



**UNIFORM RULES OF PRACTICE
FOR
U.S. NAVY-MARINE CORPS TRIAL JUDICIARY**

TABLE OF CONTENTS

PREAMBLE	1
Rule 1: APPLICABILITY	1
Rule 2: PURPOSE	1
Rule 3: CONSTRUCTION	1
Rule 4: REFERRED CHARGES	2
Rule 5: CIVILIAN DEFENSE COUNSEL	2
Rule 6: DOCKETING	2
Rule 7: PERSONALLY IDENTIFYING INFORMATION (PII)	3
Rule 8: CONFERENCES & COMMUNICATIONS WITH THE MILITARY JUDGE .	3
Rule 9: DISCOVERY	4
Rule 10: MOTIONS	4
Rule 11: CONTINUANCES	6
Rule 12: SITUS	6
Rule 13: COURTROOM SECURITY	7
Rule 14: UNIFORMS	7
Rule 15: SPECTATORS	8
Rule 16: PUNCTUALITY	9
Rule 17: BAILIFF	9
Rule 18: GUARDS	9
Rule 19: COURT REPORTERS	9
Rule 20: ENTRY AND DEPARTURE OF MILITARY JUDGE	10
Rule 21: ENTRY AND DEPARTURE OF MEMBERS	10
Rule 22: VOIR DIRE	10
Rule 23: PROHIBITED ITEMS IN COURTROOM	10
Rule 24: COUNSEL DECORUM	11
Rule 25: COUNSEL CONDUCT	11
Rule 26: WITNESSES	12
Rule 27: OBJECTIONS	12
Rule 28: STIPULATIONS	12
Rule 29: OFFERS OF PROOF	13
Rule 30: JUDICIAL NOTICE	13
Rule 31: EXHIBITS	13
Rule 32: VTC REQUIREMENTS	14

TABLE OF CONTENTS

Rule 33:	FINDINGS & SENTENCING INSTRUCTIONS	14
Rule 34:	RECORD OF TRIAL	14
Rule 35:	DOCUMENTS AND PLEADINGS	15
Rule 36:	VICTIMS' LEGAL COUNSEL AND OTHER NON-PARTY COUNSEL .	15
Rule 37:	VICTIM'S RIGHT TO BE HEARD	17
Rule 38:	APPOINTMENT OF A REPRESENTATIVE FOR CERTAIN VICTIMS	18
Rule 39:	CONTEMPT PROCEEDINGS	18

Attachment (1):	Bailiff Handbook
Attachment (2):	Motions/Pleadings Example
Attachment (3):	Findings of Fact and Conclusions of Law Example
Attachment (4):	Draft Appointment of Representative IAW Article 6B, UCMJ

PREAMBLE

These Uniform Rules govern courts-martial presided over by a military judge. They are an Appendix to the Navy-Marine Corps Trial Judiciary Standard Operating Procedures Manual and supersede all rules previously published as the Uniform Rules of Practice before Navy-Marine Corps Courts-Martial.

There may be local rules in each judicial circuit that further implement these Uniform Rules. Local rules must be consistent with these Uniform Rules.

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 any local rules.

Rule 1.2: All parties to the court-martial must comply with these Uniform Rules. In the case of noncompliance with these rules or local rules, or orders of the court, the 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 or officer-in-charge, or forward information about the matter to a civilian or military counsel's bar. In addition, the court may forward a complaint for processing in accordance with R.C.M. 109, proceed with action for contempt under R.C.M. 809 and Article 48 of the Uniform Code of Military Justice, or fashion any other appropriate remedy.

Rule 2: PURPOSE

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

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.

Rule 3.2: If any rule herein conflicts with case law, statute, the Manual for Courts-Martial, any constitutional provision, 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 those charges, along with the appropriate convening order, as soon as possible.

Rule 4.2: Trial counsel must immediately notify defense counsel, the Clerk of Court, and the assigned military judge if referred charges have been withdrawn.

Rule 5: CIVILIAN DEFENSE COUNSEL

Rule 5.1: If an accused retains civilian counsel, detailed defense counsel must furnish civilian counsel with a copy of all pertinent rules of court. Prior to appearing in court, civilian counsel must cause to be served on the Clerk of Court a written notice of appearance. This notice will be in the form of a pleading and must contain the following: name of the accused, counsel's name, office address, telephone numbers, and jurisdiction(s) where the counsel is presently admitted to practice.

