RULES OF PRACTICE
FOR
EASTERN JUDICIAL CIRCUIT
U.S. NAVY-MARINE CORPS TRIAL JUDICIARY

(REVISED ON 1 JANUARY 2021)

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PREAMBLE

These Eastern Judicial Circuit (EJC) Rules of Practice (EJC Rules) supplement the Uniform Rules of Practice before the Navy-Marine Corps Courts-Martial (Uniform Rules). The EJC Rules are promulgated by the Circuit Military Judge for 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 as of 1 January 2021, and cancel the Circuit Rules dated 1 January 2019. They 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: These 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, as officers of the court, court reporters, clerks of court, and bailiffs are required to follow these and local rules.

EJCR 1.1a: ***The EJC Rules apply to the trial of all general and special courts-martial within the EJC.***

Rule 1.2: All participants to the court-martial must comply with these Uniform Rules. In the case of noncompliance with the Uniform Rules, implementing 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: ***Detailed defense counsel shall furnish a copy of the EJC Rules to all military defense counsel from outside the EJC and to all civilian defense counsel who will make an appearance in an EJC court-martial after such counsel is detailed or retained.***

Rule 2: PURPOSE

Rule 2: These Uniform Rules are intended to facilitate the orderly administration of military justice.

EJCR 2.1: ***Operating within our adversarial system, the goal of a trial is the fair administration of justice. To that end, trials should be an efficient presentation of evidence and arguments to the trier of fact in a professional setting.***

Rule 3: CONSTRUCTION

Rule 3.1: These 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, then that rule must be read in accordance with the law.

Rule 4: REFERRED CHARGES

Rule 4.1: After the referral of charges, the trial counsel must provide the responsible judicial circuit with a copy of the charge sheet and convening order as soon as practicable. (See JAGINST 5813.4J of 19 Dec 17, Navy-Marine Corps Trial Judiciary, establishing Judicial Circuits and Areas of Responsibilities.)

EJCR 4.1a: ***After referral of charges, the trial counsel shall provide the EJC Clerk of Court with a copy of the referred charge sheet(s) and convening order(s) as soon as practicable. The referred charge sheet(s) and convening order(s) shall be forwarded to the EJC Clerk of Court via email to ejc.clerkofcourt@usmc.mil.***

Rule 4.2: 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 submitted to the court. Proper documentation consists of a certificate of withdrawal, signed by the 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 received by the court.

EJCR 4.2a: ***Trial counsel shall submit a Notice of Withdrawal[1] via email to the EJC Clerk of Court at ejc.clerkofcourt@usmc.mil within two business days of referred charges being withdrawn. The EJC Clerk of Court will endorse the Notice of Withdrawal and return it to the trial counsel as soon as practicable.***

[1] EJC Standard Notice of Withdrawal Form is attached to these rules as Enclosure 1.

Rule 4.3: After the referral of charges, the trial counsel must inform the military judge when the case involves classified information, at the earliest practicable opportunity. Trail counsel should normally provide notice when they submit the proposed Trial Management Order (TMO) or make a docketing request.

EJCR 4.4: ***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 provided via email to the EJC Clerk of Court at ejc.clerkofcourt@usmc.mil not later than one business day after the date of change.***

Rule 5: CIVILIAN DEFENSE COUNSEL

Rule 5.1: If an accused retains civilian counsel, detailed defense counsel shall furnish civilian counsel with a copy of all pertinent rules of court. Prior to appearing in court, civilian counsel must file with the Clerk of Court a written notice of appearance. The notice of appearance 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 counsel is presently admitted to practice.

ECJR 5.1a: ***Prior to appearing in any court-martial proceeding, civilian counsel shall file via email with the EJC Clerk of Court at ejc.clerkofcourt@usmc.mil a Notice of Appearance.***[2]

Rule 5.2: Detailed defense counsel must inform the civilian counsel of the rules of Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General (JAGINST 5803.1B).

Rule 5.3: Once civilian counsel notifies the Clerk of Court or the military judge of representation concerning the referred charges, civilian counsel may not withdraw from such representation without permission of the military judge.

Rule 5.4: Detailed defense counsel must inform the civilian defense counsel of the requirements necessary for obtaining a security clearance immediately upon learning that classified information may be relevant to a pending case. Civilian defense counsel has a duty within ten (10) days from notice of appearance to request a security clearance application from the government 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 that 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

[2] EJC Standard Civilian Defense Counsel Notice of Appearance Form is attached to these rules as Enclosure 2.

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.

Rule 6: DOCKETING/TRIAL MANAGEMENT ORDERS

Rule 6.1: The circuit military judge of each judicial circuit will establish and promulgate docketing procedures for cases within their circuit. These procedures must 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 shall 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 Navy-Marine Corps Trial Judiciary (NMCTJ) SharePoint website. All circuits except WESTPAC, and EURAFSWA, will also maintain their docket on the NMCTJ/Code 52 section of the jag.navy.mil public webpage. The circuit military judge will also publish the circuit docket on a weekly basis in an online format available to the public and in accordance with OJAG standard operating procedures (most often on the installation or Region website). The NMCTJ SharePoint site is available at: https://portal.secnav.navy.mil/orgs/JAG/52/SitePages/Home.aspx.

Rule 6.3: Docketing judges and military judges presiding over arraignments shall use the standard TMO located in Appendix C and at http://www.jag.navy.mil/trial_judiciary.htm.[3]

Rule 6.4: The Navy-Marine Corps Chief Trial Judge ("Chief Trial Judge") retains initial detailing authority for all reserve military judges. Circuits requesting reserve support will forward requests to the Chief Trial Judge for consideration. Once a detailed reserve military judge reports for AT/ADT/drill period on station, the circuit military judge may detail additional arraignments and/or Article 39(a) sessions as appropriate.

