

# **UNIFORM RULES OF PRACTICE BEFORE AIR FORCE COURTS-MARTIAL**

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## **PREAMBLE**

These rules govern the trial of courts-martial within the United States Air Force. They are effective upon approval by the Chief Trial Judge and supersede all rules previously published as Rules of Practice Before Air Force Courts-Martial.

### **Rule 1.1. OBJECTIVE OF THESE RULES**

Pursuant to Rule for Court-Martial (RCM) 108, these rules, hereinafter referred to as the “Rules of Court,” provide rules for the conduct of Air Force general and special courts-martial and the orderly administration of justice by setting forth the practices and procedures now followed in Air Force courts-martial. They are intended to inform staff judge advocates, military judges, and counsel of the rules of practice and to promote uniformity in courts-martial practice.

### **Rule 1.2. APPLICATION OF RULES OF COURT**

The Rules of Court apply to the trial of all courts-martial involving an Air Force accused, including those over which other Service military judges preside. Counsel, as Officers of the Court, are required to be familiar with and to comply with these rules, as well as those contained in The Judge Advocate General’s Corps Professional Responsibility Program (including *the Air Force Rules of Professional Conduct*; *the Air Force Standards for Civility in Professional Conduct*; *The Air Force Standards for Criminal Justice*; and *the TJAGC Professional Responsibility Program*), the Manual for Courts-Martial, military case law, and applicable Department of the Air Force Instructions. Counsel also have an obligation to ensure case paralegals, whether trial, defense, or Special Victims’, are familiar with and understand these rules of practice.

### **Rule 1.3. CONSTRUCTION AND ENFORCEMENT OF THE RULES OF COURT**

(A) Construction: The Rules of Court will be construed so as to ensure simplicity in procedure, fairness in administration, and speedy disposition of charges. The military judge is the arbiter of fairness over the course of a trial. Accordingly, the military judge has inherent authority to permit or require variations from the Rules of Court (see, *e.g.*, RCM 801(a)(3)).

(B) Reporting Violations: Violations of the rules will be reported through counsel to the detailed trial judge. At the conclusion of the trial, the detailed trial judge will report alleged violations to the Chief Circuit Military Judge (CCMJ) and the Chief Trial Judge (CTJ), regardless of whether action was taken by the detailed judge regarding the alleged violation.

(C) Enforcement by Detailed Judge: Non-compliance with the Rules of Court, in and of itself, does not give rise to rights or remedies to either party, and the rules will be interpreted in this context. However, the trial judge is not restricted in granting rights or remedies for actions which independently violate other standards applicable to trial practitioners, *e.g.*, rules against contempt of court, sanctions for discovery violations, or ethical violations, solely because the conduct in question also violates the Rules of Court. In the case of violations of the *Uniform Rules of Practice Before Air Force Courts-Martial*, the military judge may, upon application of a party or *sua sponte*, take such action as may be warranted by the attendant circumstances and the interests of justice. This action

may include, but is not limited to, addressing the alleged conduct on the record during the course of trial.

(D) Enforcement by the CTJ or the CCMJ: Upon report of alleged violations of the Rules of Court forwarded by the detailed military judge, the CTJ or the CCMJ may, in the case of military counsel, forward the complaint of violation to the appropriate Senior Supervisor Attorney in accordance with AFI 51-110. The decision to forward such complaints is within the sound discretion of the CTJ or the CCMJ, taking into account the nature and circumstances of the alleged violation. The CTJ or the CCMJ, or any other person, may also take other appropriate action as provided for by the Rules of Court or other standards applicable to trial practitioners, *e.g.*, ethical and professional standards.

(E) Counsel will be notified of what, if any, action was taken in response to an alleged violation of these rules.

## **PRELIMINARY MATTERS**

### **Rule 2.1. DOCKETING**

(A) Docketing of courts-martial and detailing of military judges is a judicial function. The CTJ has world-wide responsibility for the docketing of courts-martial and detailing of military judges. The CTJ delegates the authority to the Deputy Chief Trial Judge (DCTJ) to docket cases and detail judges world-wide. The CTJ delegates the authority to the CCMJs to docket courts-martial and detail trial judges within their respective circuit. To assist in the docketing of courts-martial, the Central Docketing Office (CDO) serves as the focal point for the administration of courts-martial docketing.

(B) The CDO maintains a current docket of all pending courts-martial and all other forums in which a military judge has been detailed or assigned, such as Article 32 preliminary hearings, investigations and administrative discharge proceedings.

### **Rule 2.2. NOTIFICATIONS TO CDO/CCMJs**

To facilitate efficient docketing management, each Base Legal Office will immediately notify the CDO **and** the appropriate CCMJ (and/or the detailed military judge, as appropriate) of the following:

(A) Imposition of any form of pretrial restraint and any status change – e-mail a copy of the confinement order.

