



RULES OF PRACTICE  
FOR  
EASTERN JUDICIAL CIRCUIT  
U.S. NAVY-MARINE CORPS TRIAL JUDICIARY  
(REVISED ON 31 JANUARY 2019)

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## **PREAMBLE**

These local Eastern Judicial Circuit Rules (hereinafter referred to as the “Circuit Rules” (EJCR)) supplement the Uniform Rules of Practice for the Navy-Marine Corps Courts-Martial (hereinafter referred to as the “Uniform Rules”). The Circuit Rules are promulgated by the Circuit Military Judge for the Eastern Judicial Circuit (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 Circuit Rules with the Circuit Rules inserted in appropriate numerical sequence.

These Circuit Rules are effective as of 31 January 2019, and cancel the Circuit Rules dated 1 January 2016. 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:*** *These rules apply to the trial of all general and special courts-martial within the Eastern Judicial Circuit (EJC) in which the accused is subject to the Uniform Code of Military Justice.*

**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 Rules for Courts-Martial (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 Circuit Rules and Uniform Rules to all military counsel from outside the EJC and to all civilian counsel appearing in a case, immediately 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 these Circuit Rules does not automatically provide any rights or remedies to any party or participant to a trial 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.)

**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 (Attachment (1)) to the Clerk of Court within two business days of referred charges being withdrawn.*

**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. Notice should normally be provided when trial counsel submits

their proposed Trial Management Order (TMO) or makes a request for docketing.

***EJCR 4.4:*** *All changes to the charge sheet shall be initialed and dated by the trial counsel or other representative of the convening authority. All modifications to the charge sheet shall be provided to the Clerk of Court no 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 Court, civilian counsel shall file with the Clerk of Court a Notice of Appearance (Attachment (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 5803.3 series).

**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 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](http://www.jag.navy.mil/trial_judiciary.htm).
- 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.

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

- EJCR 6.6:** *All requested court sessions shall be accompanied by a PTIR (Attachment (3)) and will only be requested for referred cases. This requirement applies equally to arraignments, cases that have been docketed by the military judge at prior court-martial sessions, court sessions scheduled through a Motion for Docketing, cases rescheduled through approved continuance requests,*

*and any other requests for 39(a) sessions by either party. Both counsel, or supervisory counsel, shall sign the PTIR.*

- 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 necessary.*
- EJCR 6.8:** *Initial PTIRs shall include the referred charge sheet, convening order(s) and a proposed Trial Management Order (TMO) (Attachment (4)). As applicable, trial counsel will include copies of the relevant portions of any military orders or directives to include cover page, signature page, punitive language, any state or federal statutes alleged to have been violated, and trial counsel’s proposed elements for any novel specifications alleged. The defense counsel may, but is not required to, submit such proposed elements.*
- EJCR 6.9:** *When a victim’s legal counsel is assigned to a case, trial counsel shall list the name of that counsel on the initial PTIR requesting arraignment. Trial counsel shall note in the PTIR the victim’s legal counsel’s input on the dates in the proposed TMO.*
- EJCR 6.10:** *If the parties agree on all proposed dates, the TMO is sufficient to memorialize trial dates and filing deadlines. If the parties do not agree, then the PTIR is used to inform the Court as to the parties’ requested dates. Proposed trial dates for special courts-martial shall normally be within 60 days of arraignment, and within 90 days of arraignment for general courts-martial.*
- EJCR 6.11:** *A PTIR requesting a guilty plea pursuant to a pretrial agreement shall include a signed copy of Part I and a signed copy of the stipulation of fact, if applicable and available. If the signed stipulation of fact is not available when the PTIR is submitted, it shall be provided to the Clerk of Court no later than 0900, one business day prior to the scheduled guilty plea.*
- EJCR 6.12:** *Arraignment is the preferred means of setting trial dates and filing deadlines. When pretrial arraignment is impracticable, a Motion for Docketing (MFD), (Attachment (5)), is permissible, provided it is unopposed and authorized by the docketing judge. The use of an MFD does not eliminate the need to submit a PTIR for future court appearances.*

