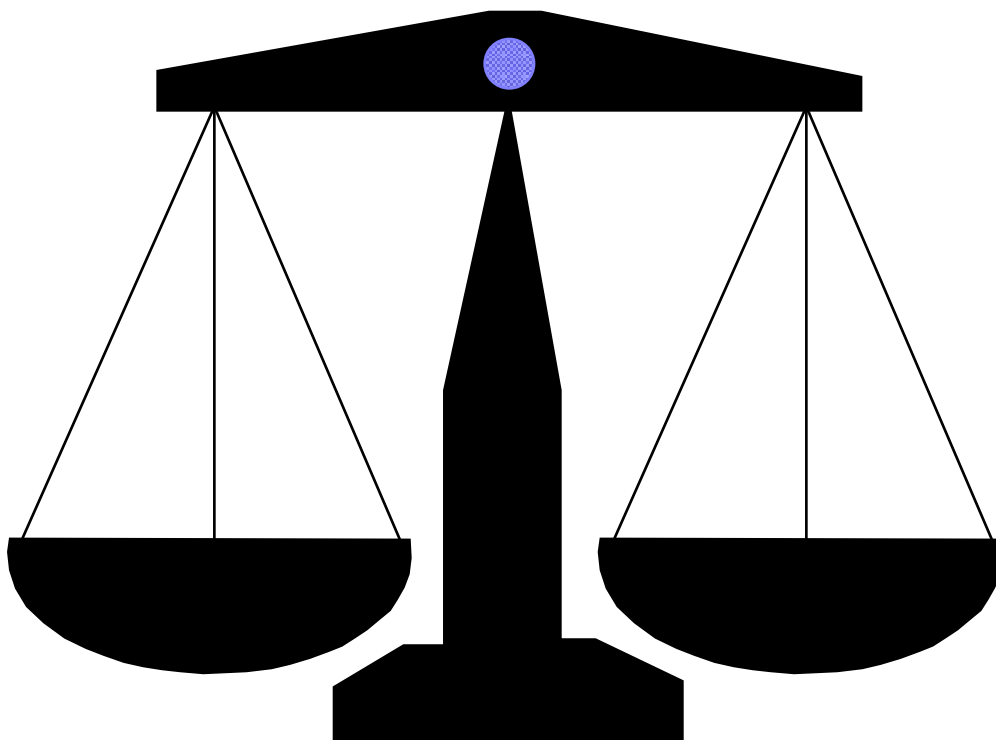


RULES OF COURT



**WESTERN
JUDICIAL CIRCUIT**

(5 OCT 2021)

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Note: The *Rules* promulgated herein conform to the numbering format of the *Uniform Rules* as applicable.

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**Rules of Practice
Before Navy-Marine Corps Courts-Martial
Western Judicial Circuit**

PREAMBLE

These local rules (hereinafter referred to as the *Circuit Rules* (WJCR)) supplement the Uniform Rules of Practice before Navy-Marine Corps Courts-Martial, dated 27 September 2021 (hereinafter referred to as the *Uniform Rules*). These *Circuit Rules* are promulgated by the Circuit Military Judge (CMJ) for the Western Judicial Circuit (WJC) 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*. The *Uniform Rules* are republished within these *Circuit Rules* with the *Circuit Rules* inserted in appropriate numerical sequence.

These *Circuit Rules* and the attachments may be found on the WJC SharePoint site, in the "Publications" folder, at:
https://portal.secnnav.navy.mil/orgs/JAG/52/Judicial_Circuits/WESTERN/Publications/Forms/AllItems.aspx

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.

WJCR 1.1a: These *Circuit Rules* apply to all Navy-Marine Corps courts-martial tried under the cognizance of the CMJ of the Western Judicial Circuit.

Rule 1.2: All participants to the court-martial must comply with the 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, or fashion other appropriate remedies.

WJCR 1.2a: Detailed defense counsel shall furnish a copy of the *Circuit Rules* and *Uniform Rules* to all military counsel detailed or approved from outside the Circuit and to all civilian counsel appearing in a case, immediately after such counsel is retained or made available.

RULE 2: PURPOSE

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

WJCR 2.1: These *Circuit Rules* are intended to facilitate the efficient and orderly administration of justice within the Western Judicial Circuit in support of the Manual for Courts-Martial's stated purpose of military law. See MCM (2019 ed.), Part I (Preamble), para. 3.

RULE 3: CONSTRUCTION

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

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 5813.4K of 29 MAR 21¹.)

WJCR 4.1a: After the referral of charges, the cognizant Trial Services Office (TSO) shall provide the Clerk of Court with a copy of the charge sheet and convening order within three (3) business days of referral. This is accomplished by uploading copies of the referred charge sheet and convening order to the WJC SharePoint site in the "Case Creation" folder.

WJCR 4.1b: After referral of charges, if a case results in a plea agreement and/or will be disposed of via alternate disposition and withdrawal of charges, trial counsel and defense counsel will notify the Docketing Military Judge (docketing judge), detailed military judge, and Clerk of Court via email at the earliest practical opportunity. Further, if as a result of the completed pretrial negotiations, a military judge is required to preside over a guilty plea hearing and sentencing, counsel are required to provide the court with proposed dates to conduct said guilty plea hearing and sentencing. Counsel will provide the court with proposed dates for the hearing as soon as possible but not later than three (3) business days after the last signature on the agreement.