Rule 6.5: No reserve military judge (part-time judge) who serves as a civilian prosecutor 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 as a civilian prosecutor, unless the offense is a uniquely military offense over which there is no comparable federal or state jurisdiction. No reserve military judge may preside over cases where the same prosecutor's office they are employed by has an interest, regardless of where the court-martial is held.

[3] The standard TMO is also attached to these rules as Enclosure 3.

EJC -PRETRIAL INFORMATION REPORT (PTIR)

EJCR 6.6: ***All requested court sessions shall be accompanied by a PTIR[4] 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)[5], 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 case only the requesting party's signature is necessary.***

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 be accompanied by all referred charge(s), convening order(s) and a proposed TMO. As applicable, trial counsel shall include copies of the relevant portions of any military orders, regulations, or directives. 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 provide a copy of the state or federal statutes alleged to have been violated, and trial counsel's proposed elements for such violation. Additionally, for any novel specifications alleged, the trial counsel shall provide proposed elements for such violation. 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, within 60 days of the date of arraignment for Special Courts-Martial, and within 30 days of arraignment for offenses referred to an Article 16(c)(2), UCMJ Special Court-Martial to be tried by a military judge alone.***

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[4] The Standard EJC PTIR is attached to these rules as Enclosure 4.
[5] The Standard EJC MFD is attached to these rules as Enclosure 5.

EJCR 6.11: ***A PTIR requesting a guilty plea pursuant to a pretrial agreement shall include a signed copy of Part I of the agreement, a copy of the convening order to which the case is referred if not previously provided, and a signed copy of the stipulation of fact, if applicable and available. If the pretrial agreement requires an agreed upon stipulation of fact and the signed stipulation of fact is not available when the PTIR is submitted, absent the detailed military judge specifically authorizing it to be submitted at a later time, the signed stipulation of fact shall be provided via email to the detailed military judge and the EJC Clerk of Court at ejc.clerkofcourt@usmc.mil not later than 0900 on the business day prior to the scheduled guilty plea.***

EJCR 6.12: ***A PTIR requesting a guilty plea pursuant to a plea agreement shall include a signed copy of the plea agreement, a copy of the convening order to which the case is referred if not previously provided, and a signed copy of the stipulation of fact, if applicable and available. If the plea agreement requires an agreed upon stipulation of fact and the signed stipulation of fact is not available when the PTIR is submitted, absent the detailed military judge specifically authorizing it to be submitted at a later time, the signed stipulation of fact shall be provided via email to the detailed military judge and the EJC Clerk of Court at ejc.clerkofcourt@usmc.mil not later than 0900 on the business day prior to the scheduled guilty plea.***

EJCR 6.13: ***Arraignment is the preferred means of setting trial dates and filing deadlines. When pretrial arraignment is impracticable, an MFD is permissible, provided it is unopposed and authorized by the EJC Docketing or Circuit Military Judge. The use of a MFD does not eliminate the need to submit a PTIR for future court sessions.***

EJC –DOCKETING PROCEDURES

EJCR 6.14: ***The EJC Circuit Military Judge may appoint a docketing judge who will serve in that capacity until properly relieved. The EJC Clerk of Court and the Docketing Judge, if and when one is appointed, shall normally be the EJC's points of contact for all docketing issues.***

EJCR 6.15: ***Every week, unless otherwise directed by the Circuit 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 1000 on Wednesday. The proposed docket shall be submitted by emailing the proposed docket to the EJC Clerk of Court at ejc.clerkofcourt@usmc.mil. Proposed dockets shall be submitted in the format contained in Enclosure 6.***

EJCR 6.16: ***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 6.15.***

EJCR 6.17: ***The proposed docket must contain a PTIR for each case requested to be docketed and each PTIR must be accompanied by all appropriate enclosures, complying with these Rules. See EJCRs 6.8, 6.11, and 6.12. Proposed dockets with missing or incomplete PTIRs and/or enclosures will not be docketed without the approval by the Circuit Military Judge upon a showing of good cause.***

EJCR 6.18: ***Counsel should estimate the length of each Article 39(a) session or trial. Arraignments should normally be docketed for the first work day of the week.***

EJCR 6.19: ***Docketing requests will be reviewed and an EJC court docket for the following week will be created and distributed. Reasonable effort will be made to schedule cases in accordance with the dates and locations requested within the PTIR. The docket is normally distributed electronically by the EJC Clerk of Court each Thursday and court sessions will be posted to the EJC's Outlook and SharePoint Docket Calendars. The EJC SharePoint Docket Calendar is located at: https://portal.secnav.navy.mil/orgs/JAG/52/Judicial_Circuits/EASTERN/SitePages/Home.aspx. Supervisory counsel shall ensure that the weekly docket is disseminated to all parties concerned with the scheduling of a particular case. Trial practitioners can be added to the docket distribution list and Outlook and SharePoint Docket Calendars by contacting the EJC Clerk of Court at ejc.clerkofcourt@usmc.mil.***

EJCR 6.19: ***Counsel shall promptly review the docket and immediately notify the EJC Docketing Judge or Clerk of Court of any conflicts, discrepancies, or requests for modifications of the docket.***

EJCR 6.20 ***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 6.21: ***"Walk-ins" will be permitted on a case-by-case basis. "Walk-ins" are cases that were not previously docketed through the normal docketing procedures outlined in EJCR 6.15 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 Circuit Military 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 Circuit Military Judge 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. See EJCRs 6.8, 6.11, and 6.12.

