



DEPARTMENT OF THE NAVY
HAWAII JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
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IN REPLY REFER TO:

5800
NMCTJ/hcr
23 Dec 16

PROMULGATING ORDER: HAWAII JUDICIAL CIRCUIT RULES OF PRACTICE

Subj: Hawaii Judicial Circuit Rules of Practice, NMCTJ

Ref: Uniform Rules of Practice, NMCTJ dated 30 July 2015

Encl: Hawaii Judicial Circuit Rules of Practice, NMCTJ dated 23 December 2016

1. Purpose. To revise the Hawaii Judicial Circuit Rules of Practice to bring them into compliance with the reference and the current procedures within the circuit.
2. Applicability. The Hawaii Circuit Rules of Practice, NMCTJ, as set forth in the enclosure, shall apply to all Navy and Marine Corps courts-martial conducted within the State of Hawaii and to all attorneys, court personnel, witnesses and spectators appearing at, participating in or observing such courts-martial.
3. Cancellation. The circuit rules are effective as of 23 December 2016. All previous versions of these rules are cancelled effective this date.

A handwritten signature in black ink, appearing to read "Leon J. Francis", written in a cursive style.

LEON J. FRANCIS
Circuit Military Judge
Lieutenant Colonel, U.S. Marine Corps

**HAWAII JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY**



RULES OF PRACTICE

Revised: 23 December 2016

Table of Contents

<i>Preamble</i>	1
<i>Rule 1: Applicability</i>	1
<i>Rule 2: Purpose</i>	2
<i>Rule 3: Construction</i>	2
<i>Rule 4: Referred Charges</i>	3
<i>Rule 5: Civilian Counsel</i>	4
<i>Rule 6: Docketing Procedures</i>	5
<i>Rule 7: Personally Identifying Information</i>	8
<i>Rule 8: Conferences and Communications with the Military Judge</i>	9
<i>Rule 9: Discovery</i>	10
<i>Rule 10: Motions</i>	10
<i>Rule 11: Continuances</i>	13
<i>Rule 12: Situs</i>	14
<i>Rule 13: Courtroom Security</i>	14
<i>Rule 14: Uniforms</i>	15
<i>Rule 15: Spectators</i>	16
<i>Rule 16: Punctuality</i>	17
<i>Rule 17: Bailiff</i>	18
<i>Rule 18: Guards</i>	18
<i>Rule 19: Court Reporters</i>	18
<i>Rule 20: Entry and Departure of Military Judge</i>	19
<i>Rule 21: Entry and Departure of Members</i>	19
<i>Rule 22: Voir Dire</i>	19
<i>Rule 23: Prohibited Items in Courtroom</i>	21
<i>Rule 24: Counsel Decorum</i>	21
<i>Rule 25: Counsel Conduct</i>	22
<i>Rule 26: Witnesses</i>	22
<i>Rule 27: Objections</i>	24
<i>Rule 28: Stipulations</i>	25

<i>Rule 29: Offers of Proof</i>	25
<i>Rule 30: Judicial Notice</i>	25
<i>Rule 31: Exhibits</i>	26
<i>Rule 32: Video Teleconference Requirements</i>	27
<i>Rule 33: Findings and Sentencing Instructions</i>	28
<i>Rule 34: Record of Trial/Appellate Rights</i>	28
<i>Rule 35: Documents and Pleadings</i>	29
<i>Rule 36: Victims' Legal Counsel and Other Non-Party Counsel</i>	29
<i>Rule 37: Victims' Right to be Heard</i>	31
<i>Rule 38: Appointment of a Designee for Certain Victims</i>	32
<i>Rule 39: Contempt Proceedings</i>	33
<i>Rule 40: Model Pretrial Agreement</i>	33
<i>Attachments</i>	34

Preamble

The Hawaii Circuit Rules of Practice (at times referred to as the HCRs) supplement the Uniform Rules of Practice, Navy-Marine Corps Trial Judiciary and govern all courts-martial convened in the Hawaii Judicial Circuit. These HCRs are promulgated by the Circuit Military Judge for the Hawaii Judicial Circuit under Rule for Courts-Martial 108 and 801(b) and pursuant to the authority delegated in the Uniform Rules. They are designed to promote a common understanding of the procedure for the practice of military criminal law in courts-martial within the Hawaii Judicial Circuit. These rules are effective 23 December 2016. All previously published rules are hereby cancelled.

Rule 1: Applicability

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

HCR 1.1: These HCRs apply to all Navy-Marine Corps courts-martial tried under the cognizance of the Circuit Military Judge of the Hawaii Judicial Circuit.

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

HCR 1.2: All counsel practicing before a court in this circuit will familiarize themselves with both the Uniform Rules of Practice, Navy-Marine Corps Trial Judiciary and these HCRs. The court will infer by counsel making an appearance before the court that they have read and will comply with both sets of rules.

Rule 2: Purpose

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

HCR 2: These HCRs are intended to facilitate the orderly and just disposition of courts-martial and to provide for more efficient application of judicial and legal resources throughout the circuit.

Rule 3: Construction

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

HCR 3.1: a. Throughout these HCRs the following definitions will apply:

(1) "Filing" of a pleading, notice, or document with the court means that a true and complete copy of the pleading, notice, or document in question is delivered to the detailed military judge and clerk of court. Counsel are cautioned that a detailed military judge in any given court-martial may not be stationed where a court-martial was convened or the *situs* of trial. Detailed counsel and detailed military judges may be separated by substantial time and distance. Counsel should plan and coordinate accordingly. Counsel are responsible for ensuring that the detailed military judge receives filings in a timely manner via an approved means as described within these *Circuit Rules*.

(2) "Service" upon opposing counsel means that a true and complete copy of a filed pleading or document is delivered to opposing counsel.

(3) "Notice" is established when the transmitting attorney establishes that the receiving attorney has, in fact, received the pleading, document, or information transmitted. For the purpose of this definition, "receiving attorney" means the lead counsel in the case, whether military or civilian. If the lead counsel is unavailable, however, notice is deemed to be established by the receipt of the pleading, document, or information by any counsel detailed to the case or assigned as individual military counsel.

(4) "Timeliness" of filing, service and notice vis-à-vis time zones shall be determined by the detailed military judge as required and when appropriate in any particular case.

b. Original documents. All original documents should be retained and physically entered into the record of trial at the next session of the court-martial in question. Counsel are solely responsible for ensuring the cognizant Clerk of Court or detailed court reporter is served with all original documents.

c. Method of filing, service, and notice:

- (1) Physical service: Proof of physical delivery to the judge or attorney in question will establish filing, service, and/or notice as appropriate.
- (2) Electronic transmissions: In lieu of physical delivery, each filing or matter to be served may be transmitted electronically to the military judge or counsel concerned. Proof that an electronic document was received and opened by the receiving military judge or receiving counsel will constitute proof of filing or service of the document in question, and will constitute proof of notice as to that document, except as to any portion of the pleading or document that was not transmitted electronically. Electronic transmission and receipt will constitute filing and service, and can be substituted for physical service to the extent that the electronic filing or matter to be served corresponds to the original of the filing or matter to be served. Originals will be entered into the record of trial at the next session of the court-martial.
- (3) Fax transmissions: Fax transmissions cannot be assumed to be delivered to the judge or counsel in question. In order to satisfy filing, service, and/or notice requirements for faxed documents, the transmitting attorney must verify by voice or other means that the addressee did in fact receive the faxed document.

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

HCR 3.2: Failure to comply with these HCRs does not provide any rights or remedies to the accused and the rules will be applied and interpreted in that light.

HCR 3.3: Consistent with law and ethical standards, the detailed military judge may modify or suspend any of these HCRs when required by the facts of a case or in the interests of justice.

Rule 4: Referred Charges

Rule 4.1: After the referral of charges, the trial counsel must provide the responsible judicial circuit with a copy of those charges, along with the appropriate convening order, as soon as possible. (See JAGINST 5813.4I CH-2 establishing Judicial Circuits and Areas of Responsibilities).

HCR 4.1.a: After referral of charges, trial counsel will provide the Clerk of Court and the Circuit Military Judge with a copy of those charges, along with the applicable convening order, as soon as possible, but not later than seven calendar days after referral.

HCR 4.1.b: Defense counsel will examine the personal data on the charge sheet, determine its accuracy, and notify the trial counsel and the military judge of any necessary corrections, additions, or deletions as soon after service of the charges as possible.

HCR 4.1.c: All authorized changes to the charge sheet must be initialed and dated by the trial counsel or other representative of the convening authority. See R.C.M. 603.

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

HCR 4.2: Trial counsel and defense counsel shall make every effort to inform the detailed military judge of plea bargain specifics (i.e., only Part I of the Pretrial Agreement) at the earliest time practical following conclusion of negotiations and acceptance by counsel, the accused and the convening authority.

HCR 4.3: Trial counsel will notify the detailed military judge and defense counsel at least three days before trial of any charges or specifications on which evidence will not be presented.

HCR 4.4: The Circuit Military Judge, Hawaii Judicial Circuit is responsible for detailing all military judges to all Navy-Marine Corps courts-martial within the Hawaii Judicial Circuit except for those cases that fall within the purview of the Chief Judge, Navy-Marine Corps Trial Judiciary.

Rule 5: Civilian Counsel

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

HCR 5.1: If an accused retains civilian counsel, detailed defense counsel must furnish civilian counsel with a copy of these HCRs as well as the Uniform Rules. Civilian counsel will cause to be served on the clerk of court a written notice of appearance, attachment 1. Detailed defense counsel will promptly provide a copy of the notice of appearance to the trial counsel and court reporter prior to the first session of court. The notice must be in the form of a pleading and must contain the following: Name of the accused, counsel's name, office address, telephone/fax numbers, and electronic mail address; and jurisdiction(s) where the counsel is presently admitted

to practice and in good standing. Additionally, the notice must acknowledge familiarity with these rules. Attachment 1 is a sample of a proper notice of appearance.

Rule 5.2: Detailed defense counsel must inform the civilian counsel of the rules of Professional Conduct of Attorneys Practicing Under The Cognizance and Supervision of the Judge Advocate General (JAGINST 5803.3 series).

