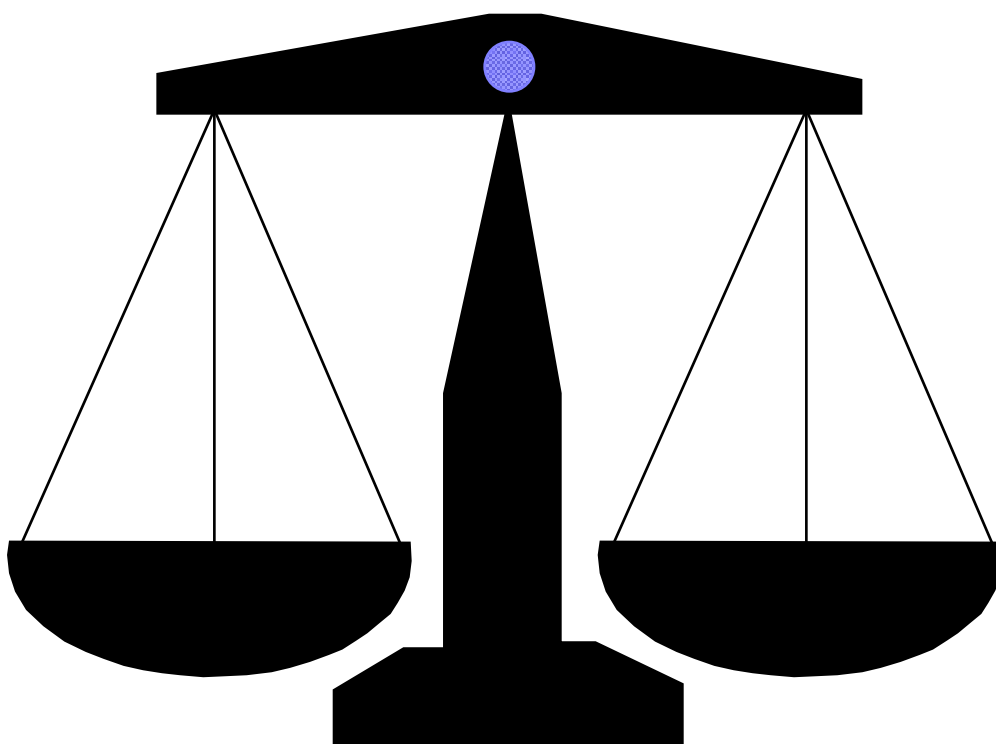


RULES OF COURT



WESTERN JUDICIAL CIRCUIT

(19 December 2024)

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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 18 December 2024 (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 public-facing webpage at:

<https://www.pendleton.marines.mil/Main-Menu/Commands/Tenant-Commands/Western-Judicial-Circuit/>.

They may also be found at the WJC Sharepoint Online webpage at:

<https://usmc.sharepoint-mil.us/teams/WesternJudicialCircuit/Shared%20Documents/Forms/AllItems.aspx>.

RULE 1: APPLICABILITY

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

Rule 1.2: All participants to the court-martial must comply with the Uniform Rules. In the case of noncompliance with the Uniform Rules, local rules, or court orders, a military judge may, as appropriate, issue

an admonishment on the record, issue appropriate court orders, issue a report to a military counsel's commanding officer, officer-in-charge, or supervisory counsel, or forward information about the matter to a civilian or military counsel's licensing bar. In addition, the court may forward a complaint for processing in accordance with R.C.M. 109, proceed with action for contempt under R.C.M. 809 and Article 48 of the Uniform Code of Military Justice (UCMJ), or fashion other appropriate remedies.

RULE 2: PURPOSE

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

RULE 3: CONSTRUCTION

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

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

RULE 4: PRETRIAL CONFINEMENT & REFERRED CHARGES

Rule 4.1: In cases of pretrial confinement, the local Region Legal Service Office (RLSO)/Law Center or Special Trial Counsel (STC) Office must file a request for designation of a military judge as an initial review officer under R.C.M. 305(j)(2) with the judicial circuit for the area of responsibility (AOR) of the confinement facility no later than the first day after receiving notification of the confinement. The request shall be made in NCORS, unless local rules for the judicial circuit in the AOR of the

confinement facility allow for another filing method. The RLSC/Law Center/STC shall supplement the request with (1) the confinement memorandum produced under R.C.M. 305(i) (2) (C); and (2) a statement from the command, if any, of the operational impact of the situs of the review as soon as they are available. The confinee's command is responsible for the administrative functions related to the pretrial confinement including, but not limited to: requesting the assignment of defense counsel, transporting the confinee from the confinement facility if necessary, providing the confinee with an appropriate uniform, arranging audio/visual communications if the hearing will be remote, and providing a command representative to appear at the hearing if a trial counsel will not be appearing. The military judge will inform both parties of the situs of the review. The command representative, or trial counsel, if assigned will ensure the victim is notified under R.C.M. 305(j) (2) (A) (iv).

WJCR Procedures for IRO Hearings

- WJCR 4.1a: Detailing: The Circuit Military Judge will detail a duty IRO hearing judge in conjunction with the publication of the weekly docket. The Circuit Military Judge may detail a substitute IRO hearing judge as necessary.
- WJCR 4.1b: Situs: All hearings shall be conducted in a courtroom aboard Marine Corps Base Camp Pendleton. The detailed military judge may designate a different location in his or her sole discretion. Hearings may be conducted by remote means. During any remote proceeding, the defense counsel detailed to the IRO hearing must be in the physical presence of the confinee. The confinee's command is responsible for ensuring the confinee is present at the time and location designated by the detailed military judge.
- WJCR 4.1c: Uniforms: The confinee may appear in attire designated by the confinement facility. The confinee will not be placed in restraints in the courtroom unless otherwise ordered by the military judge. During winter months, the prescribed uniform for all other 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 presiding military judge retains the authority to modify the proper uniform to be worn by military personnel in a particular case.

WJCR 4.1d: Coordination:

a. Hearings will be scheduled for Tuesdays and Fridays commencing at 1000. One single Law Center representative¹ will email the duty judge a proposed schedule of all requested IRO hearings no later than 0900 the day before the requested hearing date.² No later than 1600 on the day before the requested hearing date, the Law Center representative shall email, at a minimum: the documents required by Uniform Rule 4.1; any documentary evidence then in the possession of the Law Center representative or the command ordering confinement that the government desires to present at the hearing³; a Courtroom Risk Assessment; a request to conduct the hearing remotely, if applicable; any request to modify the time of the hearing; and any requests to extend the time limit of any hearing under R.C.M. 305(j)(2)(B). The WJCR will not use NCORS to coordinate R.C.M. 305 proceedings.

b. Hearings may be conducted on days other than Tuesdays and Fridays upon a showing of good cause; any such showing must be provided contemporaneously with the request to schedule the hearing.

c. The Law Center representative will carbon copy ("cc") the following billet holders, at a minimum, on the coordination email: Regional Trial Counsel, Regional Defense Counsel, Regional Special Trial Counsel, Regional Victim Legal Counsel, and relevant Senior Defense Counsel(s) and Military Justice Officer(s).

d. Hearings will begin promptly at the designated time. All counsel shall conduct any necessary preparation before commencement of the hearing.