EJCR 6.22: ***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, relief shall be requested prior to that date or milestone coming to pass by filing a Motion to Continue. See Rule 11 regarding continuances.***

EJCR 6.23: ***Notice of anticipated pleas and forum shall be submitted to the Court pursuant to the TMO and in the format provided in Enclosure 7. After written notice of pleas and forum are provided, 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 later entry of pleas and forum on the record.***

Rule 7: PERSONALLY IDENTIFIABLE INFORMATION (PII)

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 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 names of minors shall 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 witnesses and alleged victims will be used during the course of the trial, all named victims will be identified by their initials on charge sheets and in pleadings, and all witnesses will be identified by their initials in pleadings.

Rule 7.4: All Navy personnel shall comply with JAG/CNLSC Instruction 5211.11 of 14 Jun 13. All Marine personnel shall comply with Section 0603 (and other relevant sections pertaining to protection of PII) of the Marine Corps Order 5800.16 (Legal Support and Administration Manual). All counsel will comply with SECNAVINST 5211.5F of 20 May 2019.

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, but 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) session of the court, including the presence or absence of the victims' legal counsel, if applicable. Whenever appropriate, the military judge may, in his/her sole discretion, include the victims' legal counsel in R.C.M. 802 conferences in which the alleged victim has an identified interest. *See* Rule 36.4 below.

EJCR 8.1a: ***The trial counsel shall inform the VLC of all R.C.M. 802 conferences in which a represented alleged victim has an identifiable interest.***

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 administrative matters, pre-referral subpoenas, orders, warrants, or as otherwise provided by law. Routine administrative matters include, but are not limited to docketing and logistic matters (e.g. uniform and facility issues and matters that may affect time and duration of court sessions).

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

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

Rule 8.5: Government counsel applying for investigative subpoenas and warrants/orders for wire or electronic communications from will follow the R.C.M. 703A(b) warrant procedures. *See* JAGMAN Section 0132a – Warrants and Orders for Electronic Communications. Any such request will be presented to the circuit military judge or his/her designee using the model application for warrant and warrant forms (DD Form 453 (Subpoena)[6], DD Form 3057 (Application for Warrant for Electronic Communications)[7], and DD Form 3056 (Warrant for Electronic Communications)[8]), located at: http://www.jag.navy.mil_judiciary.htm.

[6] DD Form 453 (Subpoena) is also attached to these rules as Enclosure 8.
[7] DD Form 3057 (Application for Warrant for Electronic Communications) is also attached to these rules as Enclosure 9.
[8] DD Form 3056 (Warrant for Electronic Communications) is also attached to these rules as Enclosure 10.

Like other pre-referral subpoenas and orders, circuit military judges will expedite review of warrant applications as their dockets permit, but no later than five (5) days from the date the application is presented to the military judge.

EJCR 8.5a: ***Government counsel applying for investigative subpoenas and warrants/orders for wire or electronic communications shall electronically file the documentation required in accordance with Uniform Rule 8.5 to the Court with the EJC Clerk of Court at ejc.clerkofcourt@usmc.mil.***

Rule 8.6: Regardless of whether the military judge grants or denies the warrant application, the judge will ensure the application and warrant (if issued), is uploaded into the MJ Pre-Referral Document Collection tab on the NMCTJ SharePoint site at: https://portal.secnav.navy.mil/orgs/JAG/52/SitePages/Home.aspx.

Rule 8.7: 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 served on government counsel, the Circuit Military Judge of the circuit that issued the process, and the Chief Trial Judge's Executive Assistant at the address located at: http://www.jag.navy.mil/trial_judiciary.htm.

EJCR 8.8: ***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 Circuit Military Judge when the filing is electronically filed with the EJC Clerk of Court at ejc.clerkofcourt@usmc.mil.***

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 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 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 in an effort to resolve the dispute without court action, unless a party believes submission of the matter *ex parte* is appropriate.

Rule 9.4: Pursuant to Article 31(c) of the UCMJ, 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. 412 and 513;
(d) to prevent breach of privilege recognized by the 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. 505, 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 that 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 on the NMCTJ Sharepoint site at: https://portal.secnav.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) session to determine whether an issue is in fact controverted and to narrow the issues in contention to the maximum extent

possible. Counsel should advise the military judge in a R.C.M. 802 conference as early as possible of motions that are likely to arise at trial, including any unusual motions or objections, and of any relevant authority then known to counsel, including contrary authority.

Rule 10.2: When not prohibited by the military judge, motions and other documents may be filed with the court, opposing counsel, and if applicable, victims' legal counsel, by electronic transmission. It is the filing party's responsibility to ensure that the filing is received by the intended court, opposing party, victims' legal counsel, or non-party legal counsel. In cases where a named victim is not represented by victims' legal counsel, any notice or motion which implicates an alleged victim's rights shall be provided to the alleged victim via trial counsel. As appropriate, electronic mail transmissions used to communicate with the court or with opposing counsel should be maintained by the originator and provided to the court reporter for inclusion in the record of trial.