(B) Referral of charges to trial by GCM or SPCM – e-mail a copy of the complete charge sheet and all convening orders after service of the charge(s) on the accused. Do not send the pretrial advice, court member nomination list, or court member data sheets.

(C) Chapter 4 or resignation request – indicate whether permission to proceed to trial will be sought, or whether trial will be directed to proceed (also send a copy to the detailed judge).

(D) Withdrawal, dismissal, or other disposition short of trial – e-mail a copy of the convening authority action (also send a copy to the detailed judge).

(E) Major modification of charge(s) and specification(s) after referral – e-mail a copy of the modified charge sheet (also send a copy to the detailed judge).

### **Rule 2.3. DETAILING OR RETAINING OF COUNSEL**

(A) Upon service of charges, military trial counsel, and defense counsel will provide the CDO and appropriate CCMJ a written notice of detailing; civilian defense counsel will provide a written notice of representation. The notice will contain counsel's full name; rank and duty title (as applicable); position (*e.g.*, trial counsel, assistant trial counsel, detailed defense counsel); office phone number; e-mail address and mailing address in the case of civilian counsel. In addition, civilian counsel's notice will identify the jurisdiction(s) in which the counsel is admitted to practice. Such notices constitute the formal notice of appearance of such counsel.

(B) In cases where the accused is represented by both military and civilian defense counsel, the military defense counsel will provide civilian counsel a copy of these rules, the *Air Force Rules of Professional Conduct*, the *Air Force Standards for Civility in Professional Conduct*, the *Air Force Standards for Criminal Justice*, and *TJAGC Professional Responsibility Program*. In cases where the accused is represented only by civilian defense counsel, the trial counsel will provide civilian defense counsel a copy of these rules, the *Air Force Rules of Professional Conduct*, the *Air Force Standards for Civility in Professional Conduct*, the *Air Force Standards for Criminal Justice*, and *TJAGC Professional Responsibility Program*.

(C) After service of charges, counsel for persons of standing (*e.g.*, special victims' counsel [SVC]) will provide the CDO, the appropriate CCMJ, and counsel for the government and defense a written notice of representation. The notice will contain counsel's full name; rank and duty title (as applicable); position (*e.g.*, SVC); office phone number; e-mail address and mailing address in the case of civilian counsel. In addition, civilian counsel's notice will identify the jurisdiction(s) in which the counsel is admitted to practice.

### **Rule 2.4. WITHDRAWAL BY COUNSEL**

After referral, if counsel withdraws from the case, counsel shall notify the CDO and the appropriate CCMJ. Any substitute detailing or retention of counsel will be filed in accordance with Rule 2.3. After referral, counsel may withdraw only in the following manner:

(A) TRIAL COUNSEL. Trial counsel may not withdraw unless qualified counsel is detailed prior to or simultaneously with the relief of the withdrawing counsel. Notice of the withdrawal and new detailing will be filed immediately with the detailed military judge.

(B) MILITARY DEFENSE COUNSEL. Detailed and individual military defense counsel may not withdraw from representation of the accused without the military judge's approval, whether or not the accused desires to release the military counsel. *See also* RCMs 505(d)(2) and 506(c). If counsel seeks

permission to withdraw before the case is docketed for trial, send the request to the CDO and appropriate CCMJ for action.

(C) CIVILIAN DEFENSE COUNSEL. Civilian defense counsel may not withdraw from representation of the accused without the military judge's approval, whether or not the accused desires to release the civilian counsel. Willful failure of a fee-paying client to comply with the terms of the contract for representation may provide grounds for counsel to request to withdraw. The failure to pay the fee does not, however, terminate the attorney's obligations as an officer of the court. If counsel seeks permission to withdraw before the case is docketed for trial, send the request to the CDO and appropriate CCMJ for action.

(D) OTHER COUNSEL. Counsel for persons of any standing (e.g. SVC) will immediately notify the military judge when transferring or terminating their representation. If transfer or withdrawal occurs before the case is docketed for trial, send the notice to the CDO and appropriate CCMJ.

## **Rule 2.5. ESTABLISHING TRIAL DATES**

(A) GENERALLY. Many factors are considered in setting a trial date, to include: conflicts with docketed cases; estimated length of the trial; availability of witnesses, consultants, experts, detailed and civilian defense counsel, local and senior trial counsel, SVC, and court reporter; discovery; forensic tests, medical or psychiatric evaluations; and, the existence of pending requests for individual military counsel, discharge, resignation, or retirement in lieu of trial. These factors should be discussed by both sides prior to requesting a docketing conference. Trial counsel and defense counsel must ensure they are considering all of the factors when they determine their ready date for trial.