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

Rule 6: Hawaii Circuit Docketing Procedures

Rule 6.1: The circuit judge of each judicial circuit will establish and promulgate docketing procedures for cases within their circuit. These procedures must contain features that ensure positive control over the docketing and processing of courts-martial. Circuit rules shall operate to facilitate access to the court upon timely request by any party

HCR 6.1.a: Every week, each Military Justice Officer, Senior Trial Counsel, or other designated person is required to submit a Docketing Memorandum to the Clerk of Court, *in writing, no later than 1200 on Wednesday*. If not received by 1200 on Wednesday, the requested cases may be left off that week's revised docket. The Docketing Memorandum may be submitted via facsimile or electronic mail. The Circuit Military Judge may designate an alternate date and time for submission to accommodate weeks during which holidays are observed. The Docketing Memorandum must be in the format provided in attachment 2, and will list all cases which are to be included on the published docket. *If no cases are to be docketed, a negative submission is required*. The Hawaii Judicial Circuit Docket consists of a weekly docket and a long range docket. The most current weekly and long range dockets will be published on the Marine Corps Base Hawaii website at <http://www.mcbhawaii.marines.mil/Units/Tenant-Commands/Hawaii-Judicial-Circuit/> by 1630 on Friday for the following week's cases.

HCR 6.1.b: Each week, the Circuit Military Judge publishes the docket pursuant to the OJAG standard operating procedures. The Clerk of Court will be the circuit's primary point of contact for all docketing issues. The Clerk of Court is the administrative assistant to the Circuit Military Judge, Hawaii Judicial Circuit. The Clerk of Court is responsible for all administrative functions associated with the circuit and will be treated with the respect due the court when handling such matters, **regardless of his/her rank**.

HCR 6.1.c: The Circuit Military Judge or Clerk of Court will normally publish the docket on the Marine Corps Base Hawaii website and send the docket via e-mail to those on the Clerk of

Court's distribution list by close of business on Friday of each week for cases to be adjudicated the following week. Each Military Justice Officer, Senior Trial Counsel, Senior Defense Counsel, or other officer receiving the docket is responsible to ensure that the docket is distributed to all parties concerned with the scheduling of cases, including the court reporters and any affected victims' legal counsel or non-party counsel. *It is the responsibility of each counsel to be aware of each week's published docket.* If a counsel or other person has not been added to the distribution list of the Clerk of Court, and desired to be added, the individual may request inclusion on the distribution list through the Circuit Military Judge or Clerk of Court.

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

HCR 6.2.a: The Docketing Memorandum consists of four parts. Part One addresses cases to be docketed for the upcoming week, Part Two addresses cases to be docketed on the long-range docket, Part Three addresses any requested additions to the docket, and Part Four addresses any requested deletions to the docket and any logistical concerns (for example, if counsel are requesting a specific time of day due to witness availability).

HCR 6.2.b: Part One of the Docketing Memorandum must include all cases that are to have any sessions during the upcoming week. This includes cases which are being brought before the circuit for the first time, cases in which either counsel is requesting a session, and cases in which a session has been judicially scheduled by a military judge at a previous session.

HCR 6.2.c: Part Two of the Docketing Memorandum must include all cases that should be included on the long-range docket. Normally, Part Two reflects cases that have previously been docketed pursuant to previous court order, or through the use of a motion for docketing or pretrial information report.

HCR 6.2.d: Part Three of the Docketing Memorandum must include any requested additions to the docket. All requested additions to the docket must be justified, and ordinarily require supporting documentation. A motion for continuance, a copy of part one of a signed PTA, and a certificate of withdrawal are all examples of appropriate supporting documentation.

HCR 6.2.e: Part Four of the Docketing Memorandum must include any requested deletions to the docket. All requested deletions to the docket must be justified, and ordinarily require supporting documentation. A motion for continuance, a copy of part one of a signed PTA, and/or a certificate of withdrawal are all examples of appropriate supporting documentation.

HCR 6.2.f: Only cases with referred charges will be entered on the docket. In order to enter a case on the docket for the upcoming week, trial counsel will submit, via the Military Justice Officer or Senior Trial Counsel a completed Motion for Docketing (MFD), attachment 3 or a completed Pretrial Information Report (PTIR), attachment 4.

HCR 6.2.g: The PTIR serves to prepare the military judge for each session of court. In the initial PTIR, trial counsel must include copies of any military orders or directives alleged to have been violated, and copies of any federal or state statutes alleged to have been violated and applicable sections of the statutes pertaining to the maximum punishments. Prior to trial on the merits or guilty pleas, trial and defense counsel must each include proposed elements for any federal or state statutes alleged to have been violated, together with all applicable definitions.

HCR 6.2.h: Counsel should also include in Part 2 of the PTIR any special circumstances or requests that are specific to the next session of court, including start time, witness availability, significant logistical issues.

HCR 6.2.i: Trial counsel and defense counsel both must sign the PTIR. However, its submission should not be delayed for the lack of a signature. Accordingly, provided counsel have communicated with one another regarding the contents of the PTIR, one counsel may sign for the other with an explanation for the missing signature in Part 2. This will serve to verify to the court that the non-signing counsel is aware of the contents and has authorized the other to sign on his or her behalf.

HCR 6.2.j: If a previously scheduled session of court no longer appears to be necessary, a PTIR is still required. The reason for requesting to cancel the session should be explained in part 2 of the PTIR. As an example, if an Article 39(a) session was scheduled to litigate motions, and no motions have been filed, counsel still must submit a PTIR for that session, but may indicate in the PTIR that neither party desires a session. Unless all charges have been withdrawn in writing, only the military judge has the authority to cancel or move any session of court.

HCR 6.2.k: In order to docket a case for anytime other than the upcoming week (or within 7 days), counsel must submit an MFD. A PTIR is not required at that time, but must be submitted the week prior to the first scheduled session.

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

HCR 6.3.a: A proposed trial management order is REQUIRED to be filled out and attached to every MFD or presented to the military judge prior to arraignment if no MFD has been previously approved. Notice of any substantive changes to the contents of the trial management order must be affirmatively given to the opposing party and the court.

HCR 6.3.b: The accused, via defense counsel, must enter forum and pleas on the date established by the court. Such entry must be either orally on the record, or in writing by use of attachment 5. If in writing, they will be entered on the record at the next session of court.

HCR 6.3.c: Counsel shall submit pretrial documentation addressing preliminary matters (commonly referred to by the applicable page number of the Navy-Marine Corps Trial Judiciary Trial Guide) in accordance with the court-established deadlines. Notice of pleas and forum shall be submitted in accordance with attachment 5. Counsel who fails to submit such documents in a

timely manner may, in the discretion of the military judge, forfeit the opportunity to conduct general voir dire of the members.

HCR 6.3.d: Trial deadlines established at an Article 39(a) arraignment session, or by the use of a Motion for Docketing, are not optional. Counsel will adhere to the deadlines and may be called upon to address, on the record, any failure to abide by them.

HCR 6.3.e: If a case is withdrawn, documentation of such withdrawal must be submitted to the court. Proper documentation includes a withdrawal letter signed by the convening authority, a certification of withdrawal such as that in attachment 6, or a copy of the charge sheet reflecting the withdrawal action. Cases will not be removed from the docket, and counsel will be expected to appear as scheduled, until such written notification of withdrawal is received by the court.

Rule 7: Personally Identifiable Information (PII):

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

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

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

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

HCR 7: The first and last initials in capital letters will be used when identifying minors and victims in pleadings. Where initials are duplicative the middle initial will be used for both parties.

Rule 8: Conferences & Communications With The Military Judge

Rule 8.1: Conferences between the military judge and trial and defense counsel are authorized by R.C.M. 802. The presence of the accused is neither required nor prohibited. The purpose of such conferences is to inform the military judge of anticipated issues and to expeditiously resolve matters on which the parties can agree, but not to litigate or decide contested issues. The military judge must summarize all R.C.M. 802 conferences for the record at the next Article 39(a) session of the court, including the presence or absence of the victims' legal counsel. Whenever practicable, the military judge shall include the victims' legal counsel in R.C.M. 802 conferences in which the alleged victim has an identifiable interest. See Rule 36.4 below.

HCR 8.1: In contested cases, counsel may seek, and the military judge will normally schedule, a trial management R.C.M. 802 conference approximately one week prior to trial on the merits.

Rule 8.2: *Ex parte* communications with a military judge concerning a case that is pending before that military judge are prohibited, except for routine administrative matters or as provided by law.

Rule 8.3: Routine administrative matters include, but are not limited to, docketing and logistic matters (e.g. uniform and facility issues and matters that may affect time and duration of court sessions.)

Rule 8.4: After adjournment of a case, military judges may, at their discretion, conduct critiques or offer suggestions regarding counsels' performance in courts-martial to improve the administration of justice. At the discretion of the military judge, these sessions may be conducted *ex parte* or jointly.

HCR 8.2: Normally in member's trials, just prior to adjournment, the military judge will request that members remain behind in the deliberation room to provide the counsel a debrief immediately upon conclusion of the trial regarding counsel performance. The purpose of these sessions is to assist counsel in improving their individual advocacy skills. The session will not be used by counsel to intrude into the deliberative process by the members. Counsel will not ask the members during these debriefs how they voted on any particular issue or what occurred between the members during deliberations to include anything that may have been said among them. If any member begins to discuss his/her deliberative process or what occurred during

deliberations, the counsel will immediately stop the member and notify him/her of the restriction. However, a defense counsel may request a clemency recommendation from the members pursuant to R.C.M. 1105 in those cases which resulted in a conviction. If any military counsel does not desire a member's debrief at the conclusion of the trial that military counsel will notify the military judge before adjournment, otherwise it is expected that all military counsel will attend the member's debrief.

Rule 9: Discovery

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

HCR 9.1: Discovery issues must be resolved expeditiously. Counsel will acknowledge and respond to discovery requests in a timely fashion in accordance with the trial management order or otherwise within 5 days of receiving a discovery request. When counsel are not able to respond fully to a discovery request, counsel will acknowledge the request and discover what is available and give notice of when remaining material is expected to become available. To prevent discovery issues from unnecessarily delaying trial, the military judge, at arraignment, may require both counsel to state on the record their compliance with discovery requirements.