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.

WJCR 4.2a: Trial counsel shall submit proper documentation, as defined by Uniform Rule 4.2, to the Clerk of Court and the docketing military judge within one (1) business day of referred charges being withdrawn. Upon receipt of proper documentation of withdrawal, the Clerk of Court will remove future dates for the affected case from the Long Range Docket. An

¹ Navy Marine Corps Trial Judiciary, establishing Judicial Circuits and Areas of Responsibilities.

example of a certificate of withdrawal is contained in Attachment (1).

WJCR 4.2b: Trial counsel must immediately notify the court reporters if referred charges have been withdrawn and submit proper documentation of such withdrawal to the court reporters.

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. Trial counsel should normally provide notice when they submit the proposed Trial Management Order (TMO) or make a request for docketing.

WJCR 4.4: All pen changes to the charge sheet shall be initialed and dated by the trial counsel or other representative of the convening authority. If, after the charge sheet for a given case has been provided to the Clerk of Court, pen changes are made to the charge sheet, trial counsel will submit a copy of the modified charge sheet to the Clerk of Court no later than one (1) business day from the date of the modification.

WJCR 4.4a: Pursuant to R.C.M. 1101(a)(1) and R.C.M. 1111(b)(1), the Statement of Trial Results and the Entry of Judgment must account for all charges and specifications referred. Therefore, when charges and/or specifications are dismissed prior to referral, the remaining charges and/or specifications are to be renumbered. When charges and/or specifications are withdrawn and dismissed after referral, the remaining charges and/or specifications are not to be renumbered.

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 currently

admitted to practice.

WJCR 5.1a: Prior to appearing in Court, civilian defense counsel must file a Notice of Appearance (Attachment (2)) with the Clerk of Court and court reporters no later than one (1) business day before the scheduled court hearing.

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 5803.1E).

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 5.5: Civilian counsel will be sworn on the record by the military judge when making an initial appearance in every case, even if said counsel has been previously sworn.

RULE 6: DOCKETING/TRIAL MANAGEMENT ORDERS

- Rule 6.1:** The circuit military judge (CMJ) 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.
- WJCR 6.1a: The CMJ controls the docket and trial schedules for all referred courts-martial within the Circuit. The CMJ will appoint a docketing judge within the Circuit who will serve in that capacity. The authority to make all docketing decisions in the Western Judicial Circuit is delegated from the CMJ to the Docketing Military Judge. The Docketing Military Judge shall be the Military Judge within the Circuit responsible for implementing and enforcing all docketing procedures within these rules.
- Rule 6.2:** All circuits will maintain their docket/calendar on the Navy-Marine Corps Trial Judiciary (NMCTJ) SharePoint website. The NMCTJ SharePoint site is available at:
<https://portal.secnav.navy.mil/orgs/JAG/52/SitePages/Home.aspx>. Every Thursday, every circuit will coordinate with the Northern Circuit clerk to ensure that the docket is accurate for the next 30 days. The Northern Circuit clerk will relay this information to the OJAG Public Affairs Office to ensure that the monthly docket is posted in accordance with Article 140a.
- Rule 6.3:** Docketing judges and military judges presiding over arraignments shall use the standard TMO located at: https://www.jag.navy.mil/trial_judiciary.htm.
- Rule 6.4:** The Navy-Marine Corps Chief Trial Judge (CTJ) retains initial detailing authority for all reserve military judges. Circuits requesting reserve support will forward requests to the CTJ for consideration. Once a detailed reserve military judge reports for AT/ADT/drill period on station, the CMJ may detail additional arraignments and/or Article 39(a) sessions as appropriate.

WJCR 6.4a: Counsel may contact the Clerk of Court to obtain contact information for reserve military judges that have been detailed to preside over cases in the WJC for which counsel will be appearing. Counsel must ensure that the docketing judge and the Clerk of Court are included in all communications regarding administrative and logistical matters between counsel and the detailed reserve military judge.

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

WJC - DOCKETING PROCEDURES

WJCR 6.6: The Clerk of Court and the docketing judge shall be the Circuit's primary points of contact for all docketing issues. For all substantive issues, counsel shall communicate with the detailed military judge for that particular session of court, as denoted on the WJC's weekly published docket. When in doubt as to which judge to contact, counsel are advised to communicate with the docketing judge. Normally, the military judge who presides over motion sessions will be the military judge that will preside over trial, but that is subject to the discretion of the CMJ. On occasion, reserve military judges or active duty military judges from outside the WJC may be detailed to preside over cases in the WJC. Counsel may contact the Clerk of Court in order to communicate with these judges IAW with WJCR 6.4a.

WJCR 6.7: No later than 1200 on Friday of each week, each TSO practicing in the WJC shall submit a docket request to the Clerk of Court and the docketing judge for the week which begins on the second Monday after the Friday due date (*i.e.* ten (10) days later), unless directed otherwise by the docketing judge. Only Senior Trial Counsels or TSO Chiefs may submit docket requests. Docket requests must be submitted

as a Microsoft Word file and comply with the format contained in Attachment (5).