¹ See SECNAVINST M-1640.1 (DON Corrections Manual) Par. 7206.2, "[t]he local RLSO or LSSS will coordinate the IRO."

² This email will satisfy the notification requirements in Uniform Rule 4.1.

³ Additional documentary evidence may be presented during the hearing at the discretion of the military judge.

e. All hearings will be recorded with a device capable of transferring the audio of the proceeding to a DVD. A government representative is responsible for providing a recording device or ensuring other recording capability. A government representative will ensure a copy of the recording is forwarded for inclusion in the confinee's brig file, in accordance with JAGMAN section 0127(e)(1).

WJCR 4.1e: The detailed military judge will email the R.C.M. 305(j)(2)(D) memorandum to the government and defense representatives within five days of the IRO hearing's conclusion.

Rule 4.2: After referral of charges, trial counsel must ensure a copy of the charge sheet, convening order, and all applicable allied papers are uploaded into NCORS and that a request for arraignment is sent to the responsible judicial circuit via NCORS as soon as practicable.⁴

WJCR 4.2a: After the referral of charges, the cognizant government representative shall provide the Clerk of Court and Docketing Military Judge (docketing judge) with a copy of the charge sheet (*Completed through block 15*) 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 Navy Court-Martial Reporting System (NCORS).

WJCR 4.2b: 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 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

⁴ JAGINST 5813.4K para. 6(d).

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.

WJCR 4.2c: NCORS Implementation.

a. All general and special court-martial cases in the WJC referred on or after 30 May 24 must be filed and processed using NCORS as the exclusive electronic file management system.⁵ This includes the submission and service of all case pleadings, allied papers, and other case documents, with the exception of classified materials. Counsel shall email the military judge, the chief court reporter, the detailed court reporter (if applicable), and opposing counsel to notify them that the filing(s) have been uploaded. This email does not constitute service of the filing (see WJCR 10.2a). Where a military judge has not yet been detailed, counsel should include the Docketing Judge on the notification email. Counsel must not include needlessly-large files, and shall include only the relevant portions of materials as enclosures.

b. If counsel encounter difficulty accessing any materials on NCORS, they shall inform the Court and opposing counsel as soon as possible to resolve the matter.

c. All counsel will obtain access to NCORS prior to making any appearance in court or filing any pleading. Except as otherwise directed by a military judge detailed to the case, counsel who are unable to access NCORS (e.g., the when the system is down or for other temporary, technical reasons) and lack a co-counsel with NCORS access may submit pleadings via email, as follows:

i. Each pleading filed outside NCORS must include a statement by the filer certifying that they have no access to NCORS and no co-counsel with access to NCORS, or explaining in detail why the

⁵ Documents related to cases referred before 30 May 24 will be maintained on the WJC Teams site. For such cases, rules requiring action in NCORS should be read as requiring equivalent action on the WJC Teams site.

filer was otherwise unable to file the pleading via NCORS;

ii. Each pleading filed outside NCORS by email must be delivered to the clerk of court, to the court reporters, to all counsel in the case, and to the detailed military judge; and

iii. Each email filing a pleading outside NCORS must contain no more than one pleading and its enclosures, and must have a clear subject line identifying the pleading it contains, such as "Def MTC Expert Wit (Alcohol & Memory) - US v ACCUSED."

d. A detailed military judge may grant or deny exceptions to this Rule as necessary. Unusual circumstances may require special handling, as may be directed by the Military Judge.

e. Requests for pre-referral subpoenas, orders, and warrants and any other Article 30a or R.C.M. 309 pre-referral matters submitted in the WJC shall be directed to the Docketing Judge via NCORS until detailing of a military judge by the Circuit Military Judge. Counsel shall alert the Docketing Judge by email of the filing(s).

f. Parties shall not enter inaccurate information into NCORS. While the Government is responsible for Article 140a(a)(1) data collection, the Court and parties must be able to rely on the accuracy of all information in NCORS and inaccurate information may undermine the fair and efficient administration of justice.

g. Counsel shall not list a military judge as being assigned to a case without confirmation of that judge's detailing from the WJC.

WJCR 4.3a: 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

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

WJCR 4.3b: Trial counsel must also immediately notify the court reporters if referred charges have been withdrawn and submit proper documentation of such withdrawal to the court reporters.

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

WJCR 4.5: 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, detailed judge, and docketing judge no later than one (1) business day from the date of the modification.

WJCR 4.5a: 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 defense counsel, detailed defense counsel must furnish civilian defense counsel with a copy of all pertinent rules of court. Prior to appearing in court, civilian defense counsel must file with the Clerk of Court a written Notice of Appearance (NoA). Detailed defense counsel must upload the NoA into NCORS. The NoA will be in the form of a pleading and must contain the

following: name of the accused, counsel's name, office address, telephone number(s), e-mail address, and jurisdiction(s) where the civilian defense counsel is currently admitted to practice.

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 civilian defense counsel of the rules of "Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General" as outlined in JAGINST 5803.1E.

Rule 5.3: Once civilian defense counsel files a NoA, civilian defense counsel may not withdraw from such representation without permission from the military judge.

Rule 5.4: Detailed defense counsel must inform civilian defense counsel of the requirements necessary to obtain a security clearance immediately upon learning classified information may be relevant to a pending case. Civilian defense counsel has an affirmative duty to request a security clearance application from the Government within ten (10) days from notice of appearance where charges involve classified information; within ten (10) days from being notified by the Government that classified information is relevant; or within ten (10) days from determining classified information may be relevant as a result of their own preparation, whichever is earliest. Civilian defense counsel must complete the necessary security clearance application within thirty (30) days of receiving the application from the Government. If civilian defense counsel requires more time to complete the application process, civilian defense counsel must request additional time through the military judge. Requests for additional time will only be granted for good cause shown.