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

HCR 9.2: Gamesmanship in the discovery process will not be tolerated. Discovery requests should be answered promptly in writing. All counsel are expected to adhere to the spirit of military discovery practice and shall promptly turn over all discoverable materials, including the identity of witnesses.

HCR 9.3: Upon notice to opposing counsel, a party may request an *in camera* review of potentially discoverable material from the court at any time.

Rule 10: Motions

Rule 10.1: Counsel are encouraged to discuss motions or potential motions with opposing counsel prior to any Article 39(a) session to determine whether an issue is in fact controverted and to narrow the issues in contention to the maximum extent possible. Counsel should advise the military judge in a R.C.M. 802 conference as early as possible of motions that are likely to arise at trial, including any unusual motions or objections, and of any relevant authority then known to counsel.

Rule 10.2: When not prohibited by the military judge, motions and other documents may be filed with the court,

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

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

HCR 10.1: Motions must be submitted in accordance with the trial deadlines established by the military judge at the arraignment or as set out in an approved motion for docketing. If no such deadlines have been previously established in a case, counsel will submit motions 5 days prior, and responses 3 days prior, to any requested pretrial Article 39(a) session or trial. All motions and responses will be filed in the format discussed in the Uniform Rules, but must contain at a minimum the following information:

- (1) A statement of the nature of the motion;
- (2) A summary of the facts supporting the motion;
- (3) A brief discussion of the points of law supporting the motion, including citation of authority as well as argument and conclusions;
- (4) A statement of any evidence to be offered in support of the motion, (e.g., a description or copy of real evidence including photographs, names of witnesses, summaries of expected testimony, etc), a statement of which party bears the burden of production and persuasion, and a request, if any, for the production of a witness for an Article 39(a) motion session;
- (5) A statement of the relief requested, including drafts of any proposed orders; and

(6) A statement whether oral argument is desired.

HCR 10.2: Answers to motions will comply with the same requirements as motions, except they will be filed with the detailed military judge as soon as possible or as directed by pretrial order.

Rule 10.4: Each motion that requires an order must be accompanied by a proposed order by the moving party. The moving party and any responding counsel shall include proposed Findings of Fact and Conclusions of Law.

Rule 10.5: Military judges will rule on motions in a timely fashion so as not to create unnecessary delay in court proceedings. In those instances when a ruling must be reserved, the military judge shall revisit the issue and rule when the reason for the reserved ruling has been resolved.

Rule 10.6: If the military judge rules adversely to the government and the government contemplates an appeal pursuant to Article 62 of the Uniform Code of Military Justice and R.C.M. 908, the military judge must state on the record the time of the ruling, the time the 72-hour period will run, and how and where the government may provide the military judge with written notice of appeal.

Rule 10.7: Unless good cause is shown, motions must be filed in accordance with the Trial Management Order. Good cause is determined by the military judge. As supervisory counsel are not party to the trial, they shall not make, or be required to make, statements or certifications as to the timeliness of motions or whether good cause has been shown.

Rule 10.8: In cases wherein a named victim is represented by victims' legal counsel, all notices and motions in which an alleged victim's rights are implicated under the Uniform Code of Military Justice, Rules for Courts-Martial or Military Rules of Evidence shall be served upon victims' legal counsel. In cases where a named victim is not represented by victims' legal counsel, any notice or motion which implicates an alleged victim's rights shall be provided to the alleged victim via the trial

counsel.

HCR 10.3: If cases will be cited in the course of argument before the detailed military judge, a list of cases, not already cited in counsel's brief, will be delivered to the military judge and opposing counsel prior to argument.

HCR 10.4: It is the responsibility of counsel to ensure prompt delivery of all motions and/or responses as well as all supporting documents by the appropriate filing date and to confirm receipt by the judiciary.

Rule 11: Continuances

Rule 11.1: Continuance requests should ordinarily be made by written motion. The motion must state the specific reason for the request. Counsel must be prepared to fully justify each continuance request. At the discretion of the military judge and as circumstances require, a request for continuance may be made orally at an Article 39(a) session. Where counsel and the military judge are not co-located, and as exigent or emergent circumstances require, scheduling issues and continuance requests may be discussed in R.C.M. 802 sessions, but the matter shall be summarized and placed on the record at the next session of court.

HCR 11.1a: In cases where a Reserve Military Judge has been detailed, all continuance requests will be submitted to both the Circuit Military Judge and the detailed Reserve Military Judge. Absent specific delegation to the Reserve Military Judge the Circuit Military Judge will rule on the continuance requests.

HCR 11.1b: Counsel do not set trial dates. The detailed military judge has sole responsibility to set or change trial dates. If a continuance is requested and both counsel agree to the requested delay, the detailed military judge may grant the request without an Article 39(a) session or R.C.M. 802 conference in his or her sole discretion.

Rule 11.2: All motions to continue must include the number of previous continuances and who sought the continuances, whether opposing counsel consents, the trial date, and dates counsel and witnesses are available for trial. In cases involving victims' legal counsel, the moving party must certify that the motion was served on the victims' legal counsel. In cases involving a named victim not represented by victims' legal counsel, the trial counsel must certify that the motion was served on the named victim. The proposed order must

contain language for both granting and denying the motion, a place to indicate whether the motion is granted or denied, and a place for indicating the new trial date. A model motion for a continuance and a proposed order can be found at http://www.jag.navy.mil/trial_judiciary.htm.

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

Rule 12: Situs

Rule 12: Unless otherwise directed by the Convening Authority pursuant to R.C.M. 504(d)(1), the military judge will designate the situs of the trial.

HRC 12: The situs of the trial will be designated by the Circuit Military Judge when the weekly docket is published. If the convening authority desires to direct a specific situs for a session of court, then the trial counsel shall put that information in the Docketing Memorandum. Absent specific notice made to the Circuit Military Judge via the Docketing Memorandum, it will be inferred that the situs will be determined by the Circuit Military Judge.

Rule 13: Courtroom Security

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

HCR 13.1: In any case where the detailed military judge determines a security problem exists, or where a high security risk or potential risk is present, the trial counsel will ensure a courtroom security officer is appointed and a courtroom security plan is developed. The detailed military judge may delay the trial until satisfied that the court-martial may proceed in a safe manner.

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

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

Rule 13.4: The wearing or carrying of weapons in the courtroom is prohibited except when authorized by the detailed military judge.

HCR 13.2: If firearms are to be marked as exhibits, trial counsel will personally ensure that the firearms have been cleared before they are brought in the courtroom and cannot be fired.

Rule 14: Uniforms

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

HCR 14.1.a: The uniform for all sessions of court will be determined by the military judge. *See* R.C.M. 801. The prescribed uniform is service “C” for Marines and Summer Whites for Navy (or Service equivalent). Marines may be required to wear Service “A” at the military judge’s discretion. Navy personnel, at the military judge’s discretion may wear the khaki uniform. In all cases, when determining which uniform will be worn, the military judge will give careful consideration to the seriousness with which the proceedings are viewed, customs and traditions of the naval service, as well as the potential for publicity. Utility uniforms may be authorized for specific sessions, when an exigency arises, at the discretion of the presiding military judge.

HCR 14.1.b: Male civilian counsel will wear conservative coat and tie, shirt, and slacks. Female civilian counsel will wear appropriate conservative business clothing.

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 proper uniform. When the accused is in pretrial confinement, the government is responsible for ensuring the accused is in the appropriate uniform. Confinement uniforms are not appropriate courtroom attire.

Rule 14.3: Physical restraints will not be imposed on the

accused or any witness during sessions of the court-martial unless prescribed by the military judge. No accused or witness will wear any tag or symbol that identifies them as being in custody while in open court.

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. The military judge may issue such orders as deemed just to ensure a fair trial.
- Rule 15.2:** Spectators may attend any sessions of the court-martial, unless otherwise determined by the military judge. See R.C.M. 806.
- HCR 15.1:** Spectators may enter or leave the courtroom while the court-martial is in session, provided that their activity is not disruptive to the proceedings.
- Rule 15.3:** Counsel must ensure that the military judge is advised if there is a likelihood that any spectator is to be called as a witness. Except for alleged victims recognized by the court, spectators who may be called as witnesses should be excluded upon motion by the trial counsel or defense counsel. Alleged victims may only be excluded if the military judge determines by clear and convincing evidence that their testimony will be materially altered if the alleged victim heard the testimony at that hearing or proceeding.
- Rule 15.4:** Spectators are forbidden from disturbing the proceedings of the court-martial, using any menacing word, sign or gesture in the presence of the military judge, or demonstrating agreement or disagreement, either verbally or by non-verbal conduct (e.g. shaking or nodding of head), with testimony or other trial procedures. Spectators who violate this rule may be excluded from the courtroom or, in aggravated cases, held in contempt. Counsel are responsible for advising their clients, their witnesses, and friends of the alleged victim, accused and counsel of the decorum required in the courtroom.

HCR 15.2: Counsel will not confer with, attempt to confer with or make any expression in any form to anyone across the bar while the court is in session, unless given permission by the military judge.

Rule 15.5: In accordance with R.C.M. 806, courts-martial are public and shall be open subject only to those limited exceptions provided for in law and statute. The military judge shall make case-specific findings on the record justifying any court room closure regardless of whether there is an objection by a party. Supervisory counsel and support personnel may attend closed hearings to supervise and assist their counsel at the discretion of the military judge.

Rule 16: Punctuality

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

HCR 16.1: Trial counsel will notify the accused's command of the place, date, and time of trial, that the presence of the accused is required, and that appropriate transportation to the situs of the trial should be arranged. Generally, trial counsel is responsible for ensuring the timely presence of an accused who is in pretrial confinement or other restraint. However, after the accused arrives at the place of trial, defense counsel is responsible for the timely presence of an accused at all required court sessions. Defense counsel is also responsible for the timely presence of an accused that is not in pretrial restraint.

HCR 16.2: When a case is to be tried before a court with members, trial counsel must ensure that the members are notified of the time, place, and uniform for the trial. Reporting times for court members will be scheduled to minimize waiting time for members. Members may be placed on standby or "on call" as deemed necessary by the detailed military judge.