#### **EJC –DOCKETING PROCEDURES**

- EJCR 6.13:** *The Circuit Military Judge will appoint a docketing judge within the Circuit who will serve in that capacity for a designated duration. The Clerk of Court*

*and the docketing judge shall be the Circuit's points of contact for all docketing issues.*

- EJCR 6.14:** *Every week, all supervisory trial counsel (or other designated persons) practicing in the Eastern Judicial Circuit shall submit a proposed docket for the following week to the Clerk of Court in writing not later than 1000 on Wednesday unless otherwise directed by the docketing judge. Proposed dockets shall be submitted in the format contained in Attachment (6) and shall list all cases requested to be scheduled for the following week.*
- EJCR 6.15:** *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 Clerk of Court IAW Rule 6.14.*
- EJCR 6.16:** *Proposed dockets may be submitted to the Clerk of Court electronically. Each PTIR will be accompanied by all appropriate enclosures, complying with these Rules. Proposed dockets with missing PTIRs and/or enclosures will not be docketed without good cause and approval by the docketing judge.*
- EJCR 6.17:** *Counsel should estimate the length of each Article 39(a) session or trial. Arraignments should be docketed for the first work day of the week, barring unusual circumstances.*
- EJCR 6.18:** *The docketing judge will review the docketing requests and create and distribute the EJC court docket for the following week, making effort to schedule cases according to requested dates. The docket is normally distributed electronically by the Clerk of Court each Thursday. 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 distribution list by contacting the Clerk of Court. A copy of each week's approved docket can be accessed through the Eastern Judicial Circuit's website:  
<http://www.mcieast.marines.mil/StaffOffices/EasternJudicialCircuit.aspx>.*
- EJCR 6.19:** *Counsel shall promptly review the docket and immediately notify the docketing judge of any conflicts or discrepancies.*
- EJCR 6.20** *At the earliest opportunity, trial or defense counsel will notify the docketing judge or detailed military judge of any subsequent changes 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" are cases that were not docketed for the week in which counsel desire the case to be heard and/or were not submitted with the proposed docket IAW Rule 6.14. Although discouraged for complex cases and/or*

*issues, counsel may request a “walk-in” 39(a) session by contacting the detailed military judge (or the docketing judge if none detailed) no later than 48 hours prior to the requested 39(a) session. The Circuit Military Judge will evaluate the request and, based in part on the complexity of the issue and the availability of the military judge, will either grant or deny the request. All “walk-in” requests shall otherwise comply with these rules.*

**EJCR 6.22:** *Established trial deadlines by the Court are court orders and are not optional. Counsel will adhere to trial deadlines 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 deadline, relief shall be requested prior to that deadline.*

**EJCR 6.23:** *Notice of anticipated pleas and forum (Attachment (7)) shall be submitted to the Court pursuant to the TMO.*

#### **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 minors will be used during the course of the trial, all named minor victims will be identified by their initials on the charge sheet and in pleadings.

**Rule 7.4:** All Navy personnel shall comply with JAG/CNLSC Instruction 5211.11 of 14 Jun 13. All Marine personnel shall comply with MARADMIN Active Number: 181/10 R291951Z MAR 10 and Marine Corps Order 5800.16. All active duty counsel will comply with SECNAVINST 5211.5E dtd 28 Dec 2005 (5211.5E series).

#### **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 shall include the victims' legal counsel in R.C.M. 802 conferences in which the alleged victim has an identifiable interest. *See* Rule 36.4 below.

***EJCR 8.1a:***      ***The trial counsel shall inform the victims' legal counsel of all R.C.M. 802 conferences in which the 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, UCMJ.

**Rule 8.5:**      Government counsel applying for investigative subpoenas and warrants/orders for wire or electronic communications from a military judge will do so in-person, or via VTC/electronically for remote locations without a co-located military judge. Counsel 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 (prospective DD Forms) located at:  
[http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).