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 of the accused on the referred charges, civilian counsel may not withdraw from such representation without the permission of the military judge.

Rule 6: DOCKETING

Rule 6.1: The circuit 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. Circuit rules shall operate to facilitate access to the court upon timely request by any party.

Rule 6.2: The circuit military judge will publish the circuit docket on a weekly basis in an online format available to the public and in accordance with OJAG standard operating procedures.

Rule 6.3: Docketing judges and military judges presiding over arraignments shall use the standardized trial management order located at http://www.jag.navy.mil/trial_judiciary.htm

Rule 7: PERSONALLY IDENTIFYING INFORMATION (PII)

Rule 7.1: Use of Personally Identifying 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, discovery material) that are electronically transmitted. At a minimum, social security numbers, home addresses, dates of birth, financial account numbers, and names of minors shall be redacted. Medical and psychiatric records must be sent by encrypted e-mail or transmitted through a secured access file exchange.

Rule 7.3: While names of minors will be used during the course of the trial, all reported minor victims will be identified by their initials on the charge sheet and in pleadings.

Rule 7.4: All Marine judge advocates will comply with MARADMIN Active Number: 181/10 R 291951Z MAR 10 and all active duty Counsel will comply with SECNAVINST 5211.5E dtd 28 Dec 2005 (5211.5E series).

Rule 8: CONFERENCES & COMMUNICATIONS WITH THE MILITARY JUDGE

Rule 8.1: 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. Such conferences will not be used to litigate or decide contested issues. The military

judge must 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 VLC. Whenever practicable, the military judge shall include VLC in R.C.M. 802 conferences in which VLC has an identifiable interest. See Rule 36.4 below.

- Rule 8.2:** *Ex parte* communications with a military judge concerning a case that is pending before that military judge are prohibited, except for routine administrative matters or as provided by law.
- Rule 8.3:** 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 8.4:** After adjournment of a case, military judges may, at their discretion, conduct critiques or offer suggestions regarding counsels' performance in courts-martial to improve the administration of justice. At the discretion of the military judge, these sessions may be conducted *ex parte* or jointly.

Rule 9: DISCOVERY

- Rule 9.1:** Counsel will promptly comply with military law and service regulations regarding discovery.
- Rule 9.2:** Discovery requests should be as specific as possible to avoid misunderstanding and to assist in quickly obtaining the desired information.

Rule 10: MOTIONS

- Rule 10.1:** As early as possible, counsel will advise the military judge and opposing counsel of the general nature of any motions, along with applicable citations.
- Rule 10.2:** When necessary and not otherwise prohibited by the military judge, motions and other documents may be filed with the court and served on opposing counsel by electronic transmission. Transmitting counsel will ensure that such documents are actually received. Whenever an electronic mail transmission is used to communicate with the court or with

opposing counsel, the original document or copy, as appropriate, must be maintained by the originator and provided to the court reporter for inclusion in the record of trial.

Rule 10.3.A: MOTIONS

- 10.3.A.1:** 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.
- 10.3.A.2:** Each motion that requires an order must be accompanied by a proposed order by the party that is moving the court. The moving party and any responding counsel shall include proposed Findings of Fact and Conclusions of Law.
- Rule 10.4:** Military judges will rule on motions in a timely fashion so as not to create unnecessary delay in court proceedings. In those instances when a ruling must be reserved, the military judge shall revisit the issue and rule when the reason for the reserved ruling has been complied accomplished or failed to be accomplished.
- Rule 10.5:** If the military judge rules adversely to the government on a significant matter, and the government is contemplating an appeal, the military judge must state on the record the time of the ruling, the time the 72-hour period will run, and how and where the government may provide the military judge with written notice of appeal.
- Rule 10.6:** Unless good cause is shown, motions must be filed in accordance with the Trial Management Order. Good cause is determined by the military judge. As supervisory counsel are not party to the trial, they shall not make, or be required to make, statements or certifications as to the timeliness of motions or whether good cause has been shown.
- Rule 10.7:** Motions may be filed upon the court and opposing counsel electronically. The Circuit Judge may designate upon whom electronic or hard copy

documents shall be filed. It is the responsibility of the filing party (or non-party legal counsel) to ensure that the filing is received by the intended court, party, alleged victim, or non-party legal counsel.