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

RULE 6: DOCKETING/TRIAL MANAGEMENT ORDERS

Rule 6.1: The Circuit Military Judge (CMJ) of each judicial circuit will establish and promulgate docketing procedures for cases within their circuit. These procedures must utilize NCORS and contain features that ensure positive control over the docketing and processing of courts-martial, and should expedite subpoena, order, and warrant applications as appropriate. Circuit rules must operate to facilitate access to the court upon timely request by any party.

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 NMCTJ JAG Portal website available at: Judiciary Docket - Calendar. The Northern Circuit clerk is responsible for coordinating with the OJAG Public Affairs Office to ensure the monthly docket is properly posted in accordance with Article 140a, UCMJ.

WJCR 6.2a: Access to the NMCTJ Sharepoint website requires additional site permissions outside of the MCEN. Therefore, the operative docket/calendar for the WJC is located on the WJC Sharepoint Online webpage located at <https://usmc.sharepoint-mil.us/teams/WesternJudicialCircuit>, and linked to the WJC Microsoft Teams channel. Counsel in the WJC shall exclusively use and reference the WJC Sharepoint calendar for docketing and other calendaring purposes.

Rule 6.3: Docketing judges and military judges presiding over arraignments must use the standardized Trial Management Order (TMO), which can also be found at: http://www.jag.navy.mil/trial_judiciary.htm. Military

judges may amend and alter this TMO as is necessary for individual cases. Once the military judge signs the TMO, it must be marked as an appellate exhibit. The military judge must upload the signed, marked copy to NCORS and order the TMO dates in NCORS.

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 any detailed reserve military judge.

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

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

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 will communicate with both the detailed judge and 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 1700 on Thursday of each week, a single representative of the government 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 Thursday due date (i.e. eleven (11) days later), unless directed otherwise by the docketing judge. If Thursday is part of a liberty period, the request shall be submitted no later than 1700 on the day prior to the last working day of the week. Only officers in the grade of O-4 or above 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 the government 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. 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. Counsel may offer justifications for specific dates, times, and locations. Such justifications should accompany the docket request. However, the docketing judge will make changes to requested 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, the Circuit Military Judge and the docketing judge via email. Prior to submitting a docket request, the government will provide all appropriate supporting documentation IAW these rules, i.e. charge sheet, convening order, proposed TMO, allied papers, plea agreement, stipulation of fact, etc.

The supporting documentation may be uploaded on NCORS. When a docket request is submitted by the government, that is a communication to the Court that all supporting documentation has already been uploaded to NCORS. 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. If the Defense desires to submit a proposed TMO, it must be submitted no later than two (2) business days before the scheduled arraignment.
- 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 government'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.

- 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, one 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 government's email to the docketing judge/Clerk of Court. Where proposed dates have not been jointly agreed upon, the government's docket request shall include a certification that opposing counsel were consulted about TMO dates at least two (2) business days prior to submission of the docketing request. If opposing counsel do not respond with their concurrence or with proposed alternative dates, that non-response shall be noted in the docketing request.
- 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 applicable). 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. An 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 the 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.secnav.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. See WJCR 6.19. All detailed or retained defense counsel are expected to

physically appear at every session of court. Regardless of an accused's waiver of counsel's presence, counsel must request authorization from the military judge no later than one business day prior to being absent from any hearing. See also WJCR 32.3a.

- 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 for which counsel establish good cause to hear the case earlier than ordinary docketing procedures under WJCR 6.7 will allow. "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, accompanied by a Walk-in Request Report establishing good cause for the "walk-in" hearing. (Attachment 8). 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

Rule 7.1: Use of Personally Identifiable Information (PII) must be eliminated or minimized to the maximum extent possible in all pleadings and documents.

Rule 7.2: Unnecessary PII must also be redacted in all documents (e.g., pleadings and discovery material) that are electronically transmitted. At a minimum, social security numbers, home addresses, telephone numbers, e-mail addresses, dates of birth, financial account numbers, and full names of minors must be redacted. Medical/psychiatric records must be sent by encrypted e-mail or through a secured access file exchange.

Rule 7.3: While names of alleged victims will be used during trial, all named victims will be identified by their initials in pleadings. Additionally, all named victims will be identified by their initials on charge sheets.

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.

Rule 7.4: All personnel will comply with SECNAVINST 5211.5 (series)⁶ and JAGINST 5813.2,⁷ as well as the requirements of their respective services regarding safeguarding PII. For Navy personnel, the governing

⁶Department of the Navy Privacy Program.

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

service regulation is JAG/CNLSC Instruction 5211.11. For Marines, the governing service regulation is Marine Corps Order 5800.16 (Legal Support and Administration Manual), including Volume 16, Section 0603, and all other relevant sections pertaining to the protection of PII.

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

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

Rule 8.2: *Ex parte* communication with a military judge concerning a case that is pending before that military judge is prohibited, except for routine administrative matters, pre-referral matters authorized under R.C.M. 309 and Article 30a, UCMJ, or as otherwise provided by law. Routine administrative matters include, but are not limited to, docketing and logistical matters (e.g., uniform and facility issues and matters that may affect time and duration of court sessions).

WJCR 8.2a: *Ex parte* communications with the Court shall be accompanied by contemporaneous notice to opposing counsel that *ex parte* communications have been made. This Rule applies to *ex parte* motions authorized by the Rules for Courts-Martial.

WJCR 8.2b: In accordance with R.C.M. 703(d)(2)(A), after referral of charges a defense request for an expert consultant may be raised before the military judge *ex parte*. Motions filed pursuant to this rule shall include the words "ex parte" in the title of the

motion and shall be accompanied by a draft order for the production of funding and a draft sealing order for the motion. Upon submission, unless and until the Court directs otherwise, the *ex parte* filing will be restricted from public view and the Government will be notified only that an *ex parte* filing has been made.

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

WJCR 8.3a: The WJC will detail a duty military judge each week to receive and process requests regarding pre-referral matters arising under R.C.M. 309. The identity of the duty military judge will be annotated on the Long Range Docket on the WJC SharePoint site: <https://usmc.sharepoint-mil.us/teams/WesternJudicialCircuit>. 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 referral of charges, a military judge may, upon written application by authorized counsel for the Government in connection with an ongoing investigation of an offense or offenses under the UCMJ, consider whether to issue an order or warrant for wire or electronic communications and related information as provided under R.C.M.s 309 and 703A, and Articles 30a and 46(d), UCMJ.

Rule 8.5: All requests for pre-referral subpoenas, orders, and warrants shall be filed within NCORS and must include the necessary documentation (e.g., application, draft

warrant, order, or subpoena). Use of email or other communications outside of NCORS to request a pre-referral subpoena, order, and warrant are not authorized unless specifically permitted by the CMJ for good cause shown by the requesting counsel

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.