(B) POST-REFERRAL. While the Convening Authority may decide not to refer forwarded charge(s) to trial in any given case, the parties must be prepared to engage immediately in the event charge(s) is (are) referred.

(1) Procedure. Immediately after referral and service of the charge(s) on the accused, the SJA office prosecuting the case, after consulting with the detailed defense counsel(s) will notify the CDO and the appropriate CCMJ in the manner detailed in Rule 2.2(B). The SJA office prosecuting the case will also provide the memorandum at Appendix A (template located at the AF/JAT website), and they will copy the detailed defense counsel(s) when they make this notification.

(2) The CDO or appropriate CCMJ will confirm the requested date/time for a docketing conference or contact counsel to establish an alternate date/time if the requested date/time is unavailable.

(3) Docketing Conference.

a. In each case, the CDO or appropriate CCMJ will hold a docketing conference with counsel. The "presumptive trial date" is the first day after the statutory waiting period (see RCM 602) has elapsed. At the docketing conference the parties need to be able to discuss their availability to try the case given the factors detailed in Rule 2.5(A).

b. The responsible base Staff Judge Advocate (SJA) will identify the detailed trial counsel and notify the responsible defense counsel at the point the charge(s) is (are) forwarded to the Convening Authority for a referral decision so the parties can coordinate their schedules, determine availability of prospective witnesses, co-counsel, and discuss potential trial dates well before the docketing conference. Trial counsel shall consult with any known counsel to persons of standing (e.g., SVCs) about their schedule(s) prior to any docketing conference or discussion of possible continuance. If the trial counsel disagrees with a known counsel on the scheduling of a trial, that disagreement will be disclosed to the CDO or the appropriate CCMJ.

c. Detailed military defense counsel will coordinate with civilian defense counsel prior to the docketing conference to discuss the same matters and alert the civilian counsel to the pendency of the docketing conference.

d. After holding the docketing conference, the CDO/CCMJ will determine an initial trial date. Requests to exclude time from accountability under RCM 707 will be coordinated and acted upon by the CTJ, DCTJ, or the appropriate CCMJ. CCMJs have authority to exclude time from accountability under RCM 707 for all cases docketed within their respective circuits.

(4) Docketing Memorandum. After a trial date is established, the CDO will provide the docketing memorandum setting out the initial trial date, the detailing authority (CTJ, DCTJ, or CCMJ), identification of the detailed trial judge, exclusions of time under RCM 707 (if any), and any other relevant data, including the “presumptive trial date” and government and defense “case ready” dates. The memorandum will be e-mailed to the detailed trial and defense counsel, civilian defense counsel, and any known counsel to persons of standing (e.g., SVCs). The CDO will also e-mail the docketing memorandum, along with the charging documents, to the relevant CCMJ, the CTJ, the DCTJ, and the detailed military judge.

## **Rule 2.6. PRETRIAL RCM 802 SCHEDULING CONFERENCE**

In all courts-martial, the detailed military judge will, pursuant to RCM 802, conduct a Pretrial Scheduling Conference (“Scheduling Conference”) as soon as possible. Upon request from the military judge, trial counsel will coordinate all conference communications. During the conference, the military judge will conduct a detailed assessment of potential issues (e.g., approval of experts, discovery, evidentiary motions, requests for sanity boards, and pretrial agreement (PTA) discussions) with the parties to ensure trial is held on (or before) the initial trial date. Counsel will apprise the detailed judge of all issues that may affect the scheduled trial date, such as providing discovery, availability of witnesses and experts, submission of motions, sanity concerns or any other relevant issue. During this initial RCM 802 session, the parties and detailed judge will determine if the case needs to be bifurcated into a motion hearing session and trial. If bifurcation is anticipated, the parties must be prepared to talk about potential dates for a motion hearing.

## **Rule 2.7. SCHEDULING ORDER**

(A) After the 802 Scheduling Conference, the military judge will, except where found to be unnecessary (e.g. a case docketed for trial close in time to the docketing conference where a scheduling



order is impracticable), issue a Scheduling Order to establish timelines, resolve issues, and move the case forward most effectively. Trial counsel is responsible for distributing the Scheduling Order to any counsel for a person of standing within 24 hours of the issuance of such order. A sample of a Scheduling Order is provided at Appendix C.

(B) The military judge will proactively manage case progress. To this end, the military judge will conduct additional conferences as appropriate. If the military judge determines that a separate Article 39(a), UCMJ, arraignment or motion session is necessary, the military judge will schedule separate sessions. These matters are covered in more detail in Rules 3.4 and 3.5.