- WJCR 6.8: If a TSO does not desire to schedule any cases for a specified docketing cycle, a docket request stating "no court" must be submitted to the Clerk of Court and docketing judge IAW WJCR 6.7.
- WJCR 6.9: 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. Installations other than Camp Pendleton should make all reasonable efforts to docket all arraignments on the same day of the week in order to consolidate administrative, logistical, and travel arrangements. Absent specific justification that accompanies the docket request, the docketing judge may make changes to dates, times, and locations of hearings in accordance with available judicial resources.
- WJCR 6.10: Docket requests will be submitted to the Clerk of Court and the docketing judge via email and will be accompanied by all appropriate supporting documentation IAW these rules, e.g. charge sheet, convening order, proposed TMO, allied papers, plea agreement, stipulation of fact, etc. The supporting documentation may be uploaded to the "Case Creation" folder or the Active Case File for a given case (if one has been created) on the WJC SharePoint site. When a docket request is submitted by the TSO leadership, that is a communication to the Court that all supporting documentation has already been uploaded to the WJC SharePoint site. A docket request submitted without appropriate supporting documentation will not be docketed without good cause and approval by the docketing judge.
- WJCR 6.11: For all cases, initial docket requests for an arraignment shall include the referred charge sheet, convening order(s), and a proposed TMO (Attachment (3)) as supporting documentation. For general courts-martial, trial counsel must also submit allied papers (i.e., Articles 32, 33, 34 letters and PHO report) as supporting documentation. As applicable, trial counsel will also 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. Defense counsel may submit their own proposed trial milestone dates, but only if opposing the trial counsel's proposed TMO.

- WJCR 6.12: Court sessions ordered and placed on the Long Range Docket by a military judge at a prior session of court that are no longer needed by the parties require a negative docket request to be filed in accordance with the rules governing docketing procedures. Negative docket requests will be annotated in the text of the STC's or TSO Chief's email to the docketing judge/Clerk of Court and will include an appropriate explanation as to why the court session is no longer needed.
- WJCR 6.13: When a victim's legal counsel (VLC) is assigned to a case, the government shall list the name of that VLC on the initial docket request requesting arraignment. This can be accomplished by noting the name of the VLC in the text of the STC's or TSO Chief's email to the docketing judge/Clerk of Court.
- WJCR 6.14: There is no requirement that the parties agree on proposed trial milestone dates. A proposed TMO must be submitted by the trial counsel to the Clerk of Court prior to the arraignment and with the docket request, even if the parties do not agree on the proposed dates. If the parties agree on all proposed dates, the proposed TMO is sufficient to memorialize the trial dates and filing deadlines requested by the parties. If the parties do not agree on all the proposed dates, this should be noted in the text of the STC's or TSO Chief's email to the docketing judge/Clerk of Court.
- WJCR 6.15: Proposed trial dates for judge-alone special courts-martial referred under Article 16(c)(2)(A), UCMJ, shall normally be within thirty (30) days of arraignment. Proposed trial dates for special courts-martial shall normally be within sixty (60) days of arraignment. Proposed trial dates for general courts-martial shall normally be within ninety (90) days of arraignment.
- WJCR 6.16: A docket request for a guilty plea shall include a signed copy of the plea agreement (or Part I of the

pretrial agreement, if applicable) and the stipulation of fact. If the docket request for a guilty plea is also the initial docket request in the case, it shall also include all documents required under WJCR 6.11. If the signed stipulation of fact is not available when the docket request is submitted, it shall be provided to the Clerk of Court no later than two (2) business days prior to the scheduled guilty plea.

WJCR 6.17: An arraignment is the preferred means of setting trial milestones. However, an MFD 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 docket request for future court appearances. An unopposed/joint MFD may be submitted to the docketing judge, copying the Clerk of Court, at any time. A MFD need not be submitted with the weekly docketing schedule/cycle. When submitting a MFD to the docketing military judge, the trial counsel is still required to submit all initial supporting documentation IAW WJCRs 6.10 and 6.11. See Attachment (4) for a proposed MFD format.

WJCR 6.18: In accordance with R.C.M. 707(c)(1), after referral, requests for pretrial delay may be submitted to the docketing judge for resolution, unless another military judge has already been detailed to preside over the court-martial.

WJCR 6.19: After the CMJ has reviewed and approved the weekly docket, the Clerk of Court will publish it. The docket will be published by close of business (COB) each Monday. Publication is accomplished by posting the weekly docket to the WJC SharePoint site and the Camp Pendleton website. Supervisory counsel shall ensure that the weekly docket is disseminated to all parties concerned with the scheduling of a particular case. A copy of each week's approved docket can be accessed through the WJC SharePoint site and the Camp Pendleton website:

(1) https://portal.secnnav.navy.mil/orgs/JAG/52/Judicial_Circuits/WESTERN/Weekly%20Dockets/Forms/AllItems.aspx; and

(2) <https://www.pendleton.marines.mil/Commands/Tenant-Commands/Western-Judicial-Circuit/>

WJCR 6.20: After publication of the weekly docket, a case

docketed for trial or an Article 39(a) session may not be removed or changed from the published docket without the express authorization of the detailed military judge or docketing judge, except when the charges are withdrawn by the Convening Authority. If charges are withdrawn, the trial counsel must immediately notify the detailed military judge, docketing judge, and the Clerk of Court. See WJCR 4.2a.