EJCR 10.2a: ***All motions and any attachments filed with the Court will be signed, served on opposing counsel and, if applicable, VLC, and will include a certificate of service.***

EJCR 10.2b: ***Whenever motions are filed with the Court, the submitting counsel shall, no later than one business day prior to the next session of court, provide the Legal Services Support Section-East (LSSS-E) Court Reporter Section with the original pleading, or a copy thereof by electronic transmission to LSSSECourtReporters@usmc.mil.***

Rule 10.3: Each motion must include or be accompanied by a statement of the specific points of law and authority that support the motion, including, 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 in Appendix A and at: http://www.jag.navy.mil/trial_judiciary.htm.[9]

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: Each motion that requires an order must be accompanied by a proposed order by the moving party, unless this requirement is explicitly waived by the military judge. If required by the military judge, the moving party and any

[9] A suggested motion format is also attached to these rules as Enclosure 11.

responding counsel will include proposed Findings of Fact and Conclusions of Law.

EJCR 10.4a: ***All evidence, other than testimonial evidence, submitted in support of a motion shall be marked as a single appellate exhibit and that evidence shall be marked as the next numerical appellate exhibit after the motion of which the evidence is in support. [E.g. If a Motion to Dismiss filed by the defense is marked as AE I, evidence in support of the defense Motion to Dismiss shall be marked as AE II.] All documentary evidence submitted in support of a pleading shall be paginated. To the extent possible, PII shall be redacted from all pleadings and documentary evidence submitted in support of pleadings. See Uniform Rule 7.***[10]

EJCR 10.4b: ***Unless directed by the military judge, counsel are encouraged, but not required to submit proposed Findings of Fact and Conclusions of Law for motions filed.***

Rule 10.5: Military judges will rule on motions in a timely fashion so as not to create unnecessary delay in court proceedings. In instances when a ruling must be reserved, the military judge shall 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 10.6: 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, the time the 72-hour appeal period will run, as well as how and where the government may provide the military judge with written notice of appeal.

Rule 10.7: 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 shall not make, or be required to make, statements/certifications regarding timeliness of motions or whether good cause has been shown on the record.

EJCR 10.7a: ***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. Should counsel desire to file any pleading <u>after</u> a court-ordered trial milestone, that counsel shall include an affidavit of good cause detailing why counsel failed to comply with the court ordered deadline and why the court should now entertain the pleading. The affidavit will also include a statement confirming that the counsel's supervisory counsel has been notified of the late filing and the reasons therefor.***

[10] EJCR 10.4a shall apply to all cases referred or arraigned after 23 December 2020.

Rule 10.8: Motions to Reconsider. Parties seeking reconsideration of a military judge's written pre-trial ruling or order must file a motion within fourteen (14) days after the pre-trial 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 controlling law;
(b) the availability of new evidence; or
(c) the need to correct clear error or prevent manifest injustice.

Rule 10.9: In such cases where the defense moves to dismiss charges and specifications on the grounds of a speedy trial violation, the trial counsel will prepare a written chronology of events prior to trial. *See United States v. Ramsey*, 28 M.J. 370, 374 (C.M.A. 1989).

Rule 10.10: When a trial counsel serves a Bill of Particulars on the defense, it shall also be filed with the court and marked as an appellate exhibit.

EJCR 10.11: ***The litigation of motions involves the presentation of legal and competent evidence: i.e., testimony, documentary evidence, stipulations, etc. Facts must be established upon which the military judge may make essential findings. Ordinarily, mere assertions or proffers of counsel or statements of fact contained in motions are not competent evidence.***

Rule 11: CONTINUANCES

Rule 11.1: Continuance requests should ordinarily be made by written motion. The motion must state the specific reason for the request. Counsel must be prepared to fully justify each continuance request. Where counsel and the military judge are not co-located, and as exigent or emergent circumstances require, scheduling issues and continuance requests may be discussed in R.C.M. 802 sessions.

Rule 11.2: All continuance motions must cite the number of previous continuances and who sought the continuances, whether opposing counsel consents, the trial date, and dates counsel and witnesses are available for trial. In cases involving victims' legal counsel, the moving party must certify that the motion was served on the victims' legal counsel. In cases involving a named victim not represented by victims' legal counsel, the trial counsel must certify that the motion was served on the named victim. The proposed order must contain language for both granting and denying the motion, a place to indicate whether the motion is granted or denied, and a place for indicating the new trial date. A model motion for a continuance and a proposed order can be found in Appendix B and at: http://www.jag.navy.mil/trial_judiciary.htm.[11]

EJCR 11.2a: ***When motions to continue are filed in cases with a detailed or retained VLC, a signature block for the VLC to recommend or oppose the continuance***

[11] A model Motion for Continuance and proposed order is also attached to these rules as Enclosure 12.

shall be included on the response portion. In cases involving unrepresented victim(s), trial counsel shall indicate the victim(s) support of or opposition to the requested continuance.

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

Rule 12: SITUS

Rule 12: 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 12.1: ***The senior trial counsel (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 EJC Circuit Military and Docketing Judge will consider, but are not bound by, such proposals in making docketing decisions.***

Rule 13: COURTROOM SECURITY

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

Rule 13.2: The government is responsible for ensuring the courtroom facility is in compliance with all applicable orders and directives governing courtroom safety requirements. Notwithstanding such orders and directives, counsel must inform the military judge whenever they believe extra precautions and/or security measures should be implemented.

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 Circuit Military Judge 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 LSSS-E Officer-in-Charge, the Circuit Military Judge 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 circuit military judge will review annually 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 detailed 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.***

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 shall be 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 give careful consideration to 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, accused, members, bailiff, court reporter, and other official roles, and to 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 shall 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 that 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.

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.