Rule 11: CONTINUANCES

- Rule 11.1:** Continuance requests must be made by written motion outside of court or, if presented during an Article 39(a) session, they may be oral. The motion must state the specific reason for the request and the earliest possible trial date. Counsel must be prepared to fully justify each continuance request.
- Rule 11.2:** All motions to continue must include 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 alleged victims/VLC, the motion should note whether trial counsel has notified the alleged victim/VLC and whether the alleged victim/VLC supports the continuance. The proposed order must contain language for both granting and denying the motion, a box to check if the motion is granted or denied, and a place for the new trial date. If the motion is made after the last Article 39a session before trial, the motion will not be granted except under extraordinary circumstances where there is no alternative means of preventing a substantial injustice.
- Rule 11.3:** If the accused is in pretrial confinement, defense motions for continuances and concurrences in 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 pursuant to R.C.M. 504(d)(1), the military judge will designate the situs of the trial.

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 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.

Rule 14: UNIFORMS

- Rule 14.1:** The Circuit Judge will designate the proper uniform and civilian attire to be worn by all persons required to be present. Utility uniforms will not be designated as the uniform unless the court is convened at sea or in an operational setting.
- 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 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.

Rule 14.3: Physical restraints will not be imposed on the accused or any witness during open sessions of the court-martial unless prescribed by the military judge. No accused or witness in open court will wear any tag or symbol that identifies the as being in custody.

Rule 15: SPECTATORS

Rule 15.1: The military judge is responsible for the control of court-martial spectators and the courtroom security in general. The military judge may issue such orders as deemed just to ensure a fair trial.

Rule 15.2: Spectators are encouraged to attend any sessions of the court-martial, unless otherwise determined by the military judge. See R.C.M. 806.

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 victims recognized by the court, spectators should be excluded upon motion by the trial counsel or defense counsel. Victims may only be excluded if the military judge determines by clear and convincing evidence that their testimony will be materially altered if the victim heard the testimony at that hearing or 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 accused and counsel, of the decorum required in the courtroom.

Rule 15.5: 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 court room closure

regardless of whether there is an objection by a party. Supervisory counsel may attend closed hearings to supervise and assist their counsel at the discretion of the military judge.

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 will be notified immediately and provided an explanation.

Rule 17: BAILIFF

Rule 17: Trial counsel shall ensure bailiffs are provided a copy of Attachment (2) and are thoroughly briefed on their 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 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.

Rule 20: ENTRY AND DEPARTURE OF MILITARY JUDGE

Rule 20: All persons in the courtroom, except the court reporter, without regard to rank or grade, must rise when the military judge enters or leaves the courtroom.

Rule 21: ENTRY AND DEPARTURE OF MEMBERS

Rule 21: All persons, other than the military judge and court reporter, without regard to rank or grade, must rise when the members enter and 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 judge prior to trial.

Rule 22.2: The member's questionnaire shall be phrased and organized so as to facilitate an accurate screening and shall request only that information essential for: (1) determining whether a person meets the Article 25 criteria for eligibility and (2) providing basic background information ordinarily sought during voir dire examination.

Rule 22.3: Before voir dire, counsel for each party will provide the military judge with a 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.

Rule 23: PROHIBITED ITEMS IN COURTROOM

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

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 by 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 only used during recesses of court.

Rule 24: COUNSEL DECORUM

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

Rule 24.2: Counsel must stand when addressing the bench or members and when examining a witness, unless otherwise authorized by the military judge.

Rule 24.3: Unless specifically authorized by the military judge, only one counsel per side may question a witness, address the court on a motion or issue, or make opening statements or closing arguments.

Rule 25: COUNSEL CONDUCT

Rule 25.1: Counsel must not, during trial, 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.

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 26: WITNESSES

- Rule 26.1:** Trial counsel must swear each witness called to testify and must ensure that the military witness's name, grade, and military organization, or civilian witness' 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.
- 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 should not position themselves so as to block the view of the military judge, members, the accused, or counsel.

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 Victim's Legal Counsel (VLC), deem it necessary to object or otherwise be heard at trial, the counsel shall stand until recognized by the military judge. The counsel shall not speak until recognized by the military judge.

Rule 28: STIPULATIONS

- Rule 28.1:** 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 will be 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 Exhibits 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 (Page 59 matters) in accordance with the trial milestones.

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.
- 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.