- WJCR 6.21: Counsel shall promptly review the docket and immediately notify the docketing judge of any conflicts or discrepancies.
- WJCR 6.22: At the earliest opportunity, trial or defense counsel will notify the docketing judge and/or detailed military judge of any subsequent changes to a previously submitted docketing request—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 trial, etc.
- WJCR 6.23: “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 docket request IAW WJCR 6.7. “Walk-ins” are typically arraignments or guilty pleas, but could also be Article 39(a) sessions for motions. Counsel may request a “walk-in” session by contacting the detailed military judge (or the docketing judge if none detailed) no later than forty-eight (48) hours prior to the requested session. The detailed military judge or the docketing judge will evaluate the request and will either grant or deny the request. All “walk-in” requests shall otherwise comply with these rules.
- WJCR 6.24: Established trial milestones by the Court are court orders and are not optional. Counsel will adhere to trial 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 milestone, relief shall be requested prior to that milestone coming to pass and accompanied by a showing of good cause.
- WJCR 6.25: Notice of anticipated Pleas and Forum (Attachment (6)) shall be submitted to the Court pursuant to the Trial Management Order (TMO).

WJCR 6.26 Failure to comply with any of the requirements in either the *Uniform Rules* or the *Circuit Rules* may result in the requested hearing either (1) not being docketed as requested, or (2) being removed from a published docket.

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 also be redacted in all documents (e.g., pleadings and discovery material) that are electronically transmitted. At a minimum, social security numbers, home addresses, telephone numbers, e-mail addresses, dates of birth, financial account numbers, and 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.

WJCR 7.3a: PII and the names of all alleged victims, regardless of the offense, must be minimized to the maximum extent possible. All alleged victims will be identified on charge sheets and in pleadings by their initials. If the alleged victim is a service member, include rank and organization (e.g., Lance Corporal A.B.C., USMC).

WJCR 7.3b: The names of victims, regardless of the offense, will be used during the course of the trial. When names of the victims are used during the course of trial, their names will be replaced by initials in any written version of the record and, whenever practicable, in any audio version of the record. All other post-trial documents will use initials of victims, unless full names are otherwise required (e.g., the Victim Election of Rights Form (VERF), which requires the victim's PII, to include their full name).

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 personnel will comply with SECNAVINST 5211.5F of 20 May 2019² (and JAGINST 5813.2 of 16 Dec 20.³

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 (VLC), if applicable. Whenever appropriate, the military judge may, in his/her sole discretion, include the VLC in R.C.M. 802 conferences in which the alleged victim has an identifiable interest. See Rule 36.4 below.

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.

² Department of the Navy Privacy Program

³ Public Access to Court-Martial Dockets, Filings, and Records Pursuant to Article 140a, UCMJ

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.

WJCR 8.3a: The WJC will detail a duty military judge each week to receive and process requests regarding pre-referral subpoenas, orders, warrants, or other pre-referral judicial proceedings as ordered by an appellate court. The identity of the duty military judge will be annotated on the Long Range Docket on the WJC SharePoint site. If the duty military judge is unavailable, then any available WJC military judge may conduct the Article 30a, UCMJ proceeding. The duty military judge is only detailed for the purposes of matters within the scope of Rule 8 and is not otherwise available to discuss matters with counsel.

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 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 CMJ or his/her designee using the model application for warrant and warrant forms (DD Form 453 (Subpoena), DD Form 3057 (Application for Warrant for Electronic Communications), and DD Form 3056 (Warrant for Electronic Communications) located at: https://www.jag.navy.mil/trial_judiciary.htm. Like other pre-referral subpoenas and orders, military judges will expedite review of warrant applications as their dockets permit, but no later than five (5) days from the date of the application is presented to the CMJ.

WJCR 8.5a: IAW WJCR 8.3a, the WJC will detail a duty military judge each week to receive and process requests for warrants or orders for wire or electronic communications authorized under Article 46(d)(3), UCMJ, and implemented by R.C.M. 703A, as required. There will only be one duty military judge per week. The duty military judge will be the recipient of all pre-referral and post-referral requests for warrants or orders for electronic communications, and the docketing judge will be copied on all such requests.

WJCR 8.5b: If there is no military judge detailed to the case, then the duty military judge will act on the post-referral requests for warrants or orders for electronic communications. If there is a military judge detailed to the case, then the duty military judge will forward to the detailed military judge for his/her action any post-referral requests for warrants or orders for electronic communications. Government counsel applying for post-referral warrants or orders for electronic communications must inform the duty military judge that the case has been referred, state whether a military judge has been detailed, and if a military judge has been detailed, provide the name of the detailed military judge.