WJCR 8.5e In order to avoid *ex parte* communications after charges have been referred, all post-referral applications for a warrant or order for wire or electronic communications pursuant to R.C.M. 703A, or for an investigative subpoena, will be simultaneously served on defense counsel.

WJCR 8.5f Records of Article 30A proceedings will be attached to the Record of Trial at the arraignment as allied papers.

Rule 8.6: Trial counsel applying for investigative subpoenas, or orders or warrants for wire or electronic communications will follow the procedures in R.C.M. 703A and Sections 0132a through 0132c of Chapter 1 of JAGINST 5800.7 (series)(JAGMAN). Any such request will be made using NCORS and must use the model application for subpoenas, orders, or warrants (DD Form 453 (Subpoena), DD Form 3057 (Application for Warrant for Electronic Communications), and DD Form 3056 (Warrant for Electronic Communications)) at: http://www.jag.navy.mil/trial_judiciary.htm. Military judges will expedite review of investigative subpoenas, orders, and warrant applications as their docket permits, but must complete the review no later than five (5) working days from the date the application is presented to the CMJ via NCORS.

Rule 8.7: Regardless of whether the military judge grants or denies the subpoena, order, or warrant application, the military judge will document the decision in NCORS and, if issued, upload the signed subpoena, order, or warrant, and any necessary supporting documentation into NCORS.

Rule 8.8: An individual in receipt of a pre-referral subpoena, order, or warrant may move the military judge to modify or quash the process on the grounds that compliance is unreasonable, oppressive, or prohibited by law. All filings to modify or quash a subpoena, order, or warrant must be filed within NCORS and served on trial counsel, and the CMJ of the circuit that issued the process.

RULE 9: DISCOVERY/PROTECTIVE ORDERS

Rule 9.1: Counsel will promptly comply with military law and service regulations concerning discovery.

Rule 9.2: Discovery requests should be as specific as possible to avoid misunderstanding and to assist in quickly obtaining the requested information.

WJCR 9.2a: Gamesmanship in the discovery process shall not be utilized by either party and will not be tolerated by the Court. Discovery requests should normally be answered promptly and in writing. All counsel are expected to adhere to the spirit of military discovery practice and will promptly turn over all discoverable materials. The parties shall work together to resolve ongoing discovery matters and bring unresolved discovery issues to the Court for resolution by filing with the Court a Motion for Appropriate Relief. No trial counsel will appear before the Court without having first read *United States v. Simmons*, 38 M.J. 376 (C.M.A. 1993), *United States v. Williams*, 50 M.J. 436 (C.A.A.F. 1999), *United States v. Stellato*, 74 M.J. 473 (C.A.A.F. 2015), and *United States v. Claxton*, 76 M.J. 356 (C.A.A.F. 2016).

Rule 9.3: A party or person from whom discovery or production is sought may move for a protective order. The motion must include a draft protective order and a certification that counsel for the moving party has in good faith conferred or attempted to confer with counsel for the other party or represented person to resolve the dispute without court action, unless a party believes submission of the matter *ex parte* is appropriate.

Rule 9.4: Pursuant to R.C.M.s 701(g)(2) and 806(d) and Military Rules of Evidence (M.R.E.) 505(g) and 506(g), or for other good cause shown, the military judge may enter protective or other orders as may be required in the interests of justice. The military judge may issue whatever protective orders are necessary to protect a party or person as follows:

(a) When necessary to protect the safety of any person;

- (b) To protect a party or person from an unwarranted invasion of privacy, annoyance, embarrassment, oppression or undue burden;
- (c) To prevent violations of M.R.E.s 412 and 513;
- (d) To prevent breach of a privilege recognized by an M.R.E. or other law applicable to courts-martial;
- (e) To prevent disclosure of classified information or other Government information that is subject to a claim of privilege under M.R.E.s 505 and 506, or other recognized discovery privilege; or
- (f) To prevent parties and witnesses from making extra-judicial statements that present a substantial likelihood of material prejudice to a fair trial by impartial members.

"Good cause" is shown when a party demonstrates, with specificity, that disclosure will cause a clearly defined and serious injury. The military judge may deny, restrict, or defer discovery or inspection, order certain documents or materials be withdrawn from a party or be otherwise protected, issue orders that parties or potential witnesses not make extra-judicial statements, and/or issue such other order as is just under the circumstances. A model protective order is located at: <https://portal.secnav.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), UCMJ, session to determine whether an issue is, in fact, controverted and to narrow the issues in contention to the maximum extent possible. As early as practicable, counsel should advise the military judge in an R.C.M. 802 conference of motions that are likely to arise at trial, including any unusual motions or objections, and any relevant authority then known to counsel, including contrary authority.
- Rule 10.2: All motions, supporting documents, and attachments must be properly marked, filed, and made available to opposing counsel and VLC, if applicable, through NCORS. It is the filing party's responsibility to ensure the

filing is properly uploaded in NCORS and made available to the intended court, opposing party, VLC, and the appropriate court reporter. In cases where a named victim is not represented by VLC, any notice or motion which implicates an alleged victim's rights must be provided to the alleged victim by trial counsel. As appropriate, electronic mail transmissions which are not captured by NCORS must be maintained by the originator and provided to the court reporter for inclusion in the record of trial.

WJCR 10.2a: All motions and responses will be filed electronically, to include all enclosures or exhibits, using NCORS. When a motion includes voluminous enclosures, the enclosures 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 NCORS shall constitute electronic service on all parties. Any exhibits or enclosures to a motion/response shall be filed contemporaneously with the applicable motion/response. Exhibits and enclosures shall be submitted as separate files so that they may be marked as separate appellate exhibits.

WJCR 10.2b: Contemporaneously with submission of all motions and responses, counsel will email the court reporters a comprehensive list of all documents that require marking for the relevant Article 39(a) session.

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

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. Counsel desiring to file a motion in excess of ten pages must file a motion for appropriate relief seeking leave of the court no later than forty-eight (48) hours before the filing deadline.

WJCR 10.3b: Only the relevant portions of documents may be filed as enclosures to motions. Filing extraneous documents as enclosures or failing to appropriately limit and redact enclosures will be grounds for the military judge to reject the motion. Counsel are encouraged to use techniques such as highlighting and/or redacting where appropriate.

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

WJCR 10.4a: Within the WJC, if any party is requesting an order of the Court, a draft order must be provided in Microsoft Word format.