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 must send an electronic request to the Circuit Military Judge via the Eastern Judicial Circuit Clerk of Court at [ejc.clerkofcourt@usmc.mil](mailto:ejc.clerkofcourt@usmc.mil) requesting an appointment with the Circuit Military Judge or his designee for subpoena or warrant/order submission.*

**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.secnave.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 determining court, and the Chief Trial Judge's Executive Assistant at the address located at: [http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).

**EJCR 8.7a:** *Requests for the military judge to modify or quash the process must be filed electronically with the Eastern Judicial Circuit Clerk of Court at [ejc.clerkofcourt@usmc.mil](mailto: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 will not be tolerated. Discovery requests should be answered promptly in writing. All counsel are expected to adhere to the spirit of military discovery practice and shall promptly turn over all discoverable materials, including the identity of witnesses. Discovery deadlines will be established by MFD or in accordance with trial milestones otherwise ordered by the detailed military judge. The parties shall work together to resolve ongoing discovery matters, bringing unresolved discovery issues to the Court's attention as soon as they are ripe.*

**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: to protect against the making of a statement or production of evidence that is degrading and immaterial; to protect a party or person from an unwarranted invasion of privacy, annoyance, embarrassment, oppression or undue burden; to prevent violations of M.R.E. 412 and 513; to prevent breach of a privilege recognized by the M.R.E. or other laws applicable to courts-martial; to prevent disclosure of allegedly classified information or other government information that is allegedly privileged from disclosure because disclosure would be detrimental to the public interest; and/or, 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 it is specifically demonstrated 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.secnnav.navy.mil/orgs/JAG/52/SitePages/Home.aspx>.

**EJCR 9.5:** *Upon notice to opposing counsel, a party may request an in camera review of potentially discoverable material by the Court 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 victims' legal counsel, if applicable, and will include a certificate of service.*

**EJCR 10.2b:** *Whenever motions are filed with the Court, the original or a copy shall be filed with the court reporter by the submitting counsel for insertion in the record of trial no later than one work day prior to the next session of court.*

**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](http://www.jag.navy.mil/trial_judiciary.htm).

**EJCR 10.3a:** *All citations in written motions will follow the most current citation format. 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 properly cited by counsel. If an appellate court decision is not cited by counsel in the written pleading, it will not be cited orally in court unless a copy of the case or citation is provided to the judge and opposing counsel before the article 39(a) session.*

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

**EJCR 10.4a:** *Documentary evidence submitted with motions shall be marked numerically as attachments to the motion and paginated. Counsel should make every effort to have motions, responses to motions, and all supporting evidence marked in advance of the 39(a) session scheduled to litigate the motion(s) in order to avoid delaying the hearing.*

**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 motions 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 session date ordered by the Court. Should counsel desire to file any motion or response after a court-ordered trial milestone, that counsel shall include an affidavit of good cause detailing why counsel missed the court ordered deadline and why the court should now entertain the motion. The affidavit will also include a statement confirming that the counsel's regional supervisory counsel has been notified of the late filing and the reasons therefore.*
- 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:** *Litigation of motions will involve 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. *See* Uniform Rule 8.6.

**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](http://www.jag.navy.mil/trial_judiciary.htm).

**EJCR 11.2a:** *When motions to continue are filed in cases involving victims' legal counsel, a signature block for the victims' legal counsel to recommend or oppose the continuance shall be included on the response portion. In cases involving unrepresented victims, trial counsel shall indicate the victims' support or opposition of the continuance in their response.*

**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), the military judge will designate the situs of trial.

**EJCR 12.1:** *Senior Trial counsel (or other designated persons) should identify and propose specific courtrooms in their proposed docket that are most*