Rule 31.3: All audio recordings and video recordings that contain audio portions must be transcribed before trial by the party offering such a recording, unless authorized by the military judge. If a portion is inaudible, the transcript must so state. A copy of the transcript will be served on opposing counsel before trial in sufficient time to allow for ascertaining the accuracy of the transcript. The recording or a copy thereof will be made available to opposing counsel upon request. The transcript must be marked as an appellate exhibit.

Rule 32: VTC REQUIREMENTS

Rule 32.1: Consistent with the Rules for Courts-Martial and applicable DoN instructions, Video Teleconferencing (VTC) may be used to conduct Article 39(a) sessions for arraignments, motions practice and any other administrative sessions.

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.

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, must be submitted in writing and in a timely manner to the military judge and opposing counsel.

Rule 34: RECORD OF TRIAL

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 things are spelled out on the record that witnesses respond verbally,

and that descriptions of size, distance, and location are clear.

Rule 34.2: At the conclusion of the trial, defense counsel will indicate whether civilian counsel or military counsel will examine the record, who will respond to the staff judge advocate's recommendations, and who will represent the accused in post-trial matters. The accused must include such decisions in the written acknowledgement of appellate rights.

Rule 34.3: Whenever practicable, trial counsel must read and make corrections to the record of trial. Corrections by trial counsel must be initialed and dated before submission to the military judge for authentication.

Rule 34.4: The trial counsel must ensure that the record of trial is prepared in a timely and accurate manner. Pursuant to R.C.M. 1103(i)(1)(B), the trial counsel must permit the defense to review the record except when unreasonable delay will result before it is submitted to the military judge for authentication.

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 form attached as Attachment (3) to these rules

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

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

Rule 36.1: Victims' legal counsel (VLC), or other nonparty legal counsel, may be heard before the court to the extent allowed by applicable law, subject to rulings and direction of the military judge. VLC shall file a Notice of Appearance with the court, stating the court 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 oath status of the VLC. The notice must be served on all parties in the case. A VLC who fails to file a Notice of Appearance shall not be recognized by the court.

Rule 36.2: All VLC are subject to these Uniform Rules, the Rules of Professional Conduct, and the applicable Circuit Rules. Military VLC will be attired in the proper uniform required of trial and defense counsel by local Circuit Rules.

Rule 36.3: If VLC has filed a Notice of Appearance, trial counsel shall consult with the VLC regarding the VLC's availability before agreeing to any session of court in a TMO or PTIR, or any continuance request subsequently submitted by defense counsel. 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 VLC with a copy of any TMO ordered by the court, any pending PTIR, 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 36.4: VLC may have an interest in hearings regarding M.R.E. 412, M.R.E. 513, M.R.E. 514, M.R.E. 615, R.C.M. 305(j), and other rights afforded victims provided 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. Whenever practicable, VLC should be included in R.C.M. 802 conferences regarding the filing of such motions as discussed in Rule 8.1.

Rule 36.5: VLC may file such motions and other pleadings with the court as they deem proper to protect their client's interests. VLC shall articulate a basis for standing in their written pleadings if filing on issues outside those identified in Rule 36.4 above. Copies of all filings by VLC must be served on all counsel participating in the case. VLC filings should comply with motion filing dates set in the

TMO; however, the military judge may set separate deadlines for the filing of any motions by a VLC.

Rule 36.6: The military judge has discretion to allow VLCs to be heard in court via telephone or Video Teleconference (VTC). 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 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. It is within the military judge's discretion to hear from the VLC on each distinct issue separately, to have the VLC address all issues at one time, or to require the VLC to submit written matters to the court. Whenever practicable, VLC may be seated at table inside the bar during lengthy or complex motions hearings in which they will be heard. The manner in which the VLC presents evidence is within the discretion of the military judge (e.g., when the VLC is the moving or responding party, the military judge may allow the VLC to conduct examination of witnesses).

Rule 36.7: The VLC may move to close the court proceedings during any motion 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 when a victim has a right to be heard (M.R.E. 412, 513, 514 and pre-sentencing), 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 VLC to certify in writing that the victim was made aware of the right and affirmatively declined to do so.