WJCR 8.5c: Counsel will ensure that all pre-referral and post-referral requests are received by the duty military judge and the docketing judge. Counsel are encouraged to contact the Clerk of Court to ensure that the duty military judge is in receipt of all pre-referral and post-referral requests.

WJCR 8.5d: If a request for pre-referral or post-referral process is being resubmitted after having been previously denied, government counsel will notify the duty military judge that the request was previously denied, provide the name of the military judge who previously denied it, and explain what changes, if any, have been made to the request prior to resubmission.

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 determining court, and the Chief Trial Judge's Executive Assistant at the address located at:
https://www.jag.navy.mil/trial_judiciary.htm

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.

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 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 interest 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 an 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 a 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 it is just under the circumstances. A model protective order is located on the NMCTJ SharePoint site at:
<https://portal.secnave.navy.mil/orgs/JAG/52/SitePages/Home.aspx>.

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, VLC, by electronic transmission. It is the filing party's responsibility to ensure that the filing is received by the intended court, opposing party, VLC, or non-party legal counsel and appropriate court reporter. In cases where a named victim is not represented by VLC, any notice or motion which implicates an alleged victim's rights 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. It is the filing party's responsibility to provide a hardcopy of any filing, with all appropriate attachments, to the court reporter for inclusion in the record of trial.

WJCR 10.2a: All motions and responses will be filed electronically, to include all enclosures or exhibits, using the WJC SharePoint unless technically unfeasible due to size restrictions or website access. In such a case, the motion or response shall be provided to the Clerk of Court as soon as possible on a CD or DVD and shall include all enclosures or exhibits. Filing motions or responses on the WJC SharePoint site shall constitute electronic service, on all parties. Any exhibits or enclosures to a motion/response shall be filed contemporaneously with the filing of the motion/response.

WJCR 10.2b: Counsel are required to submit all motions and responses, with all enclosures, to the court reporter for marking one (1) business day prior to the Article 39(a) session where the motion/response will be litigated.

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 at https://www.jag.navy.mil/trial_judiciary.htm.

WJCR 10.3a: Unless good cause is shown and counsel are specifically authorized by the detailed military judge, all motions and/or responses must be ten (10) pages or less in length, exclusive of enclosures.

WJCR 10.3b: When counsel have made a motion with voluminous enclosures (e.g., text messages, internet searches, etc.), counsel must identify the specific and relevant information for that motion found within the voluminous enclosure either on the face of the materials or in a separate enclosure. Counsel are encouraged to use techniques such as highlighting in

yellow and/or redacting. Counsel must refrain from submitting large volumes of irrelevant information to the Court in order to avoid including unnecessary information in the record of trial.

- Rule 10.4: The military judge may require any pleading that requires an order to be accompanied by a proposed order by the moving party. If required by the military judge, the moving party and any responding counsel will include proposed Findings of Fact and Conclusions of Law.
- Rule 10.5: Motions will be marked as appellate exhibits. When filing a pleading, a party must file any evidence offered in support of the pleading separately as the next appellate exhibit in order.
- (a) For example, if the Defense were to submit a motion to suppress as AE XX, the evidence submitted in support of the motion must be submitted as AE XXI. The evidentiary filing must contain a front page that lists the specific evidentiary exhibits. This requirement applies equally to the Government, Defense, and any third-party submissions. Counsel must work closely with the court reporters to ensure that all submissions are marked correctly.
 - (b) Any supplemental evidence or attachments for a previously marked motion will be included in the applicable appellate exhibit previously marked for the evidence in support of that motion. Using the example above, any supplemental Defense evidence for AE XX that was not originally included in AE XXI will be marked as AE XXI(a), AEXXI(b), etc. The supplemental submission must also include the date submitted.
 - (c) All electronic media will be provided in a format that can be appended to the record and reviewed by reviewing authorities. All video and audio recordings submitted as evidence on a motion must be accompanied by a verbatim transcript of, at a minimum, the portions of the recordings that are pertinent to the motion.
- Rule 10.6: 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 10.7: If the military judge rules adversely to the government and the government contemplates an appeal pursuant to Article 62, UCMJ and R.C.M. 908, the military judge must state on the record the time of the ruling so that the government may compute the 72-hour time period within which to file notice of an appeal. The military judge will also notify the government of how to provide the military judge with written notice of appeal.

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

WJCR 10.8a: If a party is opposing a motion, they must do so in writing by the TMO deadline for responses. Counsel will file their response using the model format IAW Rule 10.3.

WJCR 10.8b: If a party is conceding an opposing party's motion, the conceding party must inform the Clerk of Court and docketing judge via email. In addition, if the concession results in a future court session not being required, counsel must notify the Clerk of Court and the docketing judge, and comply with WJCRs 6.12 and 6.20.

Rule 10.9: **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 10.10: 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 10.11: 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.

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 VLC, the moving party must certify that the motion was served on the VLC. In cases involving a named victim not represented by a VLC, 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 at: https://www.jag.navy.mil/trial_judiciary.htm.