(C) The military judge will remain alert to the opportunity to move the trial date forward in time. The trial date may be advanced at the discretion of the military judge.

(D) Joint Status Updates: When a scheduling order is issued, there will be a requirement for joint status updates by detailed counsel. In that e-mail, counsel will indicate if there are any current discovery issues, expert witness issues, witness production issues, witness access issues, PTA negotiations occurring, and any other information that the parties deem relevant regarding this case. The Scheduling Order will detail the date(s) these joint status update e-mails are required. To the extent possible, they will be required on a Friday at time to be determined by the detailed judge.

## **PRETRIAL MATTERS**

### **Rule 3.1. COMMUNICATIONS WITH THE MILITARY JUDGE**

(A) *EX PARTE* COMMUNICATIONS. Except as provided by the Manual for Courts-Martial, *ex parte* communications between counsel and the military judge concerning a case pending before that military judge are prohibited. Routine administrative matters are excluded from this prohibition. Additionally, SJAs are prohibited from *ex parte* communications with military judges concerning a case pending before the military judge.

(B) WRITTEN COMMUNICATIONS. Except in the case of an authorized *ex parte* communication, counsel will—on all written communications with the military judge—send a copy of the communication to opposing counsel and to any counsel for a person of standing whose rights are implicated by the communication (e.g., MREs 412, 513, and 514).

(C) ORAL COMMUNICATIONS. On oral communications with the military judge, the military judge will determine whether the communication needs to be reduced to writing and if so, by which party.

### **Rule 3.2. PRETRIAL NOTICE REQUIREMENTS**

All parties and identified counsel for persons of standing will abide by the military judge's Scheduling Order. In the absence of any Scheduling Order, and unless an extension or waiver is granted by the military judge for good cause, the following notice requirements apply.

(A) PLEAS AND FORUM. Defense counsel will file notice of probable pleas and choice of forum ten (10) calendar days prior to the scheduled trial date. The pleas will be expressed in the

precise form counsel anticipate announcing them in open court. Defense counsel will promptly notify the CDO, the appropriate CCMJ, and the detailed military judge and trial counsel of any change in anticipated plea or choice of forum.

(B) PRETRIAL AGREEMENTS. Defense counsel will notify the detailed military judge that a pretrial agreement offer has been submitted to the Government. If the Government accepts an accused's offered pretrial agreement, the trial counsel will immediately provide a copy of the offer portion of the pretrial agreement to the detailed military judge, the appropriate CCMJ, and the CDO. In addition, trial counsel will provide the detailed military judge any stipulation of fact.

(C) ALTERNATE DISPOSITION. Trial and defense counsel will notify the detailed military judge, appropriate CCMJ, and the CDO immediately whenever a request for discharge or resignation or retirement in lieu of court-martial has been submitted.

(D) MOTIONS. Counsel for both sides will file a notice of the substance of any anticipated motions, including motions *in limine* not later than fourteen (14) calendar days prior to trial. Motions that involve Military Rules of Evidence (MRE) 412, 513, 514, 615, or any other motion that relates to Article 6b, UCMJ, will also be served by the filing party on any SVCs representing affected clients. To avoid scheduling delays, the parties will notify the detailed judge as soon as possible if they believe bifurcation of the proceedings is required.

(E) WITNESS LISTS. Counsel for both sides will file a list containing each anticipated witness' full name, unit/duty station (as applicable), address and telephone number no later than five (5) calendar days prior to the scheduled trial date.

(F) VOIR DIRE. Counsel for both sides will provide a written copy of their proposed voir dire to the detailed military judge and opposing counsel not later than three (3) duty days prior to the scheduled trial date. Unless the detailed military judge directs otherwise, counsel will conduct group voir dire based on the questions approved by the detailed military judge from the written submissions.

(G) PROPOSED INSTRUCTIONS. Requests for special instructions will be filed as early as possible during the trial proceedings.

(H) OTHER REQUIRED NOTIFICATIONS. Counsel for both sides will file other notifications in accordance with the pertinent RCM, MRE (e.g., MREs 304, 404, 412, 413 and 414), or case law.

### **Rule 3.3. DISCOVERY**

(A) Requests for discovery will be made to the opposing party as soon as possible and otherwise in accordance with any Scheduling Order or other order of the detailed military judge. In the absence of a Scheduling Order, parties will file the initial discovery request within five (5) calendar days of the docketing conference. Formal replies will be made within two (2) duty days. Counsel for both sides will promptly respond to and comply with all requests for discovery. If some items require additional time, counsel will file a partial response and notify the opposing party and the

court of the anticipated completion date. The detailed military judge will be notified at the initial RCM 802 Scheduling Conference, or subsequently as matters arise whenever discovery issues require judicial engagement/resolution.