*appropriate given the nature of the proceeding, the number of counsel and other participants involved, the convenience of the participants, and pertinent logistical factors. The circuit docketing judge will consider 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 is a matter of the highest priority for all trial participants. Potential security risks include spectators, witnesses, and the accused. Any matter that might affect courtroom security 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 judge. In any case involving a potential security problem, the Circuit Military Judge will be advised and will make a risk assessment. In any case in which the detailed military judge determines a security problem exists or where a high 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. The detailed military judge may delay the trial until satisfied that the court-martial may 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 kept in separate waiting rooms and lobbies when waiting to testify or enter the court room. Trial clerks should inform all spectators and witnesses of the general rules regarding court-room security and decorum.*
- Rule 13.3:** The circuit 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 13.4a: Brig chasers shall not sit in the gallery unless they have removed 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 counsel, accused, and witnesses. It does not apply to spectators.

**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:** *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 caps shall not be worn by anyone in the courtroom unless authorized by the presiding military judge.*

**EJCR 15.6:** *Disruptive note passing, whispering, gesturing and other demonstrations and interplay between counsel and those in the gallery during the course of trial is prohibited.*

**EJCR 15.7:** *Counsel who become aware of potential media interest or presence at any phase of trial shall inform the presiding military judge as soon as possible. Trial counsel will coordinate with the bailiff to ensure that no video or audio recording devices are permitted in 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 trial, that the presence of the accused is required, and that appropriate transportation to the situs of the trial should be arranged. Generally, trial counsel is responsible for ensuring the timely presence of an accused that is in pretrial confinement or other restraint. However, after the accused arrives at the place of trial, defense counsel is responsible for the timely presence of an accused at all required court sessions. Defense counsel is also 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](http://www.jag.navy.mil/trial_judiciary.htm).

**ECJR 17.1:** *A bailiff shall be present at every guilty plea or contested trial (with or without members) or as directed by the military judge in order to enhance courtroom security and the efficient administration of the court.*

**ECJR 17.2:** *The bailiff will not be a witness. The bailiff will not be a unit escort or guard for the accused. If the detailed military judge excuses the presence of a 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.

**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.

### **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, court reporter, 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 waiting time for members. 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 en banc 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 “rapprochement” 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](http://www.jag.navy.mil/trial_judiciary.htm).
- EJCR 22.2a:** *Trial counsel shall ensure that all court members complete the NMCTJ Court-Martial Member Questionnaire (Attachment (8)). Completed questionnaires shall be submitted to the court with the Government’s final pretrial matters in accordance with the TMO. Stale questionnaires 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:** *Trial counsel shall provide the combined witness list to the court with the Government's final pretrial matters in accordance with the TMO.*

**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](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 each member is provided a folder at their respective seat in the members' box prior to the members being called. 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, and counsel 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.

#### **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.

**EJCR 24.4:** *Counsel shall not interrupt or talk over opposing counsel or the military judge unless making an objection.*

#### **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. Counsel who anticipate their opening statement will exceed 30 minutes will notify the court.*
- 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 counsel calling the witness concerning appropriate attire and decorum to include that, when testifying, they must not chew gum or tobacco, wear dark glasses, or use slang expressions or profanity, except as may be required in the presentation of the case. Witnesses shall be told 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 base. 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 military judge to reduce, whenever practicable, 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:** *Live, in-person testimony from witnesses is required (in the absence of a stipulation of expected testimony) during trial on the merits. 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 are 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.*
- EJCR 26.8:** *For military judge alone guilty plea cases, counsel shall list the number of anticipated sentencing witnesses in the PTIR.*

### **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, recapitulating testimony, or attempting to guide a witness 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 27.2a:***     *The victims’ legal counsel may verbally alert the court if the non-party legal counsel has stood and not been recognized in a reasonable amount of time.*

### **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 (see EJCR 6.8).*

### **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. 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 31.5:** *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, counsel must ensure the exhibits are properly represented by hard-copy print-outs where appropriate in the record of trial.*