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 shall be open subject only to those limited exceptions provided for in law and statute. The military judge shall 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 that the military judge is advised if there is a likelihood that any spectator is to be called as a witness. Except for alleged victims recognized by the court, spectators who may be called as witnesses on the merits should be excluded upon motion by the trial counsel or defense counsel. Sentencing witnesses are often permitted to observe the trial, but could 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 that their testimony will be materially altered if the alleged victim were to hear the testimony at that hearing or proceeding. The "right not to be excluded" does not include the right to listen remotely to court proceedings. Unless a remote viewing location

is authorized by the military judge, all spectators are prohibited from listening remotely to a court-martial proceeding.

Rule 15.4: 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, their witnesses, and friends of the alleged victim, accused and counsel of the decorum required in the courtroom.

EJCR 15.5: ***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 15.6: ***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 15.7: ***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 15.8: ***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. When a party is unavoidably late, or proceedings will be delayed, the military judge shall 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: Trial counsel shall ensure bailiffs are thoroughly briefed on their duties and that they are provided a copy of the Bailiff Handbook, found at: http://www.jag.navy.mil/trial_judiciary.htm.[12]

ECJR 17.1: ***Unless otherwise directed by the Circuit Military Judge or presiding military judge, a bailiff shall be present at every guilty plea or contested trial (with or without members) and for any other court-martial proceeding as directed by the presiding military judge in order to enhance courtroom security and the efficient administration of the court. If a bailiff's presence is required at a court-martial proceeding other than a guilty plea or 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 17.2: ***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.***

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, *see* 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 that the court reporter has been sworn.

[12] The Bailiff Handbook is also attached to these rules as Enclosure 13.

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 that the name and rank of all military parties to the trial and the name and address of civilian counsel are properly noted in the record 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 courtrooms 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. The court reporter can be notified at LSSSECourtReporters@usmc.mil.***

Rule 20: ENTRY AND 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 will announce, "All rise," whenever the military judge enters or departs the courtroom.***

Rule 21: ENTRY AND 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 will announce "All rise," whenever the members enter or depart the courtroom.***

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 shall be limited to matters relevant to determining whether to remove a member for cause and to determine the member's fairness and impartiality. The military judge shall ensure that the privacy of the prospective members is reasonably protected. All group voir dire questions must be submitted in writing to the military judge prior to trial.

EJCR 22.1a: ***All proposed group or individual voir dire questions will be submitted in writing with final pretrial matters. Upon specific request, the military judge may permit counsel to ask additional questions.***

EJCR 22.1b: ***During voir dire, counsel shall not: (1) argue the case; (2) engage in efforts to indoctrinate or establish "rapport" with members; (3) question members concerning anticipated instructions or theories of law, or members' "understanding" of various legal principles yet to be explained to them; (4) ask members what kind of findings or sentence they might return under a hypothetical set of facts; or (5) seek a pre-commitment from a member to a factual or legal proposition that is in issue. All questions asked by counsel must be relevant to determining the qualifications of the members to sit on the court-martial.***

Rule 22.2: The member's questionnaire shall be phrased and organized so as to facilitate an accurate screening and shall request that information essential for: (1) determining whether a person meets the Article 25, UCMJ criteria for eligibility; and (2) determining the existence or nonexistence of facts which may disclose a proper ground of challenge for cause. A copy of a model questionnaire can be found at: http://www.jag.navy.mil/trial_judiciary.htm.[13]

EJCR 22.2a: ***Trial counsel shall ensure that all court members complete either the NMCTJ questionnaire (See Uniform Rule 22.2) or the EJC Court-Martial Member Questionnaire (Enclosure 15). Completed questionnaires shall be submitted to the court with the Government's final pretrial matters in accordance with the TMO. Stale questionnaires (questionnaires completed more than one year prior to the scheduled trial date) shall be avoided.***

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 all witnesses. 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.***

[13] The NMCTJ model member questionnaire is also attached to these rules as Enclosure 14.

Rule 22.4: **(Applicable only to charges referred on or after 1 January 2019)** After completion of challenges for cause, the court reporter will randomly assign numbers to all remaining members in accordance with R.C.M.s 912 and 912A using the Excel random number generator or the Army Trial Judiciary's "Randomizer" program located on their website. 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. A copy of the random number generator is located at: http://www.jag.navy.mil/trial_judiciary.htm.

Rule 22.5: If after peremptory challenges are exercised, the panel falls below quorum, new members must be added. After challenges for cause of the additional new members, the court reporter will randomly assign numbers to the new members using the process in Rule 22.4, but starting at the next number following those assigned to the original members. Those members previously given numbers will retain the numbers they have been assigned.

EJCR 22.6: ***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, or using tobacco products is 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 of the military judge.

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: With the exception of the court reporter, no person shall use electronic devices (e.g. laptops or tablets) to audio record or video record any courtroom session. 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 or supervisory counsel in the courtroom unless otherwise permitted or restricted by the military judge. When cellular telephones are in the courtroom, they must be silenced and used only during recesses of court. Trial counsel will post signs prohibiting cell phones outside the courtroom where spectators and the court members enter.

EJCR 23.4 ***Prior to the start of any court proceeding during which any counsel desires to use a cellular or mobile device, the counsel must request and receive permission from the presiding military judge to do so. However, the device shall only be used during the proceedings to request, send, and receive litigation guidance. Should the use of the device become a distraction to the Court or counsel, the presiding military judge may withdraw the previously granted permission and order the removal of the device from the courtroom.***

Rule 24: COUNSEL DECORUM

Rule 24.1: Counsel's decorum in the courtroom shall be conducive to a dignified judicial atmosphere.