HCR 16.3: Trial counsel in every trial before members will submit a proposed findings worksheet where any plea of "not guilty" has been entered. If there is more than one charge or specification, if lesser-included offenses are in issue, or if findings by exceptions and substitutions can reasonably be made, the worksheet will be tailored to reflect each alternative finding. If defense counsel disagrees with the worksheet proposed by trial counsel, defense counsel may submit a proposed worksheet.

HCR 16.4: Trial counsel in every trial before members will submit a proposed sentencing worksheet when a finding of "guilty" has been reached. If defense counsel disagrees

with the worksheet proposed by trial counsel, defense counsel may submit a proposed worksheet.

Rule 17: Bailiff

Rule 17: Trial counsel shall ensure bailiffs are thoroughly briefed on their duties and that they are provided a copy of the Bailiffs Handbook, found at:
http://www.jag.navy.mil/trial_judiciary.htm.

HCR 17.1: A bailiff will be present at every trial with members or as directed by the military judge.

HCR 17.2: The bailiff will not be a witness. The bailiff will not be the unit escort or guard for the accused. The bailiff will not be assigned administrative or clerical tasks by the counsel unless permitted by the military judge. The counsel will not ask the bailiff for the bailiff's personal thoughts on the evidence or counsel's performance during the course of the trial and if the bailiff offers such thoughts unsolicited to the counsel prior to adjournment, the counsel will cease the conversation and notify the bailiff that such conversations are not permitted until after adjournment. If the detailed military judge excuses the presence of a bailiff, the trial counsel will perform the bailiff's duties.

Rule 18: Guards

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

HCR 18.1: All issues concerning guards or courtroom security will be resolved by the detailed military judge on a case-by-case basis.

HCR 18.2: Counsel will immediately notify the detailed military judge of any matters that may affect courtroom security. If matters arise during the course of a trial, counsel will immediately ask for a recess and advise the military judge.

Rule 19: Court Reporters

Rule 19.1: Trial counsel shall ensure that the court reporter has been sworn.

Rule 19.2: Each time the court convenes or reconvenes, the reporter must note in the record the presence or absence of the parties and the time at which the court convenes or reconvenes. The court reporter must note the time at which recesses are taken and the time of adjournment.

Rule 19.3: Court reporters must ensure that the name and rank of all military parties to the trial and the name and address of civilian counsel are properly noted in the record of trial.

Rule 19.4: Court reporters will maintain a complete list of all exhibits marked, those offered, and those admitted.

HCR 19: The trial counsel is responsible for keeping the court reporters apprised of the status of all docketed cases, to include, but not limited to: all anticipated delays; continuances; withdrawal of charges; changes of courtrooms and/or location; changes in the anticipated pleas and forum; and the need for court reporter support in unscheduled hearings.

Rule 20: Entry and Departure of Military Judge

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

Rule 21: Entry and Departure of Members

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

Rule 22: Voir Dire

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

HCR 22.1.a: The military judge determines the procedure for conducting voir dire. See R.C.M. 912(d). All questions to be asked *en banc* will be submitted for approval in writing on the date designated by the military judge, or in the absence of such date, at least 5 days prior to assembly or at the direction of the military judge presiding. Copies of proposed voir dire questions must be served on opposing counsel. Upon specific request, the military judge may permit counsel to ask additional questions.

HCR 22.1.b: The military judge will ordinarily conduct the initial voir dire of the members. Counsel may then be permitted to ask previously approved questions that have not been asked during the initial voir dire by the military judge. All questions must be relevant to determining the qualifications of the members to sit on the court-martial. Where necessary, and in the discretion of the military judge, counsel may be permitted to question the members individually.

HCR 22.1.c: During voir dire, counsel will not: (1) argue the case; (2) question members concerning anticipated instructions or theories of law, or members' understanding of various legal principles yet to be explained to them; (3) ask members what kind of findings or sentence they might return under a hypothetical set of facts; (4) engage in efforts to establish rapport with members; or (5) seek a pre-commitment from a member to a factual or legal proposition that is in issue.

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

HCR 22.2: The trial counsel is responsible for ensuring that all court members complete the Hawaii Judicial Circuit Court-Martial Members Questionnaire, attachment 7, on the date designated by the military judge, or in the absence of such date, at least 24 hours in advance of trial. A member may desire to retain the original and provide a copy for court use, and then update the copy as necessary for subsequent trials. The military judge may allow submission of a supplemental questionnaire to the members. The counsel shall not provide a supplemental questionnaire to the members unless approved in advance by the military judge. If use of a supplemental questionnaire is permitted the trial counsel is responsible for ensuring that all court members complete the questionnaire at least 24 hours in advance of trial. The trial counsel shall provide copies of all questionnaires completed by the members to the military judge and defense counsel as soon as possible upon receipt by the trial counsel.

Rule 22.3: Before voir dire, trial counsel will provide the military judge with a combined list of the full name and unit or city and state of residence of all witnesses. The list must include witnesses whose testimony will be presented by stipulation of expected testimony.

HCR 22.3: All challenges, whether peremptory or for cause, must be addressed to the military judge at an Article 39(a) session.

Rule 23: Prohibited Items in the Courtroom

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

HCR 23: Use of tobacco products and eating are not permitted in the courtroom. Leave of court is required to permit drinking in the courtroom of any beverage other than water. All beverages must be consumed from covered containers.

Rule 23.2: With the exception of the court reporter, no person shall use electronic devices (e.g. laptops or tablets) to audio record or video record any courtroom session. No person in the courtroom may use any such electronic devices to transmit email, text messages, or social media messages.

Rule 23.3: Cellular or mobile telephones are only permitted for detailed counsel or supervisory counsel in the courtroom unless permitted or restricted by the military judge. When cellular telephones are in the courtroom, they must be silenced and used only during recesses of court.

Rule 24: Counsel Decorum

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

HCR 24.1: Counsel will refrain from undue familiarity between themselves or in relationship to the members, military judge, or witnesses while court is in session and when in the presence of the accused.

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

HCR 24.2: Counsel will direct all argument and responsive statements to the military judge or members, as applicable, and will avoid colloquy or argument towards the other party, a victims' legal counsel or another non-party counsel, except for perfunctory matters of courtesy.

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

HCR 24.3: During sessions of the court, no counsel will leave the courtroom without permission of the military judge.

Rule 25: Counsel Conduct

Rule 25.1: During trial, counsel must not state or allude to any matter that counsel has no reasonable basis to believe is relevant to the case or that is not supported by admissible evidence.

Rule 25.2: During trial, counsel must not assert any personal knowledge of the facts in issue, except if testifying as a witness.

HCR 25.1: Counsel will not, during trial, assert any personal opinion as to the justness of a cause, the credibility of a witness, or the guilt or innocence of an accused; but counsel may argue, based on analysis of the evidence, for any position or conclusion supported by the evidence and any allowable inferences.

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.

HCR 25.2.a: When one counsel is addressing the court or examining a witness, the opposing counsel shall remain seated at the counsel table, unless standing to make an objection.

HCR 25.2.b: Each time the court convenes or reconvenes, the trial counsel will ensure that the military judge is advised of all changes to, or absences of, any parties.

HCR 25.2.c: Counsel will follow along in the trial guide to ensure that the military judge makes no unintentional omissions. Should counsel believe that a military judge has made such an omission, he or she must bring it to the judge's attention immediately upon its discovery.

Rule 26: Witnesses

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

HCR 26.1: Live, in-person testimony from witnesses is expected (in the absence of a stipulation of expected testimony) during all phases of the trial. In the event either counsel desires to use an alternative to live, in-person testimony (e.g., telephonic testimony or video teleconferencing),

counsel must request permission to do so in advance of the session and note the request on the PTIR. This rule applies equally to testimony on the merits and testimony on sentencing. Nothing in this HCR will be construed to limit or alter the military judge's discretion or responsibilities under M.R.E. 611.

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

HCR 26.2.a: Witnesses will be instructed by counsel that they must not chew gum or tobacco, wear dark glasses, or use slang expressions or profanity (except as may be required in the presentation of the facts). Witnesses must be told not to engage court members or the military judge in casual conversation. Witnesses will be instructed by the counsel calling them to testify as to the appropriate dress for court.

HCR 26.2.b: Military witnesses do not salute the military judge, president of the court, or the members. The court will not be called to attention for the appearance of any witness even if the witness is senior in rank to the military judge, members and counsel.

HCR 26.2.c: Unsworn statements will not be made from the witness stand. They will be made from the counsel table or at another location authorized by the military judge.

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

HCR 26.3.a: Counsel will ensure that their respective witnesses will be immediately available when called to testify. This includes informing the witness of the time, location, and uniform for court, as well as making any arrangements necessary to allow a civilian witness to come aboard the base. The fact that the government has agreed to, or has been ordered to, produce a witness on behalf of the defense, does not relieve the defense counsel of these requirements for defense witnesses. Counsel will coordinate with each other and the military judge to reduce, whenever practicable, the amount of time a witness is required to wait prior to testifying; however, availability is always more important than convenience.

HCR 26.3.b: Witnesses ordinarily will not be present in court during trial. Counsel are responsible for ensuring their witnesses are aware of and comply with this rule. The detailed military judge may permit a witness to remain in the courtroom after the witness has testified, or otherwise, upon a showing of good cause. This rule is not to be construed as limiting M.R.E. 615.

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

HCR 26.4.a: Witnesses will not be crowded, shouted at, ridiculed, humiliated, or otherwise abused.

HCR 26.4.b: To the greatest extent practicable, trial counsel will ensure that separate waiting areas for government and defense witnesses are provided.

HCR 26.4.c: No later than five business days prior to trial, counsel who intend on using an interpreter will notify the detailed military judge and opposing counsel of the interpreter's identity and provide a brief summary of his/her qualifications. Any anticipated objection to the proposed interpreter will be provided to the detailed military judge as soon as possible but no later than two business days prior to the date of trial.

HCR 26.4.d: Counsel will provide their witnesses with information and assistance concerning the availability of services such as transportation, parking, childcare, lodging, and courtroom translators or interpreters.

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.

HCR 27.1.a: Counsel shall not present argument on an objection without the permission of the military judge. Argument on objections shall be direct and succinct. Citation of specific authority is desirable.