(B) INITIAL DISCLOSURE. Before or upon service of charges, the SJA or trial counsel will provide defense counsel with copies of the charge sheet, the commander's forwarding memo, convening order(s), pertinent investigative reports, and statements relating to an offense charged in the case, and any RCM 701(a)(6) evidence.

### **Rule 3.4. PRETRIAL CONFERENCES**

As noted in Rule 2.6(B), pretrial conferences, in addition to the Scheduling Conference with the military judge and counsel for both sides, will be held as necessary to keep the case on schedule. The accused is neither required nor prohibited from attending any such conference. Counsel representing persons of any standing may be included, as appropriate. Conferences may be held to inform the military judge of unusual problems or issues arising after the Scheduling Conference and to seek judicial engagement/resolution. However, pretrial conferences will not be used to litigate or decide contested issues. *See* RCM 802 and Discussion.

### **Rule 3.5. ARTICLE 39(a) SESSIONS**

The military judge may set an Article 39(a) session, to include arraignment, as part of the pretrial Scheduling Order or by subsequent order. Military judges shall consider Article 39(a) sessions prior to the date of trial to conduct arraignment and resolve outstanding legal issues to include motions. Such sessions may be conducted via video teleconference in accordance with the provisions of AFI, paragraph 8.21 and Rule 3.8, below.

### **Rule 3.6. MOTIONS**

(A) NOTICE AND FILING. IAW Rules 2.6 and 3.2(D), counsel will notify the detailed military judge, opposing counsel, and known counsel for a person of relevant standing of any motions, evidentiary objections or other issues which may be litigated before or at trial. Motions will be in writing, where possible, and filed in accordance with the Scheduling Order or other order of the military judge. Every motion, pleading or other document submitted to the Court by a party will be signed by at least one counsel of record. Trial counsel will notify any representative appointed under Article 6b, UCMJ, of any relevant hearings and Court rulings.

(B) PERSONALLY IDENTIFYING INFORMATION (PII). The use of PII will be minimized to the maximum extent possible. All documents electronically transmitted should be redacted of irrelevant PII, to include social security numbers, home addresses, dates of birth, financial account numbers, and the names of minors. Alleged victims will be identified by their initials without reference to their military rank.

(C) SPECIFIC MOTIONS. Counsel are to review and be familiar with the various types of motions as outlined in RCM 906 – 907.

(D) OTHER REMEDIES. Prior to filing a motion, counsel will make reasonable efforts to secure the requested relief from opposing counsel. These rules do not operate to relieve the moving counsel from complying with applicable provisions of the Manual for Courts-Martial, to include any requirement to seek relief from the convening authority before seeking such relief from the court.

(E) CONTENTS. Motions will include a caption indicating the parties to the case, the personal data of the accused, and the title of the motion. "Personal data" includes rank, name, and duty assignment; the member's social security number should not be included. Motions will include: (1) the specific relief requested, (2) a statement of relevant facts, (3) the applicable law, (4) argument and (5) a conclusion. Motions will include a statement of whether the moving party requests or waives an Article 39(a) session to present argument or evidence. Replies will indicate agreement or disagreement with the stated facts. Affidavits may be attached when controverted factual issues are involved. A sample motion is at Appendix B.

(F) RESPONSES. Unless otherwise specified by the detailed military judge, responses to motions should be filed no later than five duty days following receipt.

(G) ARTICLE 39(a) SESSIONS. Upon request, either party is entitled to an Article 39(a) session to present oral argument or have an evidentiary hearing concerning the disposition of written motions."

(H) RULINGS. Rulings upon pretrial motions will be announced by appropriate court order. The order (where written), the motion and the response will be designated as appellate exhibits in the record of trial. Whenever possible, military judges will announce whether they intend to follow up an oral ruling with a written ruling or whether they intend to supplement the record and any rulings prior to authentication of the record.

### **Rule 3.7. SPEEDY TRIAL CHRONOLOGY**

In those cases where the defense moves to dismiss the charges and specifications on the grounds of denial of speedy trial, the trial counsel will prepare a written chronology of events prior to trial. The chronology will be in the format approved in *United States v. Ramsey*, 28 M.J. 370,374 (C.M.A. 1989). If counsel are unable to stipulate to the events and dates, areas of disagreement should be identified and litigated when the appropriate motion is presented.