Rule 24.2: Counsel shall 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 opening statement, or make closing argument.

Rule 24.4: Counsel shall address all remarks, arguments, and question to either the court or the witness testifying and shall 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 that counsel has no reasonable basis to believe is relevant to the case or that is not supported by admissible evidence.

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 personal opinion as to the justness of a cause, the credibility of a witness, or the guilt or innocence of the accused, except that 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 to be 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. See Rule 3.6 of the Rules of Professional Conduct for further elaboration.***

Rule 26: WITNESSES

Rule 26.1: Trial counsel shall swear each witness called to testify and must ensure that the military witness's name, grade, and military organization; or, civilian witness's name and city and state of residence, are announced in court.

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

Rule 26.3: Counsel must ensure that 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. 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.

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 not position themselves so as to block the view of the military judge, members, the accused, or counsel.

Rule 26.5: Not later than five (5) 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 a brief summary of the interpreter's qualifications. Any objection to the interpreter will be provided to the presiding military judge as soon as possible, but not later than two (2) business days before the date of the 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 victims' legal counsel, deem it necessary to object or otherwise be heard at trial, that counsel shall stand until recognized by the military judge. The counsel shall not speak until recognized by the military judge. When recognized, the non-party legal counsel shall 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 by the use of stipulations of fact and 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 will consider entering into stipulations of fact or of 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: Written stipulations of fact must be marked as a "Prosecution Exhibit" or "Defense Exhibit" and, in a members trial, read to the members. Stipulations of fact may be taken into the deliberation room by the members like all other admitted evidence. Written stipulations of expected testimony will be marked as an "Appellate Exhibit" and, in a members' trial, read to the members. Stipulations of testimony may not be taken into the deliberation room.

Rule 29: OFFERS OF PROOF

Rule 29.1: When offers of proof are expected to be presented on motions or objections, counsel should inform opposing counsel and attempt to reach agreement on the content of the offer of proof before presentation.

Rule 29.2: 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: 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 should seek to have their respective exhibits marked in advance of going on the record in order to avoid delays during sessions of court. Counsel shall consult with the presiding or detailed military judge regarding the order in which appellate exhibits should be marked. Prosecution and Defense Exhibits shall be marked by the court reporter, not the counsel, in the anticipated order of presentation prior to trial or during recesses. 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 has ordered 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 shall be marked as an appellate exhibit.

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 print-outs where appropriate in the record of trial.***

Rule 31.5 Military Judges will include a protective order for victim impact statements marked as appellate exhibits to ensure they are not uploaded to any public system of records under Article 140a.

Rule 32: VIDEO TELECONFERENCE REQUIREMENTS

Rule 32.1: Consistent with the Rules for Courts-Martial and applicable DoN instructions, VTC may be used to conduct Article 30a sessions for pre-referral subpoenas,

orders, or warrants, or Article 39(a) sessions for arraignments, motions practice, and any other sessions permitted by the military judge. Two-way audio and visual transmissions (in color) shall be utilized to conduct VTC sessions of court. The remote VTC location must have telephonic connectivity and a means of receiving documents and other written material.

Knowledgeable support personnel shall be available at both locations to assist with technical issues that may arise. The court reporter will transcribe the VTC witness' testimony in the same manner as a normal witness.

Rule 32.2: The trial counsel will ensure that all sites meet the necessary technology and security requirements.

Rule 32.3: VTC sessions are open to the public at the site designated by the presiding military judge consistent with the 6th Amendment, R.C.M. 504(d)(1) and R.C.M. 804.

EJCR 32.4: ***When a military judge has authorized remote testimony over the objection of one of the parties, the below safeguards will be employed. The detailed military judge may deviate from these procedures based upon the exigencies of the situation.***

a. Two-way audio and visual transmissions shall be provided and color transmissions should be used. All locations must have telephonic connectivity and means of transmitting and receiving documents/written material. A remote technician or knowledgeable support personnel will be available at both locations. The court reporter will transcribe the remote witness's testimony in the same manner as a normal witness.

b. At the discretion of the military judge, a bailiff will be detailed at the witness's remote location. The remote bailiff will identify, on the record, those present at the remote location and will ensure that the remote witness is seated far enough away from any authorized spectators so that the spectators cannot communicate with the remote witness. During the remote witness's testimony, the remote bailiff will ensure that there is no non-verbal communication between the remote witness and authorized spectators. The remote bailiff will also ensure that the remote witness has no access to papers, exhibits, or other materials while testifying unless authorized by the military judge. All spectators at the remote location must be identified on the record and authorized by the military judge.

c. The remote witness will be seated, except when sworn, and the image projected to the trial location will be a full torso frontal image to the extent possible. If able, a monitor will be placed so the remote witness will see the court proceedings as if the witness were sitting in the witness stand. Like all witnesses, the remote witness will hear all objections and Article 39(a) sessions unless otherwise directed by the military judge. During any breaks in testimony, the remote bailiff will ensure that the remote witness does not

communicate with authorized spectators except as allowed by the military judge.

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.***

Rule 34: RECORD OF TRIAL/APPELLATE RIGHTS/STATEMENT OFTRIAL 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 the course of the trial, counsel must ensure that uncommon names, places and words are spelled out on the record, that 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 all of 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. In memorializing the accused's understanding of appellate rights, counsel shall use the model Appellate Rights Statement found at: http://www.jag.navy.mil/trial_judiciary.htm.[14]

Rule 34.3: Immediately upon adjournment of the court-martial, the trial counsel shall cause a Statement of Trial Results to be prepared for the military judge's signature in accordance with R.C.M. 1101. *See* JAG/CNLSCINST 5814.1D.