HCR 27.1.b: An objection or argument for the purpose of making a speech, recapitulating testimony, or attempting to guide a witness is prohibited.

Rule 27.2: Should a non-party legal counsel, such as a victims' legal counsel, deem it necessary to object or otherwise be heard at trial, that counsel shall stand until recognized by the military judge. The counsel shall not speak until recognized by the military judge.

HCR 27.2: If after standing to be recognized, the non-party legal counsel observes that the military judge has not noticed them and the evidence or issue which is the subject of the objection is imminently to be presented to the members, then the non-party counsel may voice one of two phrases in order to get the military judge's attention, either "objection," or "I request a 39(a) session." The non-party counsel shall make no other statements in the presence of the members unless permitted by the military judge.

Rule 28: Stipulations

- Rule 28.1:** If a motion, or any other issue, involves only a dispute between the parties as to the law or any ultimate question of fact, and does not involve the underlying facts, counsel will consider entering into stipulations of fact or of testimony covering those matters.
- Rule 28.2:** Stipulations must be in writing, and will be prepared prior to trial.
- Rule 28.3:** Stipulations may be made for the limited purpose of obtaining a ruling on a motion or other pleading.
- Rule 28.4:** Written stipulations of fact must be marked as a "Prosecution Exhibit" or "Defense Exhibit" and, in a members' trial, read to the members. Stipulations of fact may be taken into the deliberation room by the members like all other admitted evidence. Written stipulations of expected testimony will be marked as an "Appellate Exhibit" and, in a members' trial, read to the members. Stipulations of testimony may not be taken into the deliberation room.

Rule 29: Offers of Proof

- Rule 29.1:** When offers of proof are expected to be presented on motions or objections, counsel should inform opposing counsel and attempt to reach agreement on the content of the offer of proof before presentation.
- Rule 29.2:** Absent a stipulation, an offer of proof is not evidence upon which a finding of fact may be based.

HRC 29: Offers of proof will not considered by the military judge in making any determination on any contested issues brought before the court for resolution. In sessions when the trial counsel or defense counsel become a witness for an issue to be resolved by the court, and the counsel will be required to testify, additional trial counsel or defense counsel should be detailed for the purpose of examining the affected counsel.

Rule 30: Judicial Notice

- Rule 30:** Counsel will advise the military judge and opposing

counsel of any intended requests for judicial notice in their written pretrial matters in accordance with the Trial Management Order.

HCR 30: Prior to trial, the trial counsel will have marked as appellate exhibits readable copies of all directives, regulations and state or federal statutes alleged to have been violated. Trial counsel will also provide advance copies to the defense counsel and to the military judge.

Rule 31: Exhibits

Rule 31.1: Prosecution exhibits will be identified by Arabic numerals. Defense exhibits will be identified by capital letters. Appellate exhibits will be identified by Roman numerals.

HCR 31.1.a: In formulating questions to witnesses concerning an exhibit, counsel will refer to the exhibit by its exhibit number or letter.

HCR 31.1.b: Exhibits will be marked by the court reporter, not the counsel, in the anticipated order of presentation before the trial is scheduled to commence or during recesses.

HCR 31.1.c: The proponent of documentary or photographic evidence will arrange to have a copy of the original exhibit available on the date of trial for each member of the court as well as a copy for the military judge.

HCR 31.1.d: Only the bailiff will hand the members original or copies of exhibits. In the absence of a bailiff, the trial counsel will serve this function.

Rule 31.2: If an exhibit is not compatible for inclusion in the record of trial, counsel who offered the exhibit must prepare an appropriate substitute for inclusion in the record, such as a photograph or reduced-size copy of the exhibit.

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

HCR 31.2.a: Use of electronic media is encouraged. However, counsel must obtain the express, prior approval of the military judge before using any form of electronic media in any session of court. Counsel using electronic media are directed to attachment 8 of these rules.

HCR 31.2.b: Any exhibits (including computer generated exhibits or any other exhibits or demonstrative aids prepared prior to trial) or evidence intended for use during argument or opening statement, must first be shown to opposing counsel and then be approved for use by the military judge. Counsel are advised to diligently practice the use of such exhibits, particularly computer generated exhibits, prior to any session of court. Further, counsel must ensure computer-generated exhibits are properly duplicated by hard-copy print-outs for inclusion in the record of trial.

HCR 31.2.c: Counsel intending on using demonstrative aids, such as charts, diagrams, videotapes, audiotapes or any other technological presentations during their opening arguments, closing arguments or cases-in-chief must provide notice to the detailed military judge and opposing counsel no less than two days prior to trial.

Rule 32: Video Teleconference Requirements

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

HCR 32.1.a: Requests for remote testimony will be made as soon as the potential need for remote testimony is discovered. The counsel intending to use remote testimony shall ensure proper connectivity is established with a witness using courtroom technology prior to coming on the record to avoid unnecessary delay.

HCR 32.1.b: When the military judge has authorized VTC or other remote testimony, the safeguards set forth in HCR 32.2 and 32.3 will be employed. The detailed military judge may deviate from these procedures based upon the exigencies of the situation.

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

HCR 32.2: Two-way audio and visual transmissions, if applicable, shall be provided and color transmission, if applicable, should be used. The VTC locations must have telephonic connectivity and access to a fax machine or other means of receiving documents/written material. A VTC technician or knowledgeable support personnel will be available at both locations. The court reporter will transcribe the VTC witness's testimony in the same manner as a normal witness.

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

and R.C.M. 804.

HCR 32.3: If counsel for both sides are not present at the site where the witness is testifying, witness will identify on the record those present at the remote location and note if any spectators are present. The witness will ensure that they are seated far enough away from any spectators so that the spectators cannot communicate with the VTC witness. During the VTC witness's testimony, the witness will ensure that there is no non-verbal communications between themselves and any spectators. They will also testify that they have no access to papers, exhibits, or the like while testifying unless authorized by the military judge. The detailed military judge may deviate from these procedures based upon the exigencies of the situation.

Rule 33: Findings and Sentencing Instructions

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

Rule 34: Record of Trial/Appellate Rights

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

Rule 34.2: At the conclusion of the trial, defense counsel will indicate whether civilian counsel or military counsel will examine the record, who will respond to the staff judge advocate's recommendations, and who will represent the accused in post-trial matters. The accused must include such decisions in the written acknowledgement of appellate rights. In memorializing the accused's understanding of appellate rights, counsel shall use the standard Appellate Rights Statement found at:
http://www.jag.navy.mil/trial_judiciary.htm.

Rule 34.3: Whenever practicable, trial counsel must read and make corrections to the record of trial. Corrections by trial counsel must be initialed and dated

before submission to the military judge for authentication.

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

HRC 34: When conducting their review of the record of trial, trial counsel must place any matters (e.g. portions of transcript, pleadings, exhibits and rulings) that were subject to a closed session in an envelope indicating on the outside of the envelope those matters contained therein and attach those matters to the record of trial in the locations that they otherwise would have appeared unsealed. The military judge will thereafter seal those portions of the record by judicial order upon receipt of the record of trial for authentication.

Rule 35: Documents and Pleadings

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

Rule 35.2: All motions will be filed in the standard form found at: http://www.jag.navy.mil/trial_judiciary.htm.

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

HCR 35: The substantive portions of all documents should be double spaced. Headings and signature blocks may be single spaced.

Rule 36: Victims' Legal Counsel and Other Non-Party Counsel

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

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

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

Rule 36.3: If victims' legal counsel has filed a Notice of Appearance, trial counsel shall consult with victims' legal counsel regarding availability before agreeing to any session of court in a TMO or PTIR, or requesting a continuance. Trial counsel shall provide the victims' legal counsel notice of all ordered or scheduled sessions of court within twenty-four hours (24) of the order, unless the military judge permits a different time for such notice upon a showing of good cause. Additionally, trial counsel shall immediately provide victims' legal counsel with a copy of any TMO ordered by the court, any pending PTIR, and any rulings on motions involving the victims' legal counsel's client. Any required notices or motions may be filed electronically upon victims' legal counsel in accordance with Rule 10.3.

Rule 36.4: Victims' legal counsel may have an interest in hearings for rights afforded alleged victims by law. As such, the trial counsel and defense counsel shall provide copies of relevant Prosecution and Defense filings to the victims' legal counsel within twenty-four (24) hours after filing. Whenever practicable, victims' legal counsel should be included in R.C.M. 802 conferences regarding the filing of such motions as discussed in Rule 8.1.

Rule 36.5: Victims' legal counsel may file such motions and other pleadings with the court as they deem proper to represent their client's interests. Victims' legal counsel shall articulate a basis for standing in their written pleadings if the pleading concerns issues outside those identified in Rule 36.4 above. Copies of all filings by victims' legal counsel must

be served on all counsel participating in the case. Victims' legal counsel filings should comply with motion filing dates set in the TMO; however, the military judge may set separate deadlines for the filing of any motions by the victims' legal counsel.

Rule 36.6: The military judge has discretion to allow victims' legal counsel to be heard in court via telephone or Video Teleconference (VTC). When in the courtroom, the victims' legal counsel shall remain seated behind the bar in proximity to trial counsel, except when invited inside the bar by the presiding military judge to address the court. When addressing the court, the victims' legal counsel shall do so from behind the podium. Victims' legal counsel may be heard in an Article 39(a) outside the hearing of the members. It is within the military judge's discretion to hear from the victims' legal counsel on each distinct issue separately, to have counsel address all issues at one time, or to require counsel to submit written matters to the court. Whenever practicable, victims' legal counsel may be seated at counsel table inside the bar during lengthy or complex motions hearings in which they will be heard. The manner in which the victims' legal counsel presents evidence is within the discretion of the military judge (e.g., when the victims' legal counsel is the moving or responding party, the military judge may allow victims' legal counsel to conduct examination of witnesses).

Rule 36.7: The victims' legal counsel may move to close the court proceedings during any Article 39(s) motion session in order to protect the privacy and dignity of their client. A court session may be closed over the objection of the accused or the public upon meeting the constitutional standard set forth in R.C.M. 806(b)(2) and related case law. For hearings under M.R.E. 412, the military judge must conduct a closed hearing. For hearings under M.R.E. 513(e)(2) and M.R.E. 514(e)(2), the military judge may order the hearing closed.