WJCR 10.4b: If the defense desires government production of a witness for the purpose of offering testimony in support of a pretrial motion or response, the defense must file a contemporaneous, separate motion to compel the witness. The motion shall provide sufficient detail supporting the relevance and necessity of the witness's testimony and shall be supported by appropriate evidence. The government shall file a response agreeing to produce the witness or justifying non-production. The government will be prepared to produce the witness if the defense motion is granted by the Court.

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

(a) For example, if the Defense were to submit a motion to suppress as AE XX, the evidence submitted in support of the motion must be submitted as AE XXI. The evidentiary filing must contain a front page that lists the specific evidentiary exhibits. This requirement applies equally to the Government, Defense, and any third-party submissions. Counsel must work closely with the court reporters to ensure all submissions are marked correctly.

- (b) Any supplemental evidence or attachments for a previously marked motion will be included in the applicable appellate exhibit previously marked for the evidence in support of that motion. Using the example above, any supplemental Defense evidence for AE XX that was not originally included in AE XXI will be marked as AE XXI(a), AE XXI(b), and so forth. The supplemental submission must also include the date submitted.
- (c) All electronic media will be provided in a format that can be appended to the record and reviewed by reviewing authorities. All video and audio recordings submitted as evidence on a motion must be accompanied by a verbatim transcript of, at a minimum, the portions of the recordings that are pertinent to the motion. The verbatim transcript must be uploaded to NCORS.

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

Rule 10.7: If the military judge rules adversely to the Government and the Government contemplates an appeal pursuant to Article 62, UCMJ, and R.C.M. 908, the military judge must state on the record the time of the ruling to allow the Government to compute the 72-hour time period within which to file a notice of appeal. The military judge will also notify the Government of how to provide the military judge with the written notice of appeal.

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

WJCR 10.8a: Any party opposing a motion 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 concedes 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. The military judge, in his or her discretion, may also consider failure to file a written response by the TMO deadline as a concession of the motion.

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

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

Rule 10.10: In such cases where the Defense moves to dismiss charges and specifications on the grounds of a speedy trial violation, trial counsel will prepare a written chronology of events prior to trial.⁸

WJCR 10.10a: Defense motions to dismiss for speedy trial violations shall also include a comprehensive written chronology of events prior to trial.

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

WJCR 10.11a: Bills of Particulars shall also be uploaded to NCORS. They will further be emailed to the detailed judge, docketing judge, and Clerk of Court.

WJCR 10.12: The litigation of motions involves the presentation of legal and competent evidence. Facts must be established upon which the military judge may make essential findings. Except in extremely limited circumstances, proffers of counsel are not competent evidence.

⁸ See *United States v. Ramsey*, 28 M.J. 370, 372 (C.M.A. 1989) (commending use of chronology in deciding speedy-trial motions).

RULE 11: CONTINUANCES

Rule 11.1: Continuance requests will ordinarily be made by written motion via NCORS. The motion must state the specific reason for the request and be accompanied by a proposed order. The proposed order must contain a place for indicating the new trial date as well as any other proposed changes to the TMO. Counsel must be prepared to fully justify each continuance request.

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

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

RULE 12: SITUS/HOURS

Rule 12.1: Unless otherwise directed by the convening authority pursuant to R.C.M.

504(d) (1) (B), the military judge will designate the situs of trial.

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 complies with all applicable orders and directives governing courtroom safety requirements. Notwithstanding such orders and directives, counsel must inform the military judge whenever they believe extra precautions and/or security measures should be implemented.

WJCR 13.2a: The government shall provide a completed Courtroom Risk Assessment to the Military Judge and opposing counsel no later than two (2) business days prior to each scheduled hearing.

Rule 13.3: The CMJ will annually review the security plan for the courtroom facilities within the circuit with the Government representative responsible for courtroom security at each installation.

Rule 13.4: The wearing or carrying of weapons in the courtroom is prohibited except when authorized by the presiding military judge for good cause shown. Most courtrooms in the naval service are not stand-alone courtrooms and are located in multipurpose 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 is set by service guidelines

WJCR 14.1a: The "tanker" jacket is authorized for wear with either the Service "B" or Service "C" uniform. The green service sweater is not authorized for wear with any uniform.

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 must render such assistance as may be necessary to ensure the proper uniform. When the accused is in pretrial confinement, the Government is responsible for ensuring the accused is in the appropriate uniform. Confinement uniforms are not appropriate courtroom attire. No accused or witness will wear any tag or symbol that identifies the person as being in custody while in open court.

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

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

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

WJCR14.5a: See WJCR 4.2c.

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

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

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

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

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

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

(b) The alleged victim is joined in the same physical location by the alleged victim's actual VLC, a substitute VLC who has agreed to attend the proceeding with the alleged victim, or a substitute Government representative - approved by the military

judge - who has agreed to attend the proceedings with the alleged victim; and

(c) The VLC or Government representative joining the alleged victim establishes to the military judge's satisfaction the alleged victim is attending in compliance with the remaining rules set forth herein.

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

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

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, and may result in removal by the presiding military judge.

RULE 16: PUNCTUALITY

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

RULE 17: BAILIFF

- Rule 17.1: Unless otherwise directed by the CMJ or presiding military judge, a bailiff must be present at all contested courts-martial with members, as well as any other court-martial proceeding as may be directed by the presiding military judge, to enhance courtroom security and the efficient administration of the Court.
- Rule 17.2: Trial counsel must personally ensure bailiffs are thoroughly briefed on their duties and are provided a copy of the Bailiff Handbook, found at:
http://www.jag.navy.mil/trial_judiciary.htm.

RULE 18: GUARDS

- Rule 18: When appropriate, a guard or guards will be detailed to ensure proper custody of the accused and to assist the court in preserving order and decorum. However, this rule is subject to Rule 13.4 regarding weapons in the courtroom and Rule 14.3 regarding physical restraints.

RULE 19: COURT REPORTERS

- Rule 19.1: Trial counsel must ensure the court reporter has been properly sworn.
- Rule 19.2: Each time the court convenes or reconvenes, the court reporter must note in the record the presence or absence of the parties and the time at which the court convenes or reconvenes. The court reporter must note the time at which recesses are taken and the time of adjournment.
- Rule 19.3: Court reporters must ensure the name and rank of all military parties to the trial and the name and address of civilian counsel are properly noted in the record of trial.
- Rule 19.4: Court reporters must maintain a complete list of all exhibits marked, those offered and those admitted.
- WJCR 19.4a: Unless required sooner by these rules (see, e.g., WJCR 10.2b), counsel will email the court reporters a comprehensive list of all documents that require marking no later than one (1) business day prior to the start of a hearing.