A draft of the Statement of Trial Results shall be prepared by the 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 for final pretrial matters in the TMO, or if no date for final pre-trial matters is set in the TMO, then three (3) days before the date set for the commencement of trial. In a guilty plea case, the draft Statement of Trial Results, except for the sentence, shall be provided to the military judge not later than the day before the date set for trial. The military judge shall only sign the Statement of Trial Results and shall not sign the confinement order.

[14] The model Appellate Rights Statement is also attached to these rules as Enclosure 16.

EJCR 34.3a: ***The most current edition of the Statement of Trial Results form shall be used. See Enclosure 17 to these rules for the current edition at the time of the promulgation of these rules.***

Rule 34.4: Sealing Orders Required. Pursuant to M.R.E.s 412, 505, 513, 514 and 701(g)(2) and R.C.M. 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 M.R.E. 701(g)(2) shall be ordered sealed by the military judge at such time as the military judge shall direct and not later than certification of the record of trial. Exhibits containing child pornography shall also be sealed by order of the military judge. Sealing shall be accomplished to prevent unauthorized viewing or disclosure but not to unnecessarily or unfairly restrict appropriate trial preparation by counsel.

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 may be ordered sealed by the military judge prior to verification of the record of trial.

Rule 34.6: The court reporter shall ensure that 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 11inch 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 will remain only in the original record of trial. All exhibits, documents, 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 34.5 and will be sent to the Clerk of Court for the Navy and Marine Corps Court of Criminal Appeals 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, the government trial counsel will provide to the court reporter a password protected compact disk (CD) 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, the government trial counsel will scan the evidentiary exhibit or exhibits into a portable document format (.pdf) onto a password protected CD, 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 or 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 CD in the record of trial shall be provided by the government trial counsel to those with record of trial responsibilities including the trial military judge who shall forward it via email to the Clerk of Court for the Navy-Marine Corps Court of Criminal Appeals. See JAGINST 5813.1B of 29 Sep 10.

Rule 34.9: All military judges will use the sealing order located on the NMCTJ SharePoint site at: https://portal.secnav.navy.mil/orgs/JAG/52/SitePages/Home.aspx.

Rule 34.10: 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 shall be sealed and attached to the record as an appellate exhibit. This includes any motions or other writings or statements requesting *ex parte* review. *See* M.R.E. 701(g)(2).

Rule 34.11: Certification of the Record. Pursuant to R.C.M. 1112 and JAG/CNLSCINST 5814.1D, the court reporter will compile the record of trial (ROT) for certification. The certified record of trial is the official record of the proceedings of a court-martial. Once the record of trial is compiled in accordance with R.C.M. 1112(b), the court reporter will certify the ROT pursuant to R.C.M. 1112(e).

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.D, will be prepared for all courts-martial but acquittals. The court reporter will certify that this written transcript is a true, accurate, and complete copy of the audio or other electronic recording of the court-martial proceedings in the case. Certification of the record should occur within one hundred twenty (120) days after the completion of trial.

Rule 34.12: Verification of the Record and Entry of Judgment. Pursuant to JAGINST/CNLSCINST 5414.D, 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 ensures the record is complete, all of the exhibits and enclosures are appropriately included in accordance with R.C.M. 1112, the plea, 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 Statement of Trial Results noted in Rule 34.3, the trial counsel or his/her designee shall 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/CNLCSCINST 5814.1D, the military judge (or his or her circuit military judge if the Chief Trial Judge determines the military trial judge is unavailable) 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 ROT and verbatim transcript.

Rule 35: DOCUMENTS AND PLEADINGS

Rule 35.1: All electronic filings must be signed and filed in MS Word or PDF format. All documents and pleadings filed with the court will be on white 8.5 inch by 11 inch white paper.

Rule 35.2: All motions will be filed in the standard form found in Appendix A[15] and at: http://www.jag.navy.mil/trial_judiciary.htm.

Rule 35.3: All pleadings filed must have one inch margins and use Courier New or Times New Roman 10-12 point font.

Rule 35.4: Motions will be marked as appellate exhibits. Enclosures and attachments to motions shall be consolidated and attached as a separate exhibit in order to prevent needless duplication of enclosures in the record.

Rule 36: VICTIMS' LEGAL COUNSEL AND OTHER NON-PARTY COUNSEL

Rule 36.1: Victims' legal counsel, or other nonparty legal counsel, may be heard before the court to the extent authorized by applicable law. Victims' legal counsel shall file a Notice of Appearance with the court, stating the judicial circuit, applicable case caption, name of the respective client (using initials only if the client is a minor), and name, rank, address, phone number and email address of the victims' legal counsel. The notice shall also contain a brief statement as to the qualifications to practice and status as to oath of the victims' legal counsel.

[15] Also attached to these rules as Enclosure 11.

The notice must be served on all parties in the case. A victims' legal counsel who fails to file a Notice of Appearance will not be recognized by the court.

EJCR 36.1a: ***If detailed, a military victim's legal counsel shall file via email a Notice of Appearance in the format contained in Enclosure 18 with the EJC Clerk of Court at ejc.clerkofcourt@usmc.mil no later than the date of arraignment.***

EJCR 36.1b: ***Trial counsel shall furnish a copy of the EJC Rules to all military victims' legal counsel from outside the EJC appearing in a case within the EJC immediately upon notification that the military victims' legal counsel has filed a Notice of Appearance.***

Rule 36.2: If an alleged victim retains civilian counsel, trial counsel shall furnish the civilian victims' legal counsel with a copy of the Uniform Rules and any local rules. The civilian victims' legal counsel's notice of appearance must acknowledge familiarity with the Uniform Rules and any local rules.