Rule 38: APPOINTMENT OF A REPRESENTATIVE FOR CERTAIN VICTIMS

- Rule 38.1:** In the case of a victim of an offense under the UCMJ as defined by 10 USC 806(b) who is under 18 years of age, incompetent, incapacitated, or deceased, the military judge shall follow the procedures delineated in ALNAV 049/14, until the amended R.C.M. 801 is promulgated.
- Rule 38.2:** In cases where a victim qualifies for a legal representative as defined in 10 USC §806b(c), the initial PTIR shall include a recommendation from the both parties and, if appropriate, the victim's legal counsel, regarding this appointment. Trial counsel shall also include a draft proposed appointing order. The draft shall include the name of the proposed representative, the proposed representative's relationship to the named victim, and the rights of the representative. (See Attachment 4.) The appointment of the representative shall be accomplished at arraignment. Either party may request, or the military judge shall order, an Article 39(a) session under this rule in cases where a representative cannot be identified or agreed upon by the parties.
- Rule 38.3:** At any time after appointment, an individual shall be excused as the representative upon request by the representative or a finding of good cause by the military judge. If the representative is excused, the military judge shall appoint a successor using the procedures in Rule 37.2.
- Rule 38.4:** Nothing in this rule conveys any additional rights to a named victim, victim's legal counsel, or representative.

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 Rules.

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.

THE BAILIFF'S HANDBOOK

The trial is a public proceeding dedicated to the propositions of equal justice under the law and protection of the community. A trial should be conducted so as to command the respect of the community it serves and to assure all that the law is functioning and will preserve order. Anything that distracts from respect for the law and the authority of the court must be avoided.

The trial should not be disturbed by small administrative matters. Every party to the trial should know what is expected of them. The military judge and trial counsel receive the assistance of a bailiff who has been instructed as to his or her responsibilities. The bailiff should be senior to the accused. A bailiff is disqualified if he or she is, or has been in the same case the accuser, a witness, an investigating officer, or counsel, or has previously served as a member of the accused's court-martial. Trial counsel normally provides a briefing as to the bailiff's responsibilities.

The bailiff should receive specific instructions as to his/her duties from trial counsel before and after each session of court. While the court is in session, the bailiff is under the supervision of the military judge and will assist the military judge and counsel in the conduct of an orderly trial. The bailiff should be familiar with the location of the principle offices and facilities, such as witness waiting rooms, the deliberation room, and the military judge's chambers, within the law complex.

DUTIES OF THE BAILIFF

Prior to Trial

1. The bailiff will report in the appropriate uniform to trial counsel at least 30 minutes before the beginning of each day's proceedings. Thereafter, the bailiff will report to the military judge 15 minutes before the reconvening of each of the day's proceedings.

2. The bailiff ensures that the courtroom spectator area and deliberation room for court members are neat and orderly.

3. The bailiff, with assistance of trial counsel or the court reporter will ensure that the court members have pencils and pads of papers in their deliberation room.

4. The bailiff will maintain phone contact information for all members and will be the principle point of contact with members for logistical information for example changes in arrival time or extended recesses.

ENTRY AND DEPARTURE OF MILITARY JUDGE

5. When counsel for both sides, the accused, the reporter, and if applicable, court members, are present in the courtroom, the bailiff will notify the military judge and escort the judge to the courtroom. When the bailiff enters the courtroom with the military judge, he or she will announce: "All rise." When the military judge announces a recess or adjournment the bailiff will announce: "All rise." If need be, the bailiff will instruct the spectators to stand fast until the military judge has departed the courtroom. The military judge will advise the bailiff of any departure from this procedure.

ENTRY OF COURT MEMBERS

6. When the court members enter the courtroom and when the court members stand to be sworn, the bailiff will announce: "All rise" in a voice that can be heard by all, unless advised of different procedure by the military judge.

SPECTATORS AND MEMBERS OF THE NEWS MEDIA

7. Military trials are open to the public. Spectators and members of the news media are welcome in the courtroom to observe the trial proceedings, unless otherwise instructed by the military judge. The bailiff should see that they enter the courtroom, be seated, and leave quietly while the court is in session.

8. As the law does not permit picture taking or any type of broadcasting in or from the courtroom, the bailiff will not permit broadcasting-capable equipment to be taken into the courtroom. Any problems concerning this matter should be brought to the attention of the trial counsel immediately.

9. Courtroom rules do not permit spectators to eat, sleep, smoke, or engage in conversation or social media/email/text

messaging while the court is in session. The bailiff should quietly and diplomatically inform offenders of these rules.

10. Anyone talking or making distracting noises in the areas outside of or adjacent to the courtroom while court is in session will be informed by the bailiff that a court is in session and they can be heard in the courtroom.