### **Rule 3.8. USE OF VIDEOTELECONFERENCING (VTC)**

VTC is authorized for all preliminary matters prior to the entry of pleas by the accused, to include conferences held under RCM 802 and Article 39(a) sessions. If either party proposes to use alternatives to testimony after the court is assembled, such as VTC (or other audiovisual) technology, in accordance with RCM 703(b)(1), 804(b), 805(a), 805(c), and/or RCM 914B (and AFI 51-201 para 8.21), the proponent, when possible, shall serve notice of its intent on the Court and opposing counsel not later than ten (10) duty days prior to trial. Any objection shall be filed within two (2) duty days of receipt.

## **DURING TRIAL**

#### **Rule 4.1. CONVENING THE COURT**

The military judge will establish the time and date of the initial convening of the Court and all sessions thereafter. All personnel of the court will be present and ready to proceed at the scheduled time.

#### **Rule 4.2. MILITARY JUDGE**

All persons in the courtroom capable of rising, other than the court reporter, will rise when the military judge enters or leaves the courtroom. A nameplate will be provided for the judge and will designate the judge as "Judge [last name]". Military rank will not be placed on the nameplate.

#### **Rule 4.3. ROBES**

The judicial robe will be worn by the military judge in all Air Force general and special courts-martial including during hearings on interlocutory matters. For courts-martial conducted in deployed locations, the robe will be worn when practicable.

#### **Rule 4.4. COURT MEMBERS**

All persons capable of rising, other than the military judge and court reporter, will rise when the members, as a group, enter and leave the courtroom.

(A) INFORMATION PROVIDED TO COURT MEMBERS BEFORE ASSEMBLY. Court members will not be advised of: (1) the reasons or responsibility for any delay in trial; (2) requests for sanity boards or administrative separation; or (3) projected pleas or forum. Either party may apply to the detailed military judge for an order to the court members warning them to avoid anticipated pretrial publicity.

(B) QUESTIONNAIRES PROHIBITED. Other than to obtain the information from potential members as identified in *United States v. Credit*, 2 M.J. 631 (C.M.A. 1976), no pretrial questionnaires will be sent to any court member, except upon approval of the military judge. No post-trial questionnaires or surveys will be sent to any member, except upon approval of the military judge. Defense requests for clemency recommendations will be limited solely to that purpose and do not require the approval of the military judge. RCM 1105(b)(2)(D).

(C) TELEPHONE STANDBY. Unless otherwise directed by the military judge, court members will be on telephone standby, ready to report in a timely fashion once called, until completion of the preliminary Article 39(a) session. Members will not be released until a judge alone request has been approved on the record.

(D) APPROACHING MEMBERS. Unless directed otherwise by the military judge, counsel may not – without prior permission – approach the court members.

(E) MEMBERS' OATH. Trial counsel will swear the members in accordance with the oath for members in RCM 807(b)(2). The parenthetical "(upon a challenge or)" will be omitted. No other modifications will be made.

#### **Rule 4.5. PUNCTUALITY**

All parties will be punctual for all sessions of the court-martial.

#### **Rule 4.6. UNIFORM AND CIVILIAN ATTIRE**

The default military uniform for all courts-martial is military service dress. The military judge may designate an alternate uniform if a military exigency exists. Civilian attorneys will wear appropriate court attire suitable for appearance before a federal judge. Unless military exigencies exist, the military judge will wear the Class A uniform, with long sleeves and a tie/tie tab.

#### **Rule 4.7. SIDEBAR CONFERENCES**

Sidebar conferences will not be used. If matters must be discussed outside the presence of the court members, an Article 39(a) session will be used.

#### **Rule 4.8. SPECTATORS**

(A) Spectators are welcome to attend any session of a court-martial except those sessions at which spectators must be excluded, as determined by the military judge and consistent with the rules of evidence and the federal laws regarding the protection of classified data. Counsel will ensure that the military judge is notified if any spectator may be called as a witness, unless the spectator becomes a witness by observing trial events.

(B) Consult the military judge in advance if potential spectators exceed normal seating capacity, before adding chairs inside the bar, or reserving seats for media or family members. Standing-room access may only be approved by the detailed military judge.

(C) In a bench trial, the court member seats may be used as spectator seating with approval of the detailed military judge, and with the understanding that ingress and egress to such seats will be limited to court recesses.

#### **Rule 4.9. CONDUCT DURING TRIAL**

(A) Spectators ordinarily may enter or leave the courtroom while court is in session. Spectators will not disturb the proceedings in any way, including verbal expressions, whispering, shaking or nodding of the head, or similar displays. Spectators will refrain from any activities indicative of inattention to the proceedings, such as sleeping, clipping nails, reading any material, and watching, listening to, or playing with any electronic device or game.

(B) All personal electronic devices, to include mobile phones, must be placed in silent, non-vibrating mode prior to entering the courtroom. Trial counsel will post signs indicating this

requirement outside the courtroom where spectators and the court members enter. Counsel for both sides are responsible for informing their witnesses of this requirement.