EJCR 36.2a: ***Retained civilian victims' legal counsel shall file via email a Notice of Appearance in the format contained in Enclosure 19 with the EJC Clerk of Court at ejc.clerkofcourt@usmc.mil within five (5) business days of being retained.***

EJCR 36.2b: ***Trial counsel shall furnish a copy of the EJC Rules to the civilian victims' legal counsel immediately upon notification that the civilian victims' legal counsel has filed a Notice of Appearance.***

Rule 36.3: All victims' legal counsel are subject to these Uniform Rules, the Rules of Professional Conduct, and the applicable local rules.

Rule 36.4: If victims' legal counsel has filed a Notice of Appearance, trial counsel shall consult with the victims' legal counsel regarding availability before agreeing to any session of court in a TMO or PTIR, or requesting a continuance. Trial counsel shall provide the victims' legal counsel 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 shall immediately provide victims' legal counsel with a copy of any TMO ordered by the court, any pending PTIR, and any rulings on motions involving the victims' legal counsel's client. Any required notices or motions may be filed electronically upon the victims' legal counsel in accordance with Rule 10.3.

Rule 36.5: Victims' legal counsel may have an interest in hearings for rights afforded alleged victims by law. As such, the trial counsel and defense counsel shall provide copies of the relevant Prosecution and Defense filings to the victims' legal counsel within twenty-four (24) hours after filing. When appropriate, victims' legal counsel should be included in R.C.M. 802 conferences regarding the filing of such motions as discussed in Rule 8.1.

Rule 36.6: Victims' legal counsel may file such motions and other pleadings with the court as they deem proper to represent their client's interests. Victims' legal counsel shall articulate a basis for standing in their written pleadings. Copies of all filings by victims' legal counsel must be served on all counsel participating in the case. Victims' legal counsel filings should comply with motion and response filing dates set in the TMO; however, the military judge may set separate deadlines for the filing of any motions by a victims' legal counsel.

Rule 36.7: The military judge has discretion to allow victims' legal counsel to be heard in court via telephone or VTC. When in the courtroom, the victims' legal counsel shall remain seated behind the bar in proximity to trial counsel, except when invited inside the bar by the presiding military judge to address the court. When victim's legal counsel desires to be heard, if not seated in the well of the court, that counsel shall stand silently until recognized by the military judge and invited into the well of the court. When addressing the court, the victims' legal counsel shall do so from behind the podium. Victims' legal counsel may be heard in an Article 39(a) outside the hearing of the members. Whenever practicable, victims' legal counsel may be seated at counsel table inside the bar during lengthy or complex motions hearings in which they will be heard.

Rule 36.8: The victims' legal counsel may move to close the court proceedings during any Article 39(a) motion session in order 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. 412, the military judge must conduct a closed hearing. For hearings under M.R.E. 513(e)(2) and M.R.E. 514(e)(2), the military judge may order the hearing closed.

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 shall verify on the record that the victim was notified of the right to be heard. When a victim elects not to testify or otherwise be heard, the military judge may require the trial counsel and/or victims' legal counsel to certify in writing that the victim was made aware of the right and affirmatively declined to do so.

EJCR 37.1: ***In guilty plea cases in which a victim intends to offer an unsworn statement pursuant to R.C.M. 1001(c)(5) during presentencing, the VLC, or trial counsel in cases where there is no VLC, shall provide the parties a copy of the written unsworn statement or a written proffer of the matters that will be addressed in an oral unsworn statement no later than 1600 one business day prior to the presentencing hearing absent leave of court. In contested cases, the written statement or proffer shall be provided to the parties after findings at a time established by the presiding military judge.***

Rule 38: APPOINTMENT OF A 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 PTIR or request for docketing shall include a recommendation from both parties and, if appropriate, the victim's legal counsel, regarding this appointment. Trial counsel shall also include a draft proposed appointing order, using the standard appointment form found at: http://www.jag.navy.mil/trial_judiciary.htm.[16]

The draft shall 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 shall be accomplished at arraignment when practicable. Either party may request, or the military judge shall order, an Article 39(a) 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 shall be excused as the designee upon request by the designee or a finding of good cause by the military judge. If the designee is excused, the military judge shall 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, victims' legal counsel, or designee.

Rule 39: CONTEMPT PROCEEDINGS

Rule 39.1: Military judges are empowered to punish persons in accordance with Article 48 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 shall 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 40.1: Counsel are strongly encouraged to use the model pretrial or plea agreement depending on the offense date found at: http://www.jag.navy.mil/trial_judiciary.htm.

EJCR 40.1a: ***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***

[16] A draft proposed R.C.M. 801(a)(6) appointing order is also attached to these rules as Enclosure 20.

court's attention to any deviations from the model pretrial agreement or model plea agreement in the PTIR.

Rule 40.2: Counsel should note that for cases referred on or after 1 Jan 19, no automatic reductions in pay grade for enlisted members pursuant to Article 58a, UCMJ, will be imposed until the Secretary promulgates rules concerning automatic reductions. See JAGMAN Section 0153(e).

Enclosures:

1. Notice of Withdrawal Filing
2. Civilian Defense Counsel Notice of Appearance
3. 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. NMCTJ Bailiff Handbook
14. NMCTJ Court-Martial Member Questionnaire
15. EJC 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