Rule 37: Victims' Right to be Heard

Rule 37: In any motion or hearing where an alleged victim has a right to be heard, the military judge shall verify

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

HRC 37.1: The trial counsel or victims' legal counsel, if applicable, shall certify to the court on the record that the victim or designee of an offense for the which the accused was convicted was notified of his/her right under R.C.M. 1001A(e) to make an unsworn statement during the sentencing hearing if the victim is not physically present in the courtroom and does not make an unsworn statement.

HRC 37.2: If the victim or designee of an offense for which the accused was convicted is in the courtroom during the sentencing hearing and does not request to make an unsworn statement, the military judge will inquire of the victim or designee as to whether he/she understands his/her right under R.C.M. 1001A to make an unsworn statement and whether he/she desires to make an unsworn statement after the notification.

HRC 37.3: Rule for Court-Martial 1001A(e) contemplates that a victim or designee may present the unsworn statement in a question/answer format through questioning by the victims' legal counsel or non-party counsel of the victim or designee. If the victim or designee desires to make his/her unsworn statement using this method, the victims' legal counsel or non-party counsel will notify the military judge and the party counsel of the intended questions and anticipated answers in writing. Even if the question/answer format is used, the victim or designee will not use the witness stand for delivery of his/her unsworn statement.

Rule 38: Appointment of a Designee for Certain Victims

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

or agreed upon by the parties.

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

Rule 38.3: Nothing in this rule conveys any additional rights to a named victim, victims' legal counsel, or designee.

Rule 39: Contempt Proceedings

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

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

Rule 40: Model Pretrial Agreement

Rule 40: Counsel are strongly encouraged to use the model PTA found at:
http://www.jag.navy.mil/trial_judiciary.htm.

HRC 40: If counsel use boilerplate language in a PTA from the model PTA, then the counsel must make the language conform to the specific issues and evidence pertaining to the accused. Not all language from boilerplate provisions apply to the case of every accused and if not properly edited can create ambiguity in the PTA.

Attachments:

- (1) Civilian Counsel Notice of Appearance
- (2) Docketing Memorandum
- (3) Motion for Docketing/Continuance
- (4) PTIR
- (5) Notice of Pleas and Forum
- (6) Certification of Withdrawal
- (7) Member's Questionnaire
- (8) Technology Supplement

**HAWAII JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
(GENERAL) (SPECIAL) COURT-MARTIAL**

UNITED STATES v. ACCUSED	CIVILIAN DEFENSE COUNSEL NOTICE OF APPEARANCE Date:
--	--

1. Pursuant to Rule 5.1 of the Uniform Rules of Practice, Navy-Marine Corps Trial Judiciary (Uniform Rules) and the Hawaii Judicial Circuit Rules of Practice (Circuit Rules), I, {ATTORNEY'S FULL NAME}, hereby provide notice to the Circuit Military Judge of my appearance on behalf of {CLIENT'S RANK, FULL NAME}. My office address, phone numbers, and e-mail address are: ADDRESS, PHONE NUMBER (office and fax) & E-MAIL ADDRESS. I am an active member in good standing licensed to practice in the following jurisdictions: {LIST BAR ADMISSIONS}.

2. I understand that practice in the Hawaii Judicial Circuit requires me to be familiar with the Uniform and Circuit rules. Additionally, I am aware of the standards of professional conduct required of counsel practicing in Navy-Marine Corps courts-martial as contained in JAG Instruction 5803.1E. I certify that I am not now, nor have I ever been, de-certified or suspended from practice in Navy-Marine Corps courts-martial by the Judge Advocate General of the Navy.

COUNSEL NAME
Attorney At Law

Certificate of Service

I hereby attest that a copy of the foregoing notice of appearance was served on the court and opposing counsel personally / electronically / and/or by facsimile on _____, 20xx.

Counsel Name



UNITED STATES MARINE CORPS
 LEGAL SERVICES SUPPORT TEAM KANEOHE BAY
 MARINE CORPS BASE HAWAII
 KANEOHE BAY, HAWAII 96863

5800
 B0521
 1 Aug 12

From: Senior Trial Counsel, RLSO MIDLANT Det Groton
 To: Docketing Judge
 Via: Clerk of Court

Subj: DOCKETING MEMORANDUM FOR THE WEEK OF 6 - 10 AUGUST 2012

1. DOCKET REQUEST FOR 6 - 10 AUGUST 2012

NAME	TIME	MJ/TC/DC	UNIT	CHARGES	PURPOSE	CTRM	DUR
Monday, 6 August 2012							
Smith	0800	ABC/DE/FG	NSB	80,81,134	MOT	Groton	3 HRS
Tuesday, 7 August 2012							
Johnson	0900	ABC/DE/FG	NSB	91,92,121	ARRN-VTC	Groton	15 MIN
Wednesday, 8 August 2012							
Thursday, 9 August 2012							
Friday, 10 August 2012							

2. The long range docket accurately reflects the following cases:

U.S. v. Smith: Wednesday 22 - 24 August, Trial.
 U.S. v. Johnson: Monday 27 August, Motions.

3. The following cases need to be added to the docket.

U.S. v. Sailor: Wednesday 15 August, Motions.
 U.S. v. Corpsman: Friday 31 August, Motions.
 U.S. v. Marine: Monday 24 September, Motions.

4. The following cases need to be removed from the docket.

U.S. v. Smith: Tuesday 4 September, Motions.
 U.S. v. Smith: Monday 10 - 13 September, Trial.

I. M. COUNSEL
 Captain,
 U.S. Marine Corps

Copy to:
 SDC
 File

**HAWAII JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
(GENERAL) (SPECIAL) COURT-MARTIAL**

<p style="text-align: center;">UNITED STATES</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">ACCUSED</p>	<p style="text-align: center;">GENERAL/SPECIAL COURT-MARTIAL</p> <p style="text-align: center;">MOTION FOR DOCKETING</p> <p style="text-align: center;">Date:</p>
--	--

From: _____, Trial Counsel
To: _____, Defense Counsel

1. The government requests _____ for arraignment/trial in the above captioned case to be tried at _____.
2. THE ATTACHED TRIAL MANAGEMENT ORDER IS PROPOSED [notice must be given if any change is made to the standard TMO].

Dated: _____ TRIAL COUNSEL

From: _____, Defense Counsel
To: _____, Trial Counsel

1. The above arr/trial date and proposed TMO is acceptable.
 The above arr/trial date and proposed TMO is not acceptable, and the date of _____/ATTACHED TMO is proposed. [notice must be given if any change is made to the standard TMO].

(if approved by the military judge, delay is normally excludable under R.C.M. 707 absent a showing to the contrary).

2. Anticipated Forum: Members; Military Judge Alone.
3. Anticipated Motions: _____
4. Anticipated Pleas: _____
5. Additional Comments: _____

Dated: _____ DEFENSE COUNSEL

From: _____, Trial Counsel
To: Circuit/Docketing Military Judge or detailed military judge as appropriate

1. The arr/trial date of _____ AND TMO is **mutually agreeable** to the trial and defense counsel.
 The trial and defense counsel were not able to reach a mutually agreeable date and TMO – both the government’s as well as the defense’s proposed TMOs are attached.

Dated: _____ TRIAL COUNSEL

Counsel are advised that if they do not receive a court signed copy of the TMO soon after submitting this MFD, that they have an affirmative duty to acquire a copy of the TMO for this case.

**HAWAII JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
(GENERAL) (SPECIAL) COURT-MARTIAL**

PRETRIAL INFORMATION REPORT

From: _____, (Trial)(Defense) Counsel

To: _____, Clerk of Court

Via: _____, (Defense)(Trial) Counsel

Subj: (GCM) (SPCM) ICO U.S. v. _____

Ref: (a) Hawaii Judicial Circuit Rules of Practice

- Encl: (1) Copy of Charge Sheet ___ enclosed ___ not enclosed
(2) Copy of Convening Order ___ enclosed ___ not enclosed
(3) Pretrial Agreement (Part one) ___ enclosed ___ not enclosed
(4) Page 43 matters ___ enclosed ___ not enclosed
(5) Anticipated Pleas/Forum ___ enclosed ___ not enclosed
(6) Motion for Docketing ___ enclosed ___ not enclosed
(7) Stipulation of Fact ___ enclosed ___ not enclosed
(8) Applicable Orders/Regulations ___ enclosed ___ not enclosed
(9) Prop elements (if Assimil.) ___ enclosed ___ not enclosed

1. Pursuant to Rule 6 of reference (a), the following information is provided:

- a. Date charges preferred: _____; Day 120: _____.
calculated from date of pretrial confinement
- b. Date charges referred: _____.
- c. Proposed trial site: _____.
- d. Expected duration of trial: _____ (hours)(days).
- e. Prior Sessions: ___ Yes ___ No
- f. Names of Related case(s)(if any): _____.
- g. Additional Counsel (not listed above):
_____.
- h. Pretrial Agreement: ___ Yes ___ No
- i. Article 39(a) session requested by ___ TC ___ DC to resolve:

2. Special requests (e.g. explain missing signature(s), specific times):

Trial Counsel / date

Defense Counsel / date

**HAWAII JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
(GENERAL) (SPECIAL) COURT-MARTIAL**

<p>UNITED STATES</p> <p>v.</p> <p>ACCUSED</p>	<p>ACCUSED’S NOTICE OF ANTICIPATED PLEAS AND FORUM ELECTION</p> <p>Date:</p>
--	--

1. **Forum Election.** Pursuant to Rule for Courts-Martial 903(b), I, ACCUSED NAME, elect to be tried by a court-martial composed of members / members with enlisted representation / military judge alone.

2. **Entry of Pleas.** Pursuant to Rule for Courts-Martial 910, I, ACCUSED NAME, enter the following pleas:

Charge	Plea
Charge (I) Specification:	

ACCUSED NAME
RANK, U.S. Marine Corps / Navy

I. M. DEFENDER
RANK, U.S. Marine Corps/Navy
Detailed Defense Counsel

Certificate of Service

I hereby attest that a copy of the foregoing was served on the court and opposing counsel personally / electronically/ by facsimile on (DATE).