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

RULE 12: SITUS/HOURS

- Rule 12.1: Unless otherwise directed by the Convening Authority pursuant to R.C.M. 504(d)(1)(B), the military judge will designate the situs of the trial.
- Rule 12.2: Regular court hours will run from 0830 to 1700, Monday through Friday. Military judges may, after consultation with the parties, alter the hours as needed to ensure the fair and expeditious processing of court proceedings and the interests of justice. If a day extends past 1930, the military judge must notify the CMJ at the earliest possible opportunity.

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.
- Rule 13.3: The CMJ will annually review the security plan for the courtroom facilities within the circuit with the government representative responsible for courtroom security at each installation.
- Rule 13.4: The wearing or carrying of weapons in the courtroom is prohibited except when authorized by the 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 of a firearm inside the courtroom itself.

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.

WJCR 14.1a: The uniform for all courts within the WJC will be the Marine Corps Service "C", or service equivalent, regardless of seasonal uniform regulations, unless the detailed military judge designates otherwise.

WJCR 14.1b: Civilian counsel will wear conservative business attire as would be appropriate for an appearance in a United States District Court.

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. The

government will inform the military judge of efforts made to prevent the members from seeing the accused in restraints while the accused or members are transiting the building.

Rule 14.4: The judicial robe will be worn by the military judge in all Department of the Navy courts-martial, including during hearings on interlocutory matters.

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.

- Rule 15.4: All personnel are forbidden from recording any of the proceedings. See Rules 23.2, 23.3.
- Rule 15.5: VLC may attend court proceedings remotely via telephone or other remote means. Absent good cause, VLC must provide the military judge notice no later than three business days before the hearing that the VLC intends to attend remotely.
- Rule 15.6: (Alleged) victims may attend court proceedings remotely - via telephone or other remote means - if the military judge confirms that the following conditions have been met:
- (a) The (alleged) victim is participating onboard a military installation;
 - (b) The (alleged) victim is joined in the same physical location by:
 - 1. The (alleged) victim's actual VLC;
 - 2. A substitute VLC who has agreed to attend the proceeding with the (alleged) victim; or
 - 3. A substitute government representative - approved by the military judge - who has agreed to attend the proceedings with the (alleged) victim;
- and;
- (c) The VLC/government representative joining the (alleged) victim establishes to the military judge's satisfaction that the (alleged) victim is attending in compliance with the remaining rules set forth herein.
 - (d) The military judge has the discretion to modify any of the requirements set forth in this rule on a case-by-case basis if the (alleged) victim establishes good cause to do so.
- Rule 15.7: Spectators are forbidden from disturbing the proceedings of the court-martial, using any menacing word, sign or gesture in the presence of the military judge, or demonstrating agreement or disagreement, either verbally or by non-verbal conduct (e.g. shaking or nodding of head), with testimony or other trial procedures. Spectators who violate this rule may be excluded from the courtroom or, in aggravated cases, held in contempt. Counsel are responsible for advising their clients, their witnesses, and friends of the (alleged) victim,

accused and counsel of the decorum required in the courtroom.

WJCR 15.7a: 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.

WJCR 15.7b: Disruptive note passing, whispering, gesturing, and other demonstrations and interplay between counsel and those in the gallery during the course of trial is prohibited.

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.

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:
https://www.jag.navy.mil/trial_judiciary.htm.

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.

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.

WJCR 19.4a: Trial and defense counsel are required to submit all proposed exhibits (including Appellate Exhibits) to the court reporter for marking one (1) business day prior to the start of an arraignment, an Article 39(a) motions session, guilty plea cases, and contested trials.

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.

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.

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.

WJCR 22.1a: Unless good cause is demonstrated by counsel, and approved by the military judge, counsel are limited to twenty (20) group voir dire questions. The voir dire questions shall be pertinent to the case and not cumulative with the military judge's questions.

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: https://www.jag.navy.mil/trial_judiciary.htm.

WJCR 22.2a: For courts-martial within the WJC, the WJC Court-Martial Member Questionnaire shall be used. See Attachment (7).

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.

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:
https://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.

RULE 23: PROHIBITED ITEMS IN THE COURTROOM

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

WJCR 23.1a: Members, accused, and counsel are permitted to have covered drinks in the courtroom.

WJCR 23.1b: All firearms to be used as exhibits will be inspected by the trial counsel to ensure that the weapon is a clear and safe weapon. When possible, trigger locks, cables, and/or other safety devices (e.g., zip ties) 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 placed in silent mode and used only during recesses of the 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.
- Rule 24.4: Counsel shall address all remarks, arguments, and questions to either the court or the witness testifying and shall refrain from addressing opposing counsel directly.

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.
- WJCR 25.1a: If counsel believe that uncharged misconduct may be raised when questioning a witness, the counsel must first raise the issue with the military judge in an Article 39(a) session outside the presence of the members.
- 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.

WJCR 25.5: Pursuant to R.C.M. 1112(b)(1), the audio recording of the court-martial proceedings are included in the record of trial. The microphones used in court will record everything said unless muted. Counsel will ensure that their individual microphones are muted when having conversations amongst themselves and/or consultation with their clients. Counsel will unmute their microphone upon completion of their conversations that are not intended to be part of the record.