Rule 19.5: Trial counsel are responsible for keeping the Clerk of Court and/or the court reporter apprised of the status of all docketed cases, to include, but not limited to: anticipated delays, continuances, withdrawal of charges, changes of courtroom or location, changes in anticipated pleas and forum, and the need for court reporter support in unscheduled hearings.

RULE 20: ENTRY & DEPARTURE OF MILITARY JUDGE

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

RULE 21: ENTRY & DEPARTURE OF MEMBERS

Rule 21: Without regard to rank or grade, all persons, other than the military judge and court reporter, must rise when the members, as a panel, enter or leave the courtroom.

RULE 22: VOIR DIRE

Rule 22.1: In accordance with R.C.M. 912(d), the military judge determines the procedure for conducting voir dire. Voir dire examination must be limited to matters relevant to a member's fairness and impartiality and to determining whether to remove a member for cause. The military judge must ensure the privacy of the prospective members is reasonably protected. All group voir dire questions, and individual voir dire questions counsel seek to ask of all members, must be submitted in writing to the military judge prior to trial.

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

Rule 22.2: Members' questionnaires must be phrased and organized to facilitate an accurate screening of the members. The questionnaires must seek information essential to determine: (1) whether a person meets the Article 25, UCMJ, criteria for eligibility; and (2) the existence or nonexistence of facts which may disclose a proper ground

for a challenge for cause. A copy of a model questionnaire can be found at: http://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 each witness. The list must include witnesses whose testimony will be presented by stipulation of expected testimony.

Rule 22.4: For charges referred on or after 1 January 2019 and arraigned on or after 28 December 2023, before assembly of the court-martial, the court reporter must randomly assign numbers to the members detailed by the convening authority in accordance with R.C.M. 911. The preferred method for assigning the random numbers is to use the Army Trial Judiciary's "Randomizer" found on their website. As a backup method of assigning random numbers, the court reporter may use the Navy Excel random number generator located at https://www.jag.navy.mil/trial_judiciary.htm. Counsel for all sides may view the random number generation. When the court reporter completes the random number generation, a copy of the results will be printed and marked as an appellate exhibit.

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

RULE 23: PROHIBITED ITEMS IN THE COURTROOM

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

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: Except for the court reporter and as authorized by the CMJ, no person shall use electronic devices (e.g. laptops or tablets) to audio or video record any courtroom session or to take photographs of the courtroom during or between courtroom sessions. No person in the courtroom may use any such electronic devices to transmit email, text messages, or social media messages.

Rule 23.3: Cellular or mobile telephones are only permitted in the courtroom for detailed counsel and supervisory counsel unless otherwise permitted or restricted by the military judge. When cellular telephones are in the courtroom, they must be placed in silent mode. Trial counsel will post signs prohibiting cell phones outside the courtroom where spectators and the court members enter.

RULE 24: COUNSEL DECORUM

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

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

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

Rule 24.4: Counsel must address all remarks, arguments, and questions to either the court or the witness testifying and must refrain from addressing opposing counsel directly.

RULE 25: COUNSEL CONDUCT

Rule 25.1: During trial, counsel must not state or allude to any matter counsel has no reasonable basis to believe is true and relevant to the case.

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 a personal opinion as to the justness of a cause, the credibility of a witness, or the guilt or innocence of the accused, except counsel may argue for any position or conclusion based on an analysis of the evidence with respect to the matter stated.

Rule 25.3: In presenting a matter to the court-martial, counsel must disclose legal authority in the controlling jurisdiction known to counsel to be directly contrary to their position and which is not disclosed by opposing counsel.

Rule 25.4: Counsel will not leave the courtroom during trial without first obtaining the military judge's permission.

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.

- WJCR 25.7: Counsel shall limit their opening statements to what they expect the issues in the case will be and what the evidence will show. Counsel will not use the opening statement to argue or to attempt to instruct as to the law. Unless good cause is shown, and approved by the military judge, opening statements are limited to a total of thirty (30) minutes per side.
- WJCR 25.8: The court reporter will produce the exclusive recording of court sessions. No other person in attendance will record any court proceeding in any manner. Counsel will not record any R.C.M. 802 conference without the express authorization of the military judge.
- WJCR 25.9: Email correspondence to the Court shall be limited to administrative and logistical matters. All other communication with the Court on cases before the Court shall be transmitted via a formal filing or pleading. The Court will not consider any requests for relief or other substantive matters made via means other than formal filing or pleading.

RULE 26: WITNESSES

Rule 26.1: Trial counsel must swear each witness called to testify and must ensure that the following information is announced in court depending on the witness's status.

- (a) For a military witness, his or her name, rate or rank, service, and current duty station; or**
- (b) For a civilian witness, his or her name and city and state of residence.**

Rule 26.2: Counsel must ensure their witnesses understand the physical arrangements of the courtroom, where they should go, and how they must conduct themselves.

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 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 avoid positioning themselves in a way that obstructs 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: No later than ten (10) business days prior to trial, counsel who intend on using an interpreter during the trial will notify the presiding military judge and opposing counsel of the interpreter's identity and provide a brief summary of the interpreter's qualifications. Any objection to the interpreter will be provided to the presiding military judge as soon as practicable, but no later than five (5) business days before the date of trial.

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, the non-party legal counsel must stand until recognized by the military judge. The counsel must not speak until recognized by the military judge. When recognized, the non-party legal counsel must enter the well and speak from the podium.

RULE 28: STIPULATIONS

Rule 28.1: Counsel will attempt to narrow the issues to be litigated as much as possible using stipulations of fact and expected testimony. If a motion, or any other issue,

involves only a dispute between the parties as to the law or any ultimate question of fact, and does not involve the underlying facts, counsel should consider entering into stipulations of fact or expected testimony covering those matters.

Rule 28.2: Stipulations must be in writing and prepared prior to trial.

Rule 28.3: Stipulations may be made for the limited purpose of obtaining a ruling on a motion or other pleading.

Rule 28.4: In a trial before members, stipulations are evidence and will be read to the members.

- (a) Stipulations of fact. Stipulations of fact will be provided to the members for use in deliberations like all other admitted evidence. Written stipulations of fact must be marked as a "Prosecution Exhibit" or "Defense Exhibit."
- (b) Stipulations of expected testimony. Stipulations of expected testimony will not be provided to the members for use in deliberations. Written stipulations of expected testimony must be marked as an "Appellate Exhibit."

RULE 29: OFFERS OF PROOF

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

RULE 30: JUDICIAL NOTICE

Rule 30: Counsel will advise the military judge and opposing counsel of any intended request 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.