I. M. DEFENDER

**HAWAII JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
(GENERAL) (SPECIAL) COURT-MARTIAL**

<p>UNITED STATES</p> <p>v.</p> <p>ACCUSED</p>	<p>CERTIFICATE OF WITHDRAWAL FILING</p> <p>Date:</p>
--	---

Pursuant to Hawaii Judicial Circuit Rule of Practice 6.3.e, notice of withdrawal of referred charges in the above-captioned case is hereby filed with the court. The charges were withdrawn by (convening authority) on (date), and (dismissed)(referred to summary court-martial)(other appropriate action).

COUNSEL NAME
RANK, U.S. Marine Corps/Navy
Trial Counsel

Certificate of Filing

I hereby attest that a copy of the foregoing was filed with the court personally / electronically / by facsimile on (DATE).

COUNSEL NAME

HAWAII JUDICIAL CIRCUIT COURT-MARTIAL MEMBER QUESTIONNAIRE

1

Please complete the following questionnaire and provide to the appropriate authority. Because of the sensitive personal information requested, no copy will be retained on file outside of the Legal Office. However, counsel and the military judge will use the questionnaire to prepare for trial and a copy will be attached to the record of trial.

1. Name _____ Grade _____ Date of Rank _____ Service _____

2. Active Duty Base Date _____ Date Current Tour Began _____ Years of Service _____

3. Military Awards / Decorations: _____

4. Current Duty Position: _____ Work Phone: _____

5. Unit (down to **Company Level**): _____

6. Date of Birth _____ Gender _____ Race or Ethnic Origin _____ Marital Status _____

7. Age and gender of any children _____

8. Age and occupation of spouse if married _____

9. Civilian Education: College / Vocational / Civilian Professional School / Civilian Post-Graduate:

Date graduated or dates attended (and number of years), school, location, degree/major: _____

10. Military Education: Dates attended, school/course title. _____

11. Duty Assignments: Last **four** assignments, units, and dates of assignments. _____

12. Have you ever sat as a court-martial member or juror in any other case? _____ If so, how many special courts-martial _____; general courts-martial _____. What was the general nature of the charges for these cases (rape, murder, theft, etc.) _____

PRIVACY ACT WARNING: This document contains personal information concerning an individual. Use and disclosure thereof is governed by SECNAVINST 5211.5 (series). Unauthorized disclosure of personal information from this document could subject the discloser to criminal penalties.

Attachment 7

**HAWAII JUDICIAL CIRCUIT
COURT-MARTIAL MEMBER QUESTIONNAIRE**

13. Have you ever conducted an Article 15 or Summary Court-Martial? ____ If so, how many times? ____
For what type of offense(s)? _____

Did any of these cases resulted in a finding of Not Guilty? _____

14. Have you ever sat as a member for a Board of Inquiry and/or Administrative Discharge Board? ____
If so, how many times? _____.

15. Have you or a close relative or friend ever been the victim of any crime? Explain. _____

16. Have you or a close relative or friend ever been the witness to any crime? Explain. _____

17. Have you or a close relative or friend ever testified in any legal proceeding? Explain. _____

18. Have you or a close relative or friend ever been arrested for, accused of, or investigated for committing any crime? Explain. _____

19. Have you ever dealt with any military or civilian law enforcement agency (CID, NCIS, local police, etc)? _____ If so, was/were your experience(s) positive or negative? Explain. _____

20. Have you ever visited a military brig for any reason? _____

21. What is your opinion of the military's criminal justice system? _____

22. Do you believe that anything about your religious beliefs would make it difficult for you to sit in judgment of another person? Explain. _____

23. Do you have any specialized training in criminal justice, law, medicine, science, psychology, or biology? Explain. _____

24. Do you believe you may be disqualified to sit as a court member for any reason? Explain. _____

25. If you were the accused at a court-martial, would you be willing to be judged, and if found guilty, sentenced by a person who has provided information similar to your responses and who has your personal temperament, views and morals? _____

Signature of Member: _____ Date: _____

PRIVACY ACT WARNING: This document contains personal information concerning an individual. Use and disclosure thereof is governed by SECNAVINST 5211.5 (series). Unauthorized disclosure of personal information from this document could subject the discloser to criminal penalties.

TECHNOLOGY SUPPLEMENT
HAWAII JUDICIAL CIRCUIT RULES OF PRACTICE
USE OF ELECTRONIC MEDIA

These rules supplement the Rules of Practice, Hawaii Judicial Circuit, to address the use of electronic media in courts-martial.

1. Introduction. “Electronic media” is any form of graphic or other data display, any image, picture, moving image or picture, sound, or any combination of these media, which is presented to a court-martial through an electronic device, such as an image projector, a speaker, a “speaker-phone” telephone, or a video monitor combined with a computer, VCR, DVD or other electronic media player, and includes video-teleconference transmissions and computers employing similar software.

a. Properly used, electronic media can substantially enhance the ability of the prosecution to fairly represent the interests of the government and the defense to zealously represent anyone accused of a crime. Appropriate use facilitates both the quality of representation and the efficiency of courts-martial. As a result, the use of electronic media in the Hawaii Circuit is encouraged. At the same time, however, electronic media must be acknowledged as a powerful tool, the use of which must be subject to procedural rules that encourage superlative advocacy through technology while ensuring the dignity, efficiency, and fairness of courts-martial.

b. For example, if used during opening statements, material displayed must satisfy R.C.M. 913 (i.e., referencing only evidence counsel expect to be offered, and in good faith believe to be admissible, and a brief statement of the issues anticipated in the case). *See* R.C.M. 913 (Discussion). During trial, any material to be introduced into evidence and published by electronic means must first be properly admitted under the Military Rules of Evidence. If used during closing arguments, any matter displayed electronically should either have been admitted into evidence, or be a fair comment on the evidence admitted, such as an accurate summary of data or other similar demonstrative aid. Ultimately, use of electronic media will be subject to the objections of opposing counsel and will be within the discretion of the judge to admit or exclude consistent with applicable authority.

This supplement to the Hawaii Circuit Rules of Court is to be construed consistently with the Rules for Courts-Martial, the Military Rules of Evidence, applicable case law, the Navy-Marine Corps Trial Judiciary Rules, and the other Hawaii Circuit Rules of Court.

2. Pre-Trial Requirements. This rule is a rule of notice and, if required by the judge in the interests of justice, of disclosure. It is not a rule of discovery and it does not provide any

substantive rights to either the prosecution or to the defense to obtain the content of any electronic media not otherwise subject to the rules governing discovery.

a. Notice.

(1) Prior to Docketing. To ensure facilities (i.e. a properly equipped courtroom) and equipment are available (e.g., where portable equipment is needed), counsel shall provide notice of the intent to use electronic media via docketing memo at the time counsel request a trial date. The docketing memo shall be addressed to the opposing counsel, and the judge, and the Court Clerk, and it shall describe generally the technology and purpose desired for use (e.g., electronic media to display evidence, the presentation of remote live testimony, or otherwise to bring matters before the court-martial). No further elaboration is necessary in the docketing memo.

(2) After Docketing. If a case has already been docketed for trial when counsel determine use of electronic media is necessary or desired, notice or an amended docketing memo must immediately be filed with opposing counsel and the court including the Clerk of Court. Counsel are cautioned that delay in submitting notice to the court could result in facilities or equipment, including remote access to witnesses, being unavailable.

b. Judge Alone Cases.

(1) In guilty plea cases before a military judge alone, use of electronic media shall be discussed with the judge at a conference under R.C.M. 802 sufficiently in advance of trial to resolve logistics and other issues related to the use of electronic media, such as whether it consists of classified or contraband material.

(2) In cases contested before a military judge alone, in mixed plea cases where the electronic media relates to a plea of not guilty, in conditional guilty plea cases, or in the disposition of guilty pleas (military judge or members for sentencing) with the permission of the judge, counsel should follow the procedures for notice and disclosure in a contested members case.

c. Contested Members Cases.

(1) Notice. Unless previously provided by the docketing memo, notice of intent to use electronic media must be provided to opposing counsel and to the presiding military judge at arraignment. Notice shall describe generally the technology and purpose desired for use of electronic media (such as ExhibitONE® or similar technology to display evidence, the presentation of remote live testimony, or otherwise to bring facts before the court-martial) and the notice shall indicate whether any exhibit is classified or of a contraband nature, such as pornography. No further elaboration is necessary at arraignment. Failure to provide notice at arraignment risks unavailability of needed facilities, equipment, or access to remote witnesses. Pretrial notice is not required for the use of electronic media for impeachment or in rebuttal; however, if notice of such an intention is not provided, counsel risk unavailability of necessary facilities, equipment, or access to remote witnesses unless already approved.

(2) Disclosure.

A. Where either party has provided notice of an intent to use electronic media, counsel should discuss the proposed use with the judge at a conference under R.C.M. 802. The judge shall, by entry of a Trial Management Order (TMO) or otherwise, set the date on which disclosure, if any, of electronic media to the court or to opposing counsel is required. The judge may provide different disclosure dates in the TMO for different uses of electronic media and may direct descriptions or summaries of electronic media be disclosed in lieu of a copy in order to protect the value of the presentation. For example, the nature and origin of material to be introduced into evidence and published via electronic media may be required to be disclosed, if necessary, sufficiently in advance of trial to dispose of any objections or to provide any needed safeguards, such as for the use of contraband or classified information.

B. Where electronic media are intended for use in opening statement or closing argument, proponent counsel shall discuss such use with the judge at an R.C.M. 802 conference. Counsel are cautioned that such use of electronic media must comply with the Rules for Courts-Martial, Military Rules of Evidence, and case law applicable to opening statements and closing arguments. Counsel are highly encouraged to disclose the content of such electronic media to opposing counsel. In addition, counsel should submit any media intended for use in opening statement or closing argument to their supervisory counsel for review prior to use. Disclosing the contents to supervisory counsel and to opposing counsel will help ensure such use of electronic media is properly within the governing rules and will minimize the potential for objections that would interrupt the presentation of counsel and require an Article 39(a), UCMJ, session at a critical point in the presentation of the proponent's case. As a precondition to using electronic media in opening statements or closing arguments, the judge may require disclosure of the nature of the presentation, or the contents thereof, to the judge and opposing counsel, if necessary in the interests of justice. Ordering disclosure of contents should ordinarily occur only so far in advance as is necessary to resolve any issue, giving the utmost consideration to protecting the value of the presentation from premature disclosure.

d. Motions. The content of electronic media proposed for use by either side during their respective cases in chief may be made the subject of a pretrial motion *in limine* by either counsel. Such a motion should be disposed of in accordance with the terms of the TMO setting the date for submission and hearing of pre-trial motions. Objections to electronic media that are not readily susceptible of resolution as a pre-trial matter, such as an objection to opening statements, refreshed recollection, impeachment, rebuttal, or closing argument, may be disposed of in the discretion of the judge.

e. Remote live testimony.