11. Rowdiness and violence are not unknown in the courtroom. The bailiff must be alert and prepared to take immediate steps to suppress unruly behavior.

COURT MEMBERS - IN CLOSED SESSION

12. When the court members are in closed session, they are the only ones permitted in the deliberation room. Therefore, the bailiff will not enter that room or permit anyone else to enter during the closed session. The bailiff will be posted outside the deliberation room to ensure no unlawful entry or intrusion.

13. The bailiff is the only contact between the court members and the parties to the trial during the periods the court members are deliberating. The bailiff will be available to the court members outside their deliberation room and immediately notify counsel and the military judge when the court members request the court to be reopened for any reason.

14. If the bailiff is instructed to deliver any item or message to the court members in closed session, he must first inform the military judge and obtain his or her approval.

MISCELLANEOUS DUTIES DURING TRIAL

15. The bailiff will be prepared to furnish the following services:

a. Summon the court members to the courtroom at the beginning of each session of court when directed to do so by the military judge or trial counsel.

b. While the court is in session, collect written questions from the court members upon the military judge's request and hand them to the court reporter, the military judge, and counsel as instructed.

c. Summon witnesses to the courtroom when requested by counsel.

d. While the court is in session, deliver findings and sentence worksheets to the president of the court when instructed to do so.

e. Deliver items of evidence to the deliberation room, if instructed to do so by the military judge, when the members retire to the deliberation room.

f. Perform administrative errands during the trial as requested by the military judge or counsel.

**THE BAILIFF'S RELATION
TO THE ISSUES AND PARTIES OF THE TRIAL**

The bailiff must remain neutral during the trial of a case. In other words, the bailiff should not take the side of prosecution or defense. The bailiff must never participate in any discussion of the merits of the case and should never attempt to predict the outcome of the trial. The bailiff must not make any comments on the performance of counsel or on the testimony of a witness. **The bailiff shall not reveal to members the matters discussed during sessions of the trial held outside the presence of the members except as directed by the military judge.**

NAVY-MARINE CORPS TRIAL JUDICIARY
_____ JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

The United States of America) **GOVT / DEFENSE MOTION TO**
)
)
v.)
)
First MI Last)
Rank Service) **DATE**

1. **Nature of the Motion:** The United States / Defense moves the court to admit / exclude the evidence of X Y Z because

2. **Issues:**

A. The first issue presented for the court to decide is

B. The second issue presented for the court to decide is.....

3. **Statement of Facts:**

A. The accused is charged with,

B.

C.

4. **Statement of the Law:**

A correct statement of the governing law with supporting citations

5. **Analysis of Law:**

A.

B.

6. **Evidence.** (No evidence will be presented in support of this motion.) (The (accused) (United States) offers the following evidence to support this motion...).
7. **Burden of Proof.** (Moving party states which party has the burden of proof regarding any matter raised by the motion.)
8. **Oral Argument.** The (accused)(United States) (does)(does not) desire to make oral argument on this motion.
9. **Conclusions:** The Court should grant the motion to _____ because (WHY).

NAME OF COUNSEL
RANK OR ADDRESS OF COUNSEL
TRIAL / DEFENSE COUNSEL

CERTIFICATION OF SERVICE

A true copy of this motion was served on opposing party/on Victim's Legal Counsel) via)_____ on _____.

(date)

Signature of counsel or party

NAVY-MARINE CORPS TRIAL JUDICIARY
JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES)	GENERAL COURT-MARTIAL
)	
V.)	
)	
)	FINDINGS OF FACTS,
)	CONCLUSIONS OF LAW
FIRST MI LAST)	AND RULING ON U.S./DEFENSE
SERGEANT)	MOTION TO CONTINUE
U.S. MARINE CORPS)	

1. Nature of the Motion. Pursuant to Rule for Courts-Martial 906(b)(1), the Defense MOTION TO CONTINUE THE TRIAL IS GRANTED/DENIED. The Defense moved for a continuance of the trial from DATE for _____ days to DATE. (There is a pretrial agreement in the case and the accused has been admitted to the psychiatric hospital for observation, diagnosis, and treatment.) (The Defense seeks a delay to enable_____). The U.S. / DEFENSE did/ did not oppose the motion. Victim’s Legal Counsel has been notified of the continuance request.