WJCR 31.1c: Counsel will ensure that exhibits are appropriately redacted, including removal of extraneous and irrelevant pages from documents.

WJCR 31.1d: All exhibits the parties intend on using during a contested trial will be uploaded to NCORS no later than 0900, **one business day** before the court-martial is scheduled to begin, followed by notification via email to the court reporter, Military Judge, and opposing party. If the contested trial is scheduled to commence on a Monday, parties will upload exhibits no later than 0900 the preceding Friday. For physical exhibits and documentary exhibits containing contraband materials, the parties will upload a "placeholder" describing the exhibit. Audio and video exhibits will be placed on a CD or DVD and hand-delivered to the court reporter, with a courtesy copy provided to the military judge and opposing party no later than 0900, **one business day** before the court-martial is scheduled to begin.

WJCR 31.1e: Guilty Pleas. All exhibits, the plea agreement or pretrial agreement, and the appellate rights statement will be uploaded to NCORS, no later than 0900, **one business day** before the guilty plea and sentencing hearing is scheduled to begin, followed by notification via email to the court reporter, Military Judge, and opposing party. If the hearing is scheduled to commence on a Monday, parties will upload exhibits no later than 0900 the preceding Friday. For physical exhibits and documentary exhibits containing contraband materials, the parties will upload a "placeholder" describing the exhibit. Audio and video exhibits will be placed on a CD or DVD and hand-delivered to the court reporter, with a courtesy copy provided to the military judge and opposing party no later than 0900, **one business day** before the guilty plea and sentencing hearing is scheduled to begin.

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 must be marked as an appellate exhibit and uploaded into NCORS.

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.

WJCR 31.4b: When offering video or audio evidence in support of a motion, the party offering the evidence will include as an enclosure a document setting out the pertinent time stamps from the audio or video exhibit with a quotation or synopsis of the relevant material to be found at the time stamp.

RULE 32: REMOTE REQUIREMENTS

Rule 32.1: Hearings. Remote hearings occur when the military judge is located in a different site than the accused and court reporter. Consistent with the R.C.M.s and applicable Department of the Navy instructions, a military judge

may conduct remote hearings as needed to complete Article 30a, UCMJ, sessions for pre-referral subpoenas, orders, and warrants, and Article 39(a), UCMJ, sessions for arraignments, motions practice, and any other session permitted by the military judge subject to the following rules:

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

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

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

WJCR 32.3a: All counsel detailed to a case or retained in a case will physically attend every session of court. The detailed military judge or docketing judge, as applicable, may grant leave to be excused from a session of court, or to appear remotely, in exceptional circumstances. Counsel shall submit written motions for excusal or to appear remotely no later than two (2) business days prior to a session of court. Such motions will explain in detail the reason for the request, and (if applicable) the reason that proceeding in the absence of counsel will work to the benefit of

the represented client, and will certify that the represented client has consented to proceeding in the absence of detailed or retained counsel. In case of an emergency, the detailed military judge or docketing judge may, in his or her discretion, grant late excusal requests for good cause shown.

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

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

RULE 33: FINDINGS & SENTENCING INSTRUCTIONS

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

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 JUDGEMENT/SEALING ORDERS

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

Rule 34.2: At the conclusion of the trial, defense counsel will ensure the accused understands his/her post-trial and appellate rights and specifically designates who he/she wants to receive the Entry of Judgment, record of trial, and any matters submitted by the victim. The accused must include such decisions in the written

acknowledgement of appellate rights. Counsel must use the model Appellate Rights Statement found at: http://www.jag.navy.mil/trial_judiciary.htm.

Rule 34.3: Immediately upon adjournment of the court-martial, trial counsel must cause a Statement of Trial Results (SOTR) to be prepared for the military judge's signature in accordance with R.C.M. 1101.⁹ A draft of the SOTR must be prepared by trial counsel, except for the findings and sentence, and submitted to the military judge in every contested case prior to the commencement of trial on the deadline set in the TMO for final pretrial matters, or if no date is set, then three (3) days before the date set for the commencement of trial. In a guilty plea case, the draft SOTR, except for the sentence, must be provided to the military judge no later than the day before trial. The military judge must sign only the SOTR and not the confinement order. Trial counsel shall upload the completed SOTR to NCORS after the military judge signs it.

WJCR 34.3a: The trial counsel shall cause the final/complete Statement of Trial Results to be delivered to the military judge via NCORS within thirty (30) minutes of adjournment of the court-martial. The trial counsel shall notify the military judge via email once the Statement of Trial Results has been completed in NCORS.

Rule 34.4: Sealing Orders Required. Pursuant to M.R.E.s 412, 505, 513, and 514, and R.C.M.s 701(g)(2) and 1113, all motions, responses, enclosures and other papers relating to motions and responses, rulings and orders, and portions of the record of trial of closed or *ex parte* sessions of court for hearings conducted pursuant to M.R.E.s 412, 505, 513, and 514, and where the military judge has granted relief after an *ex parte* hearing conducted pursuant to R.C.M. 701(g)(2) must be ordered sealed by the military judge at such time as the military judge must direct and no later than the certification of the record of trial. Exhibits containing child pornography must also be sealed by order of the military judge. Sealing must be implemented to prevent unauthorized access or disclosure, while also ensuring

⁹ See JAG/CNLSCINST 5814.1D (Post-Trial Processing).

it does not unduly or unfairly restrict proper 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 must be ordered sealed by the military judge prior to verification of the record of trial.

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

Rule 34.7: Court reporters will ensure the sealed matters are not further reproduced or copied and remain only in the original record of trial. All exhibits, documents, and portions of the record of trial ordered sealed, to include videos and images of child pornography, will be appended to the original record of trial as set forth in Rule 34.6 and will be sent to the Clerk of Court for the Navy-Marine Corps Court of Criminal Appeals (NMCCA) for inspection in accordance with that court's rules.