(C) Military and civilian law enforcement spectators will not enter the courtroom bearing arms while the court is in session without the prior approval of the military judge. [*See also* Rule 6.5.]

(D) Spectators who violate any rules may be warned that their behavior will not be tolerated and, at the discretion of the military judge, may be excluded from the courtroom. Contempt proceedings may be initiated when appropriate.

(E) The parties, known counsel for persons of standing, or expert consultants may use laptops or tablet devices inside the courtroom and as necessary to assist in their trial practice. These devices must be in silent, non-vibrating mode when in the courtroom.

#### **Rule 4.10. SMOKING, FOOD AND BEVERAGES**

Smoking and eating will not be permitted in the courtroom during open sessions. Trial participants and spectators may drink non-alcoholic beverages from an appropriate, conservative container such as an opaque cup or water bottle. Trial participants will not chew gum or use any form of tobacco product in the courtroom.

#### **Rule 4.11. PHOTOGRAPHY AND RECORDINGS**

Photographs, sound and video recordings (except those made for the limited purpose of preparing an official record of the proceedings) and radio and television broadcasts will not be made in or from the courtroom during trial proceedings. A closed circuit television system may be used under the circumstances set forth in MRE 611(d), RCM 804(c), and RCM 914A, when an accused has been removed from the courtroom, or to accommodate members of the public who have been unable to obtain space in the courtroom. [*See also* RCM 806(c)]

#### **Rule 4.12. READING BACK PORTIONS OF THE RECORD**

Portions of the record of trial including prior questions or answers will be reread or replayed back to the Court only at the direction of the military judge.

#### **Rule 4.13. DELIBERATIONS**

A deliberation room for use by the court members will be provided in every trial with court members. The court members will not deliberate in the courtroom unless exigent circumstances are found by the military judge. The bailiff must ensure that counsel, the accused, spectators, and witnesses do not stand at or near the doors or windows of the deliberation rooms.

#### **Rule 4.14. BAILIFF**

A bailiff should be present at every court-martial. The bailiff should be an Airman of high moral character with a record of service demonstrating efficiency and discipline. The bailiff should not have an interest in the case, or a close association with the accused or with any witness. The trial counsel

will ensure the bailiff is oriented to the courtroom and instructed on bailiff duties by a base legal office member. If no bailiff is available, a paralegal will perform the bailiff duties.

#### **Rule 4.15. COURTROOM SECURITY**

(A) SECURITY CONCERNS. Appropriate security must be considered for every trial. If any party or any known counsel becomes aware of any potential security concerns, counsel will immediately advise the military judge of such concerns.

(B) PREVENTIVE SECURITY MEASURES. At the initial RCM 802 conference, the trial counsel will advise the military judge of any special security features of the courtroom, (e.g., a “panic button,” bullet resistant plating, or phone connection to law enforcement) and any planned security actions (e.g., searching spectator’s parcels or metal detector “wandering”).

(C) GUARDS. After notifying the military judge in advance, the trial counsel will provide for guards whenever necessary to secure high value evidentiary items or to provide security for the accused or other trial participants. Guards will not be permitted into the bar of the Court unless it is necessary for them to carry out their mission. Guards will not be armed, unless such arming is specifically approved in advance by the military judge.

(D) CUSTODY OF ACCUSED. The duties of prisoner escort are inconsistent with the duties of counsel at a court-martial. Neither trial counsel nor defense counsel nor the bailiff will sign for a prisoner, before or during trial. Ordinarily, a prisoner escort should be detailed from the accused’s unit. However, if confinement is adjudged, the trial counsel is responsible for custody of the accused until the confinement is deferred or the accused is received for confinement by security forces.

(E) SECURITY OF ACCUSED. The accused will not be shackled or unshackled, or physically restrained in the presence of court members except upon prior approval of the military judge for good cause shown.

### **CONDUCT OF COUNSEL**

#### **Rule 5.1. RESPONSIBILITY OF COUNSEL**

All counsel who enter into the courtroom are to be considered officers of the court and must abide by the rules of professional conduct and legal ethics. Counsel owe a duty both to the client and to the Court. Counsel will assist the military judge in maintaining a dignified atmosphere within a military setting. Counsel will not encourage the Court or court members to ignore the law.

#### **Rule 5.2. COURTESY**

Counsel will stand when addressing the military judge, court members, or witnesses and when conducting all trial actions such as examination of witnesses and argument. Counsel will address the military judge as “Your Honor” and will address the members by their grade and name. Unless directed otherwise by the military judge, counsel may, without prior permission, approach the bench or the court reporter to provide or retrieve evidence. Inappropriate or rude behavior or language, or



any actions calculated to intimidate a witness, provoke opposing counsel, or improperly impede the proceedings is prohibited. Stated affirmatively, counsel will treat others civilly and with respect. If the bailiff does not, trial counsel will say “all rise” whenever the military judge or the entire court member panel enters or leaves the courtroom.