WJCR 25.6: Counsel will describe for the record all movements, actions, and demonstrations conducted in court. This rule applies whether the movement, action, or demonstration is conducted by counsel or a witness.

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 should conduct themselves.

WJCR 26.2a: Counsel will ensure that witnesses give clear and audible verbal responses to all questions.

WJCR 26.2b: The counsel who calls a witness is responsible for ensuring that the witness is correctly wearing a microphone so that the witness's testimony is captured for the record.

Rule 26.3: Counsel must ensure that their witnesses will be immediately available when called to testify.

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.

WJCR 26.4a: If counsel anticipate using a certain document with a witness, they will provide a copy of that document to the court reporter for marking and insertion in the record of trial prior to calling the witness to testify.

Rule 26.5: Not later than ten (10) business days prior to trial, counsel who intend on using an interpreter during the trial will notify the presiding military judge and opposing counsel of the interpreter's identity and 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 five (5) business days before the date of the trial.

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.

Rule 27.2: Should a non-party legal counsel, such as a VLC, 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.

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: 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.

RULE 31: TRIAL EXHIBITS

- Rule 31.1: Prosecution exhibits will be identified by Arabic numerals. Defense exhibits will be identified by capital letters. Appellate exhibits will be identified by Roman numerals.
- WJCR 31.1a: For all cases alleging a violation of a written order, trial counsel will ensure said written order is marked as an appellate exhibit and added to the record of trial at arraignment.
- WJCR 31.1b: Counsel are responsible for maintaining custody of any real/physical evidence used in trial. Court reporters will not have custody of real/physical evidence in between sessions of court.

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.

WJCR 31.2a: All real/physical evidence will be photographed prior to the scheduled trial and the photographs will be provided to the court reporter one (1) business day in advance of the start of trial to be marked for inclusion into the record of trial.

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

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

WJCR 31.4a: Counsel will ensure that evidence submitted to the Court in CD, DVD, or other media format is readable and accessible. If the evidence is unreadable and/or inaccessible it will not be considered to have been served on the Court. If the media requires a password for access, that password must be provided to the Court or the evidence will not be considered to have been served on the Court.

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. See JAGINST 5813.2, enclosure (3), paragraph (2).

RULE 32: REMOTE REQUIREMENTS

Rule 32.1: Hearings. Consistent with the Rules for Courts-Martial and applicable DoN instructions, a military judge may conduct remote hearings as needed to complete 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. Remote hearings occur when the military judge is located in a different site than the accused and court reporter.

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

Rule 32.2 Testimony. Separate from remote hearings - and consistent with the Rules for Courts-Martial - the military judge may permit witnesses to testify via electronic means. The court reporter will transcribe the witness' testimony in the same manner as a normal witness.

Rule 32.3: Appearances. The military judge may allow a counsel to appear via electronic means IAW Rule 36. The court reporter will transcribe the counsel's statements in the same manner as though the counsel was present in court.

Rule 32.4 Attendance. VLC and (alleged) victims may attend court proceedings via electronic means IAW Rule 15.

Rule 32.5: Remote 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.

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.

WJCR 33.1: Unless good cause is shown, and approved by the military judge, all closing and rebuttal arguments will be limited to a combined total of forty-five (45) minutes in length.

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: https://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 5814.1D.

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.

WJCR 34.3a: The trial counsel shall cause the final/complete Statement of Trial Results to be delivered to the military judge within thirty (30) minutes of adjournment of the court-martial. The Statement of Trial Results shall be delivered to the military judge via email. The military judge will ordinarily sign the Statement of Trial Results electronically and return it to the trial counsel via email.

Rule 34.4: Sealing Orders Required. Pursuant to M.R.E.s 412, 505, 513, 514 and R.C.M.s 701(g) (2) and 1113, all motions, responses, enclosures, and other papers relating to motions and responses, rulings and orders, and portions of the record of trial of closed or *ex parte* sessions of court for hearings conducted pursuant to M.R.E.s 412, 505, 513 and 514, and where the military judge has granted relief after an *ex parte* hearing conducted pursuant to 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 a 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 5813.1D of 12 Aug 19.

Rule 34.9: All military judges will use the sealing order located on the NMCTJ SharePoint site at: <https://portal.secnave.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 5814D, 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. The certified ROT - together with all required attachments - must be forwarded as soon as practicable after the Entry of Judgment (EOJ) to OJAG Administrative Support Division (Code 40). In all cases, the certified ROT and all required attachments must be completed and forwarded for appellate review within 120 days of the announcement of sentence.⁴

Rule 34.12: Verification of the Record and Entry of Judgment. Pursuant to JAGINST/CNLSCINST 5814.1D, the military

⁴ *United States v. Rivera*, 2021 CCA LEXIS 418 (N-M.C.C.A. 2021).

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.

As with the Statement of Trial Results noted in Rule 34.3, the trial counsel or his/her designee shall cause the Entry of Judgement to be prepared for the Military judge's signature in accordance with R.C.M. 1111. Additionally, in accordance with R.C.M. 1111 and JAG/CNLSCINST 5814.1D⁵, the military judge (or his or her substitute if the Chief Trial Judge determines the military trial judge is unavailable and details a separate military judge) will enter the judgment of the court-martial as soon as practicable, but no later than twenty (20) days after the military judge receives the complete ROT and verbatim transcript.