Rule 34.8: For cases in which child pornography is introduced into evidence in a digital format and published to the military judge or members on a computer monitor, trial counsel will provide to the court reporter a password

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

Rule 34.9: All documents and materials which are reviewed by the military judge pursuant to an *ex parte* request or an in camera review and not ordered disclosed must be sealed and attached to the record as an appellate exhibit. This includes any motions or other writings or statements requesting *ex parte* review.¹⁰

Rule 34.10: Certification of the Record. Pursuant to R.C.M. 1112 and JAG/CNLSCINST 5814.1D, the court reporter will compile the record of trial for certification. The certified record of trial is the official record of the proceedings of a court-martial. Once the record of trial is compiled in accordance with R.C.M. 1112(b), the court reporter will certify the record of trial pursuant to R.C.M. 1112(c). The court reporter will further prepare the certified record of trial for appellate review in accordance with R.C.M. 1112(f), to include the verbatim transcript. The verbatim transcript will be prepared in accordance with R.C.M. 1114 and pursuant to JAG/CNLSCINST 5814.1D for all courts-martial except

¹⁰ See R.C.M. 701(g) (2).

acquittals. The court reporter will certify this written transcript is a true, accurate, and complete copy of the audio and/or other electronic recording of the court-martial proceeding in the case. The certified record of trial, together with all required attachments, must be forwarded as soon as practicable after the Entry of Judgment to OJAG Administrative Support Division (Code 40). In all cases, the certified record of trial and all required attachments must be completed and forwarded for appellate review within 120 days of the announcement of sentence.¹¹

Rule 34.11: Verification of the Record and Entry of Judgment. Pursuant to JAG/CNLSCINST 5814.1D, the military judge will verify the record of trial within twenty (20) days of receipt of the certified record, including the verbatim transcript. Verifying the record of trial ensures the record is complete, all exhibits and enclosures are appropriately included in accordance with R.C.M. 1112, the pleas, findings, and sentence are accurately reflected in the transcript accompanying the record of trial, and the verbatim transcript is suitable for appellate review. As with the SOTR noted in Rule 34.3 herein, trial counsel or designee must cause the Entry of Judgment to be prepared for the military judge's signature in accordance with R.C.M. 1111. Additionally, in accordance with R.C.M. 1111 and JAG/CNLSCINST 5814.1D, the military judge (or his or her substitute if the CTJ determines the military trial judge is unavailable and details a separate military judge) will enter the judgment of the court-martial as soon as practicable, but no later than 20 days after the military judge receives the complete record of trial and verbatim transcript.

WJCR 34.12: 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.

¹¹ *United States v. Rivera*, 81 M.J. 741, 744 (N-M. Ct. Crim. App., 2021).

RULE 35: DOCUMENTS & PLEADINGS

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

RULE 36: VICTIM LEGAL COUNSEL & OTHER NON-PARTY COUNSEL

- Rule 36.1: Victim Legal Counsel (VLC), or other non-party legal counsel, may be heard before the court to the extent authorized by applicable law. Prior to appearing before the court, non-party counsel must file an NoA with the court. This NoA must state the judicial circuit, applicable case caption, name of the respective client (using only the client's initials if the client is a minor), and name, rank, address, phone number and email address of the non-party counsel. The NoA must also contain a brief statement as to the non-party counsel's qualifications to practice and status as to oath. The NoA must be uploaded into NCORS. A non-party counsel who fails to file a NoA will not be recognized by the court.

- 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. 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 must furnish the civilian VLC with a copy of the Uniform Rules and any local rules. The civilian VLC's NoA must acknowledge familiarity with the Uniform Rules and local rules.

Rule 36.3: All non-party counsel are subject to these Uniform Rules, the Rules of Professional Conduct,¹² and the applicable local rules.

Rule 36.4: If a VLC has filed a NoA, trial counsel must consult with the VLC regarding availability before agreeing to any session of court in a TMO or requesting a continuance. Trial counsel must provide the VLC notice of all ordered or scheduled sessions of court within twenty-four hours (24) of the order unless the military judge permits a different time for such notice upon a showing of good cause. Additionally, trial counsel must immediately provide the VLC with a copy of any TMO ordered by the court and any rulings on motions involving the VLC's client. Any required notices or motions may be served electronically upon the VLC via NCORS in accordance with Rule 10.3.

Rule 36.5: VLC may have an interest in hearings for rights afforded alleged victims by law. As such, trial counsel and defense counsel must ensure VLCs receive copies of the relevant Government and Defense filings on issues their clients have standing to address. To the maximum extent possible, this must be accomplished using NCORS. If not possible for technical reasons or because an alleged victim is represented by a civilian VLC, then trial counsel and defense counsel must ensure VLC receives such filings within one business day after filing. When appropriate, VLC should be included in R.C.M. 802 conferences regarding the filing of such motions as discussed in Rule 8.1.

Rule 36.6: VLC may file such motions and other pleadings with the court as they deem appropriate to represent their client's interests. VLC must articulate a basis for standing in their written pleadings. Military VLCs will

¹² JAGINST 5803.1E.

file motions and other pleadings using NCORS. For civilian VLCs, trial counsel is responsible for uploading all such motions and other pleadings to NCORS on the VLC's behalf. VLCs and other non-party counsel must ensure their motions and other pleadings are timely filed and served on the Court and all counsel for the parties, and any other non-party counsel whose client has an interest in the issue. The presiding military judge may set separate deadlines for the filing of any motions by a VLC or other non-party counsel.

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

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

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

R.C.M. 806(b)(2) and related case law. For hearings under M.R.E.s 412, 513(e)(2), and 514(e)(2), the military judge must close the hearing.

RULE 37: VICTIM'S RIGHT TO BE HEARD

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

RULE 38: APPOINTMENT OF DESIGNEE FOR CERTAIN VICTIMS

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

Rule 38.2: At any time after appointment, an individual must be excused as the designee upon request by the designee or a finding of good cause by the military judge. If the designee is excused, the military judge must appoint a successor using the procedures established in R.C.M. 801(a)(6).

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

RULE 39: CONTEMPT PROCEEDINGS

Rule 39.1: Military judges are empowered to punish persons in accordance with Article 48, UCMJ, and R.C.M.s 801(b) and 809 for direct or indirect contemptuous behavior. Such contempt power is to be exercised with restraint and in strict compliance with the statute and the implementing R.C.M.

Rule 39.2: If a military judge intends to hold a contempt proceeding under R.C.M. 809(b)(2), the military judge must notify the subject of the proceeding in writing, notwithstanding the provision in the rule allowing for oral notification.

RULE 40: MODEL PRETRIAL/PLEA AGREEMENT

Rule 40: Counsel are strongly encouraged to use the model pretrial or plea agreement, depending on the offense date, at: http://www.jag.navy.mil/trial_judiciary.htm.

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

Rule 41.1: The NCORS system will be used for all case activity unless a specific exception is granted by local rules, the CMJ, or the presiding military judge.

Rule 41.2: To effectuate this policy, counsel and military judges are required to make use of NCORS for all activity on a case from inception through the completion of the trial and post-trial process. Where deficiencies are discovered, counsel and military judges should forward the deficiencies, and any proposed changes to address

the deficiencies, up their chain of command as expeditiously as possible.

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
- (8) WJC "Walk-in" Request Report