### **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 government 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 VTC 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. The two VTC locations must have telephonic connectivity and means of receiving documents/written material. A VTC technician or knowledgeable support personnel will be available at both locations. The court reporter will transcribe the VTC 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 VTC witness is seated far enough away from any authorized spectators so that the spectators cannot communicate with the VTC witness. During the VTC witness's testimony, the remote bailiff will ensure that there is no non-verbal communication between the VTC witness and authorized spectators. The remote bailiff will also ensure that the VTC witness has no access to papers, exhibits, or other materials while testifying unless authorized by the military judge. All spectators at the remote VTC location must be identified on the record and authorized by the military judge.*

*c. The VTC 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 VTC witness will see the court proceedings as if the witness were sitting in the witness stand. Like all witnesses, the VTC 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 VTC 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 OF TRIAL RESULTS/ENTRY OF JUDGMENT/SEALING ORDERS**

**Rule 34.1:** A complete and accurate record of the proceedings is required to protect the rights of all parties. During 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](http://www.jag.navy.mil/trial_judiciary.htm).

**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 5814.1C.

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.

**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 11 inch envelope, two hole-punched at the bottom with the opening of the envelope at the bottom of the record of trial for easy removal of sealed materials, and the sealing order or a copy affixed to the envelope in the original record of trial (or substituted for the sealed materials in the copies of the record of trial).

**Rule 34.7:** Court reporters will ensure the sealed matters are not further reproduced or copied and 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:** Entry of Judgment. In accordance with R.C.M. 1111 and JAG/CNLSCINST 5814.1C, upon receipt of the convening authority's action, 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. Entries of judgment will be signed by the military judge as soon as practicable, but no later than ten (10) days after the receipt of the convening authority's action.
- Rule 34.12:** Certification of the Record. Pursuant to R.C.M. 1112 and JAG/CNLSCINST 5814.1C, upon receipt of the entry of judgment, the court reporter will compile the record of trial (ROT) for certification. The certified record of trial is the official record of the proceedings of a court-martial. Once the record of trial is compiled in accordance with 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 5814C, will be prepared for all courts-martial but acquittals. The court reporter will certify that this written transcript is a true, accurate, and complete copy of the audio or other electronic recording of

the court-martial proceeding in the case. Certification of the record should occur within one hundred twenty (120) days after the completion of trial.

- Rule 34.13:** Verification of the Record. Pursuant to JAGINST/CNLSCINST 5814.1C, the military judge will verify the record of trial within twenty (20) days of receipt of the certified record, including the verbatim transcript. “Verifying” the record of trial ensures the record is complete, all of the exhibits and enclosures are appropriately included in accordance with R.C.M. 1112, the pleas, findings, and sentence are accurately reflected in the transcript accompanying the record of trial, and the verbatim transcript is suitable for appellate review.

### **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 and) at: [http://www.jag.navy.mil/trial\\_judiciary.htm](http://www.jag.navy.mil/trial_judiciary.htm).
- Rule 35.3:** All pleadings filed must have one inch margins and use Courier New or Times New Roman 10-12 point font.

### **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. 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:** *The victim’s legal counsel shall file a notice of appearance with the clerk of court no later than the date of arraignment.*
- 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.
- 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 victim's legal counsel, or trial counsel in cases where there is no victim's legal counsel, 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](http://www.jag.navy.mil/trial_judiciary.htm).

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 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](http://www.jag.navy.mil/trial_judiciary.htm).
- EJCR 40.1a:** *All counsel shall use the NMCTJ model pretrial agreement (Attachment (9)) or NMCTJ model plea agreement (Attachment (10)). Counsel shall direct the 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).

### **Attachments:**

- (1) Notice of Withdrawal
- (2) Civilian Counsel Notice of Appearance
- (3) PTIR
- (4) Trial Management Order
- (5) Motion for Docketing
- (6) Request for Docketing
- (7) Notice of Pleas and Forum
- (8) Court-Martial Member Questionnaire
- (9) Model Pretrial Agreement
- (10) Model Plea Agreement