup>24</sup> and the applicable local rules.
- Rule 36.4:** If VLC has filed a NoA, trial counsel must consult with the VLC regarding availability before agreeing to any session of court in a TMO or requesting a continuance. Trial counsel must provide the VLC notice of all ordered or scheduled sessions of court within twenty-four hours (24) of the order, unless the military judge permits a different time for such notice upon a showing of good cause. Additionally, trial counsel must immediately provide the VLC with a copy of any TMO ordered by the court and any rulings on motions involving the VLC's client. Any required notices or motions may be served electronically upon the VLC via NCORS in accordance with Rule 10.3.
- Rule 36.5:** VLC may have an interest in hearings for rights afforded alleged victims by law. As such, trial counsel and defense counsel must ensure VLCs receive copies of the relevant Government and Defense filings on issues their clients have standing to address. To the maximum extent possible, this must be accomplished using NCORS. If not possible for technical reasons or because an alleged victim is represented by a civilian VLC, then trial counsel and defense counsel must ensure VLC receives such filings within one business

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<sup>22</sup> See enclosure 18.

<sup>23</sup> Civilian VLC Notice of Appearance format is attached as Enclosure 19.

<sup>24</sup> JAGAINST 5803.1E.



day after filing. When appropriate, VLC should be included in R.C.M. 802 conferences regarding the filing of such motions as discussed in Rule 8.1.

**Rule 36.6:** VLC may file such motions and other pleadings with the court as they deem appropriate to represent their client's interests. VLC must articulate a basis for standing in their written pleadings. Military VLCs will file motions and other pleadings using NCORS. For civilian VLCs, trial counsel is responsible for uploading all such motions and other pleadings to NCORS on the VLC's behalf. VLCs and other non-party counsel must ensure their motions and other pleadings are timely filed and served on the Court and all counsel for the parties, and any other non-party counsel whose client has an interest in the issue. The presiding military judge may set separate deadlines for the filing of any motions by a VLC or other non-party counsel.

**Rule 36.7:** When in the courtroom, VLC must remain seated behind the bar, except when invited inside the bar by the presiding military judge to address the court. When VLC desires to be heard, if not seated in the well of the court, the VLC must stand silently until recognized by the military judge and invited into the well of the court. When addressing the court, VLC must do so from behind the podium. VLC may be heard in an Article 39(a), UCMJ, outside the hearing of the members. Whenever practicable, VLC may be seated at counsel table inside the bar during lengthy or complex motions hearings in which they will be heard.

**EJCR 36.7a:** If the VLC anticipates a need to be heard during a 39(a) session via alternative means, that VLC must request permission from the Court via a written filing stating the specific reasons that necessitate the use of alternative means prior to the hearing taking place. Failure to obtain prior approval may result in the forfeiture of the opportunity to argue on the issue.

**Rule 36.8:** The military judge has discretion to allow VLC to appear in court via remote means. This rule is different than Rule 15.5, which allows the VLC to attend a proceeding via telephone. If the VLC believes it is possible he/she would like to be heard on the record, the VLC should ensure the remote technology has video and audio capabilities. When appearing remotely, VLC must ensure the military judge, defense counsel, and the accused are able to see and hear the VLC. Absent good cause, VLC must provide the military judge notice no later than three (3) business days before the hearing that the VLC intends to appear remotely. VLC and trial counsel will ensure the requisite technology is in place in advance of the hearing. The military judge has discretion to modify any of the requirements set forth in this rule on a case-by-case basis if VLC establishes good cause to do so.

**Rule 36.9:** VLC may move to close the court proceedings during any Article 39(a), UCMJ, motion session to protect the privacy and dignity of their client. A court session may be closed over the objection of the accused or the public upon meeting the constitutional standard set forth in R.C.M. 806(b)(2) and

related case law. For hearings under M.R.E.s 412, 513(e)(2), and 514(e)(2), the military judge must close the hearing.

### **Rule 37: VICTIM'S RIGHT TO BE HEARD**

**Rule 37:** In any motion or hearing where an alleged victim has a right to be heard, the military judge must verify on the record that the alleged victim was notified of the right to be heard. When the alleged victim elects not to testify or otherwise be heard, the military judge may require the trial counsel and/or VLC to certify in writing the alleged victim was made aware of the right and affirmatively declined to do so.

**EJCR 37.1:** A military judge may permit a VLC to be heard *ex parte* to the extent necessary to protect privileged information. Prior to any such *ex parte* hearing or conference, the parties shall be informed. If *ex parte* communications are held off the record, the military judge shall later state that the *ex parte* discussion took place and shall generally summarize the subject matter of the discussion. Any written matters considered *ex parte* shall be attached to the record with a protective order sufficient to protect privileged information.