WJCR 34.14: Attachment of Prior Court-Martial Proceedings: When charges and specifications at a prior court-martial have been withdrawn and/or dismissed, the record of trial for the prior court-martial will not be attached at a later court-martial involving the same accused/misconduct, unless the military judge directs otherwise.

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 at: https://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.

⁵ Post-Trial Processing

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

Rule 36.1: VLC, or other non-party legal counsel, may be heard before the court to the extent authorized by applicable law. VLC 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 VLC. The notice shall also contain a brief statement as to the qualifications to practice and status as to oath of the VLC. The notice must be served on all parties in the case. A VLC who fails to file a Notice of Appearance will not be recognized by the court.

WJCR 36.1a: VLC shall file a Notice of Appearance with the Clerk of Court no later than one (1) business day prior to an arraignment. Filing is accomplished by uploading the Notice of Appearance to the WJC SharePoint site. VLC are responsible for providing a separate copy of the Notice of Appearance to the court reporter for marking and inclusion as an appellate exhibit in the record of trial. If, after arraignment, there is a change in VLC or detailing of a new VLC, the newly added VLC shall file a Notice of Appearance with the Clerk of Court no later than five (5) days after detailing.

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

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

Rule 36.4: If VLC has filed a Notice of Appearance, trial counsel shall consult with the VLC regarding availability before agreeing to any session of court in a TMO, or requesting a continuance. Trial counsel shall provide the VLC notice of all ordered or scheduled sessions of court within twenty-four hours (24) of the order, unless the military judge permits a different time for such notice upon a showing of good cause. Additionally, trial counsel

shall immediately provide the VLC with a copy of any TMO ordered by the court and any rulings on motions involving the VLC's client. Any required notices or motions may be filed electronically upon the VLC in accordance with Rule 10.3.

- Rule 36.5: VLC may have an interest in hearings for rights afforded (alleged) victims by law. As such, the trial counsel and defense counsel shall provide copies of the relevant Prosecution and Defense filings to the VLC within twenty-four (24) hours after filing. When appropriate, VLC should be included in R.C.M. 802 conferences regarding the filing of such motions as discussed in Rule 8.1.
- Rule 36.6: VLC may file such motions and other pleadings with the court as they deem proper to represent their client's interest. VLC shall articulate a basis for standing in their written pleadings. Copies of all filings by VLC must be served on all counsel participating in the case. VLC 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 VLC.
- Rule 36.7: The military judge has discretion to allow VLC to appear in court via remote means. Absent good cause, VLC must provide the military judge notice no later than three business days before the hearing that the VLC intends to appear remotely. The VLC and Government will ensure that the requisite technology is in place in advance of the hearing.
- (a) When in the courtroom, the VLC 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 a VLC desires to be heard, if not seated in the well of the court, the VLC shall stand silently until recognized by the military judge and invited into the well of the court. When addressing the court, the VLC shall do so from behind the podium. VLC may be heard in an Article 39(a) outside the hearing of the members. Whenever practicable, VLC may be seated at counsel table inside the bar during lengthy or complex motions hearings in which they will be heard.
- (b) When appearing remotely, the VLC must ensure that the military judge, defense counsel, and the accused are able to see and hear the VLC.

(c) This rule is different than Rule 15.5, which allows the VLC to attend a proceeding via the telephone. If the VLC believes it is possible that he/she would like to be heard on the record, then the VLC should ensure that the remote technology allows the VLC to be seen and heard.

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

Rule 36.8: The VLC 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: (ALLEGED) 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 (alleged) victim was notified of the right to be heard. When the (alleged) victim elects not to testify or otherwise be heard, the military judge may require the trial counsel and/or VLC to certify in writing that the (alleged) victim was made aware of the right and affirmatively declined to do so.

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 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: https://www.jag.navy.mil/trial_judiciary.htm.

The draft shall include the name of the proposed

designees, 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 may 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, VLC, 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:
https://www.jag.navy.mil/trial_judiciary.htm

WJCR 40.1a: Once a military judge has been detailed to preside over a guilty plea and sentencing hearing in a given case, counsel shall email that military judge in order to direct the court's attention to any deviations from the NMCTJ model pretrial agreement or model plea agreement. This notification shall take place no later than forty-eight (48) hours

prior to the docketed guilty plea and sentencing hearing. The intent of this rule is to have counsel notify the court of any novel provisions contained in a pretrial agreement or plea agreement well in advance of the guilty plea and sentencing hearing.

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).

WJCR 40.2a: Notwithstanding Uniform Rule 40.2, counsel should see ALNAV 072/19, dated 20 November 2019, which has amended JAGMAN Section 0153(e).

Attachments:

- (1) Certificate of Withdrawal
- (2) Civilian Counsel Notice of Appearance
- (3) Trial Management Order (TMO)
- (4) Motion for Docketing (MFD)
- (5) Docketing Request Format
- (6) Notice of Pleas and Forum
- (7) WJC Court-Martial Member Questionnaire