2. Findings of Fact.

- a. On DATE , the charges and specifications were preferred.
- b. On DATE , the defense submitted an offer for pretrial agreement.
- c. On DATE ,
- d. On DATE , the charges and specifications were referred to trial by General Courts-martial.
- e. On DATE , COUNSEL., filed a notice of appearance.

f. On DATE, the Trial Counsel (TC) submitted a motion for docketing and requested DATE for arraignment/trial of this case. The Detailed Defense Counsel (DDC) did not object to the arraignment date and case was docketed for DATE .

g. On DATE, the Detailed Defense Counsel on behalf of CDC moved for a continuance. The U.S. is not opposing the continuance.

h. The Court finds by a preponderance of the evidence that the defense has made a factual showing of reasonable cause to continue this case and that their ability to proceed on DATE would be prejudiced.

3. **Ruling.** The U.S./Defense motion for a continuance is **GRANTED/ DENIED**. Further, the follow deadlines are set:

All discovery to be completed on: DATE

39(a) / status 802 conference on: DATE

Trial shall commence at _____ hrs on: DATE

So ordered this _____ Day of _____ 201____.

Military Judge

NAVY-MARINE CORPS TRIAL JUDICIARY
_____ **JUDICIAL CIRCUIT**
_____ **COURT-MARTIAL**

The United States of America)	
)	
)	APPOINTMENT OF
)	REPRESENTATIVE IAW
v.)	ARTICLE 6B, UCMJ
)	
First MI Last)	
Rank Service)	DATE

1. Nature of Order

Pursuant to Article 6b, UCMJ the Court is required to designate a legal representative for a reported victim of an offense under the UCMJ who is (under 18 years of age and not a member of the armed forces)(incompetent)(incapacitated)(deceased). In this case, [insert initials relevant victim], is the son of the accused, is ___years old, and is the named victim of the offense alleged in Specification __ of Charge __, [alleged offense].

At an Article 39(a) session held on _____/by PTIR the parties nominated a representative and addressed the factors provided in ALNAV 049/14.

The following information was provided:

- a. The age and maturity, relation to the victim, and physical location of any proposed designee:
- b. Any costs associated with representation by the potential designee:
- c. The willingness of the potential designee to serve as representative:
- d. The previous appointment of a representative or representative by another court of competent jurisdiction:
- e. The preferences of the victim, if ascertainable:

f. Any potential delay in any court-martial related proceeding that may be caused by a specific appointment; and,

g. The recommendations of trial counsel and defense counsel:

2. Duties of the Representative

a. The representative shall assume the following rights normally provided to the named victim:

- (1) The right to be reasonably protected from the accused;
- (2) The right to reasonable, accurate, and timely notice of any of the

following:

(a) A public hearing concerning the continuation of confinement prior to trial of the accused;

(b) A preliminary hearing or investigation under Art. 32 of Ref B;

(c) A court-martial relating to the offense;

(d) A public proceeding of the naval clemency and parole board relating to the offense; and,

(e) The release or escape of the accused, unless such notice may endanger the safety of any person.

(3) The right not to be excluded from any public hearing or proceeding related to the offense unless the military judge or Article 32 officer, as applicable, determines by clear and convincing evidence that testimony by the victim would be materially altered if the victim heard the testimony at that hearing or proceeding;

(4) The right to be reasonably heard at any of the following:

(a) A public hearing concerning the continuation of confinement prior to trial of the accused;

(b) A sentencing hearing related to the offense; and,

(c) A public proceeding of the service clemency and parole board relating to the offense.

(5) The reasonable right to confer with the counsel representing the government at any proceeding described above;

(6) The right to receive restitution as provided by law;

(7) The right to proceedings free from unreasonable delay; and,

(8) The right to be treated with fairness, and with respect for the victim's dignity and privacy.

b. For purposes of this order, a public hearing or proceeding under this instruction shall include any hearing or procedure which is open to the public generally or which has not been closed by competent authority.

c. Personal appearance by the reported victim is not necessary to satisfy the right to be reasonably heard. The right to be reasonably heard may ordinarily be accomplished by telephonic, written or other means.

d. While all reasonable efforts shall be made to ensure these rights are afforded to the victim/representative, in no case shall the rights of the accused be infringed or the administration of justice be unduly prejudiced.

3. Order

The Court **ORDERS** that Ms. _____ be designated as _____'s legal representative within the meaning of Article 6b, UCMJ.

So **ORDERED** this ___th day of _____.

NAME
RANK AND SERVICE
Military Judge