### **Rule 38: APPOINTMENT OF DESIGNEE FOR CERTAIN VICTIMS**

**Rule 38.1:** In cases involving a victim who qualifies for a designee under R.C.M. 801(a)(6), the initial request for docketing must include a recommendation from both parties and, if appropriate, the VLC regarding this appointment. Trial counsel must also include a draft proposed appointing order, using the standard appointment form found at: [http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).<sup>25</sup> The draft must include the name of the proposed designee, the proposed designee's relationship to the named victim, and the rights of the designee. The appointment of the designee must be accomplished at arraignment whenever practicable. Either party may request, or the military judge may order, an Article 39(a), UCMJ, session under this rule in cases where a designee cannot be identified or agreed upon by the parties.

**Rule 38.2:** At any time after appointment, an individual must 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 must appoint a successor using the procedures established in R.C.M. 801(a)(6).

**Rule 38.3:** Nothing in this rule conveys any additional rights to a named victim, VLC, or designee.

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<sup>25</sup> See enclosure 20.

### **Rule 39: CONTEMPT PROCEEDINGS**

- Rule 39.1:** Military judges are empowered to punish persons in accordance with Article 48, UCMJ, and R.C.M.s 801(b) and 809 for direct or indirect contemptuous behavior. Such contempt power is to be exercised with restraint and in strict compliance with the statute and the implementing R.C.M.
- Rule 39.2:** If a military judge intends to hold a contempt proceeding under R.C.M. 809(b)(2), the military judge must notify the subject of the proceeding in writing, notwithstanding the provision in the rule allowing for oral notification.

### **Rule 40: MODEL PRETRIAL/PLEA AGREEMENT**

- Rule 40:** Counsel are strongly encouraged to use the model pretrial or plea agreement, depending on the offense date, at:  
[http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).
- EJCR 40a:** As appropriate, all counsel shall use either the NMCTJ model pretrial agreement format contained in Enclosure 21 or the NMCTJ model plea agreement format contained in Enclosure 22. Counsel shall direct the court's attention to any deviations from the model pretrial agreement or model plea agreement in the PTIR.
- EJCR 40b:** In any case that is currently docketed with the EJC where the parties reach a pretrial or plea agreement, the counsel shall notify the Court immediately upon their receipt of the final agreement. Counsel shall docket the guilty plea, if any, in accordance with EJCR 6.11 and 6.12. Trial counsel shall upload the agreement to the appropriate location within NCORS at the earliest opportunity.

### **Rule 41: USE OF NAVY COURT-MARTIAL REPORTING SYSTEM (NCORS)**

- Rule 41.1:** The NCORS system will be used for all case activity unless a specific exception is granted by local rules, the CMJ, or the presiding military judge.
- Rule 41.2:** To effectuate this policy, counsel and military judges are required to make use of NCORS for all activity on a case from inception through the completion of the trial and post-trial process. Where deficiencies are discovered, counsel and military judges should forward the deficiencies, and any proposed changes to address the deficiencies, up their chain of command as expeditiously as possible.

## **Rule 42: USE OF LARGE LANGUAGE MODEL ARTIFICIAL INTELLIGENCE**

**EJCR 42:** Counsel may utilize artificial intelligence (AI) in their filings. However, counsel are responsible for the content of all court filings, to include content resulting from an AI hallucination. Any document provided to the court shall note if any portion of the document was created by AI. This includes substantive content only. It does not include research that was assisted by AI. For example, if counsel utilize AI to draft a plea agreement the plea agreement must contain text so indicating. Conversely, if counsel utilize AI to research an issue, but then draft a motion without AI assistance incorporating that research, no note would be required.

### **Enclosures:**

1. Notice of Withdrawal Filing
2. Civilian Defense Counsel Notice of Appearance
3. EJC Standardized Trial Management Order (TMO)
4. Pretrial Information Report (PTIR)
5. Motion for Docketing (MFD)
6. Proposed Docket
7. Notice of Pleas and Forum
8. DD Form 453 (Subpoena)
9. DD Form 3057 (Application for Warrant for Electronic Communications)
10. DD Form 3056 (Warrant for Electronic Communications)
11. Model Motion Format
12. Model Continuance Motion and Order Format
13. Model Format for Motion for Leave to File Out of Time
14. NMCTJ Bailiff Handbook
15. NMCTJ Court-Martial Member Questionnaire
16. Model Appellate Rights Statement
17. Statement of Trial Results
18. Military Victims' Legal Counsel Notice of Appearance
19. Civilian Victims' Legal Counsel Notice of Appearance
20. R.C.M. 801(a)(6) Draft Appointment Order
21. NMCTJ Model Pretrial Agreement
22. NMCTJ Model Plea Agreement