(1) Remote live testimony includes, but is not limited to, testimony by video-conference, closed circuit television, telephone, or other similar technology. To use remote live testimony, counsel must provide notice to opposing counsel and to the judge, using the docket or other notice procedures set forth in paragraph 2.a., b. or c. above.

(2) In a contested case, counsel requesting the use of remote live testimony during their case-in-chief must submit a written motion, at the time required by the applicable TMO, requesting such remote live testimony and setting out the justification therefor, pursuant to the governing case law and Rules for Court-Martial. See R.C.M. 914A (and 914B, when implemented). If opposed, counsel may submit briefs in support of their respective positions and request the matter be heard at an Article 39(a), UCMJ, session in accordance with the TMO. Counsel should carefully consider methods for ensuring the integrity of remote testimony. Such measures may include the appointment of an officer to be present at the site of the remote witness to administer the oath, and to ensure the integrity of the testimony from intrusion by other personnel or reference material not otherwise permitted.

(3) Counsel requesting remote live testimony shall annotate their witness list to indicate which witnesses are expected to testify remotely.

3. Trial Procedure.

a. Admission and Publishing of Exhibits.

(1) Loading Media.

A. Counsel are encouraged to reserve and use courtroom facilities and electronic equipment for training, familiarization, moot courts, and other similar exercises. However, counsel should not pre-load any media into electronic devices in the courtroom for a trial until they have requested and received permission to do so from the judge. Permission to preload any evidence into courtroom electronic devices, and to connect laptops to electronic display media, should be requested pre-trial at an R.C.M. 802 conference.

B. Classified information or exhibits of a contraband nature may ONLY be loaded and displayed on electronic devices previously cleared to contain and exhibit such items. Permission to use such devices must be obtained from the judge at a pretrial conference under R.C.M. 802.

(2) Offering/Admitting Evidence Electronically.

The procedures for the use of electronic media in a members trial should be the subject of discussion with the judge at a conference under R.C.M. 802. The preferred method of admitting evidence electronically will ordinarily be to pre-admit the evidence, and the electronic media display thereof, at an Article 39(a), UCMJ, session.

(3) Publishing Pre-Admitted Evidence.

Counsel may not operate the electronic media control panel to activate the monitors of the court-martial members without the permission of the judge. When electronic exhibits have been admitted into evidence at an Article 39(a) session, counsel will ordinarily be given permission to publish/display those exhibits at counsel's discretion. Under these circumstances, once the

court-martial is called to order, counsel should request permission to activate the members' monitors and publish/display the enumerated item of previously admitted evidence. Once authorized by the judge to do so, counsel may activate the members' monitors. If a series of exhibits are being published, counsel may request and be permitted to publish/display the series without seeking permission for each item individually.

(4) Evidence Not Pre-Admitted.

A. Counsel may not operate the electronic media control panel to activate the monitors of the court-martial members without the permission of the judge.

B. When electronic exhibits have not been previously admitted into evidence outside the members' presence, such as when used to refresh recollection or to impeach, counsel shall use standard evidentiary procedures to use or offer that evidence at trial. Counsel should initially request to activate only the monitors of the witness and may do so only upon a grant of permission by the judge. If an exhibit is not admitted into evidence when use of the exhibit is completed, counsel shall turn off the monitors of the witness, orally informing the record.

C. If an electronic exhibit used to refresh or impeach is admitted into evidence, counsel should request to activate the members' monitors and to publish the item or items of evidence to the members.

(5) Electronic Imaging.

A. Counsel may publish documentary and other items of admitted evidence by use of visual presentation equipment (e.g., ELMO), after requesting and receiving permission from the judge.

B. In switching between items of evidence on the visual presentation equipment, counsel shall ensure the image being used is "frozen" on the monitors or that the members' monitors are turned off prior to removing a published item. Members' monitors should remain off, or the image of the last item of evidence published should remain frozen on their monitors, until the next item of admitted evidence is in place to be published electronically. This practice will result in a smooth transition from one item of evidence to the next and will minimize the potential for error in publishing the next item. As in the case of other electronic items of evidence, counsel may request and be granted permission to publish a series of admitted items without seeking permission for each item individually.

(6) Witness Monitors. Counsel may activate the monitor of a witness at the appropriate time in their questioning, after first requesting and being granted permission of the judge. Members' monitors may not be activated until the proponent counsel has requested and been granted permission by the judge to publish an item of evidence by electronic means.

b. Remote Live Testimony. Before beginning any remote live testimony, proponent counsel shall request an Article 39(a), UCMJ, session during which the remote witness will be properly placed before the remote camera or telephone and a sound check completed. The receiving monitor will then be turned off or the telephone placed on “hold.” Once the members are present, proponent counsel should request to call the witness for remote live testimony. Upon receiving permission, proponent counsel may activate the receiving monitor or telephone and the remote witness will be sworn and testify.

c. If technical problems are encountered, such as loss of the phone connection or other transmission signal, proponent counsel should request a recess in order to resolve the problem.

4. Preservation of Evidence for the Record

a. Electronic Media Not Admitted as Evidence.

When electronic media are used at trial but are not admitted into evidence, such as a PowerPoint opening statement or closing argument, or an item used to refresh recollection, or otherwise, the media should be printed, labeled as an Appellate Exhibit, and included in the record of trial.

b. Real Evidence. When items of real evidence are published to the court by use of visual presentation equipment (e.g., ELMO), proponent counsel shall prepare an accurate color photograph of such exhibit and move to substitute that photograph for the original exhibit in the record of trial.

c. Annotations to an Exhibit.

(1) Oral Descriptions. All annotations made to an exhibit by a witness made to an exhibit by a witness using the touch-screen monitor should be clearly described for the record by the witness or counsel. If a witness uses multiple colors, print fonts, symbols, or the like to annotate a document, an oral description of each convention used shall be provided by the witness or by counsel.

(2) Annotated Exhibits.

A. Whenever a witness uses the touch-screen monitor to make annotations on an exhibit that was previously admitted into evidence, the annotations shall be preserved for the record separately from the original exhibit, which shall remain unaltered. There is no need, however, to separately preserve an unmodified exhibit that is neither intended nor offered as evidence until the witness modifies it.

B. At the conclusion of a witness annotating an exhibit, the proponent counsel will request admission into evidence of the annotated exhibit as a separate prosecution or defense exhibit marked next in order as an appendix to the original exhibit. For example, if a map is admitted and marked as “PE-1,” the annotated version should be marked as

“PE-1(a) for ID.” A subsequent annotation of the same exhibit should be marked “PE-1(b) for ID” (if it is intended to be a separate exhibit, such as when a later annotation would obliterate a previous one). The opposing counsel should use a similar marking convention. For example, if the defense counsel modifies PE-1(a) during cross examination, the modified version should be marked DE-1 for ID. A second modification altering DE-1 for ID should be marked DE-1(a) for ID. Counsel need not mark and capture for the record each mark made on an exhibit as a new exhibit. However, counsel must take care that exhibits are separately captured and saved for the record each time a new mark would alter or obliterate a preceding marking and when control of the exhibit changes for purposes of moving the item into evidence (i.e., from prosecution [PE] to defense [DE] or the reverse).

C. Upon admission into evidence by the judge, the proponent counsel shall request that the electronic media exhibit be “saved” as annotated, marked as the appropriate exhibit number, and that a printed copy be substituted in the record of trial.

D. If the offered exhibit is not admitted into evidence, the court reporter shall save the exhibit electronically and print a copy to be appended to the record, marked as the exhibit numbered “for ID.”

(3) Corrections. If a witness needs to make a correction to an annotation, counsel shall first request permission of the judge to make the necessary correction.

(4) “Clear All” Function. When counsel has completed questioning a witness using ExhibitONE or similar electronic media, counsel must request permission to verify with the court reporter that all witness annotations on the touch-screen have been preserved for the record. Upon such confirmation by the court reporter, counsel must then request permission from the judge to activate the “clear all” function. Only the judge may authorize counsel to hit the “clear all” button to remove markings from the touch-screen monitor.

d. Audio-Video and Remote Live Testimony.

Evidence published in an audio or audio-video medium, or remote live testimony, shall be recorded during its presentation in court and transcribed verbatim, subject to the requirements of R.C.M 1103 regarding verbatim transcripts. Proponent counsel will provide the court reporter any electronic file used, which shall be saved in the court reporter’s electronic file of the case and forwarded with the printed record of trial. If cassettes (audio or video) or CDs are admitted into evidence, these must be labeled with the caption of the matter, the date, the prosecution or defense exhibit number, and shall be forwarded as part of the original record of trial.

5. Use of Electronic Media in Deliberations.

a. When the court members retire to deliberate, a printed copy of all previously admitted and published exhibits will ordinarily be provided to the senior member to take into the deliberation room. If an original exhibit was admitted electronically, the printed copy shall be an exact duplicate of the original, including color.

b. If members of the court request to see or hear evidence admitted in an audio or audio-video medium, the judge will assemble the members in open court and replay the desired audio or audio-video evidence, if determined to be appropriate. Ordinarily, remote live testimony should be treated as any other witness testimony and, if replayed, only the audio track should be used. If testimony has been provided using a videotaped deposition, any replay of that testimony shall only be of the audio track, just as if the witness had testified personally in court. Any replay of audio or audio-video media is a matter subject to objection by either the government or the defense and it remains in the discretion of the judge.

6. Effective Date. This supplement are effective on the date the Hawaii Circuit Rules of Practice are published.