### **Rule 5.3. FLYER; FINDINGS AND SENTENCING WORKSHEETS**

Prior to trial with court members, trial counsel shall prepare the flyer and tailored findings and sentencing worksheets (the latter using the formats in Appendix B, DA Pamphlet 27-9), and submit them to the judge and opposing counsel at least two (2) duty days before trial. Any lesser included offenses likely to be in issue will be reflected on the findings worksheet.

### **Rule 5.4. AVOID UNDUE FAMILIARITY**

Counsel will refrain from undue familiarity between themselves, with the members, witnesses, spectators, or the military judge while court is in session, or in front of the accused, spectators, witnesses or the members.

### **Rule 5.5. ONE COUNSEL PER CAUSE**

Except with the permission of the military judge, only one counsel for each side or for each accused will examine any one witness or address the court on any issue, motion, objection or argument.

### **Rule 5.6. ENGLISH REQUIRED**

Counsel will be fluent in written and spoken English.

### **Rule 5.7. PERSONAL OPINIONS**

Counsel will not, during trial, assert personal knowledge of the facts in issue, except when testifying as a witness. Counsel will not assert a personal opinion as to the justness of a cause, the credibility of a witness, or the guilt or innocence of the accused except that counsel may argue for any position or conclusion based on an analysis of the evidence with respect to the matter stated.

### **Rule 5.8. STATE OBJECTION**

When making objections, counsel will first state only the objection and the specific basis for it without further elaboration. Counsel may present argument only on invitation by the military judge. Should counsel for persons of standing (*e.g.*, Special Victims’ Counsel) desire to be heard during trial, that counsel shall stand silently until recognized by the military judge.

### **Rule 5.9. RELATIONS WITH THE NEWS MEDIA**

Counsel will comply with the *Air Force Standards for Criminal Justice*, especially Chapter 4, Fair Trial and Free Press. Military judges will refer all media requests to the servicing SJA.

## **Rule 5.10. LEAVING THE COURTROOM**

The parties will not leave the courtroom during trial without permission from the military judge.

## **WITNESSES**

### **Rule 6.1. COURTESY TO WITNESSES**

Witnesses will be treated with courtesy, fairness, and consideration and will not be treated in an abusive manner. Counsel will not approach a witness without permission from the military judge.

### **Rule 6.2. PRETRIAL INSTRUCTIONS TO WITNESSES**

Counsel are responsible for ensuring that their witnesses know the physical layout of the courtroom and proper decorum. Specifically, counsel will instruct witnesses to not chew gum or tobacco, wear sunglasses, or use profanity, slang or colloquialisms except as required as part of their testimony. Witnesses will be instructed to avoid casual conversation with the military judge and court members.

### **Rule 6.3. NO SALUTING IN COURT**

Military witnesses will not salute in the courtroom.

### **Rule 6.4. AVAILABILITY**

Counsel will make arrangements to ensure that witnesses will be immediately available when called. Counsel will inform the bailiff of the witness' whereabouts and coordinate with each other to minimize delays.

(A) ON-CALL STATUS. Apply common sense. Convenience to the witnesses and a smooth orderly trial are not inconsistent goals when counsel plan ahead. It is preferable to have three witnesses waiting rather than have to recess the trial to wait for each of them. On the other hand, an occasional recess to notify a senior officer or medical officer who is on immediate telephone standby is acceptable.

(B) WAITING AREA. Sound discretion often requires segregation of witnesses from each other or others waiting for service in the legal office. All witnesses will be treated as required by common sense, federal statute, and Air Force Instructions.

(C) PRESENCE IN COURTROOM. A witness being called at the conclusion of a recess should be present at the witness stand upon resumption of trial. Prospective witnesses will not be present in the courtroom during proceedings except upon agreement by both sides and approval of the military judge, or as otherwise required by law.

(D) RELEASE OF WITNESSES. No witness will be released beyond recall until the court is adjourned, without the approval of the military judge.

## **Rule 6.5. ATTIRE**

Military members should normally testify in service dress uniform. If approved by the military judge in advance, military members may testify in an alternative clean, neat, duty uniform. Whether or not on duty, military witnesses who wear uniforms in the course of their duty should testify in uniform. However, military witnesses called or recalled unexpectedly during off-duty hours may testify in civilian attire to avoid inordinate delay. Civilian witnesses should testify in appropriate, clean, neat attire. Military investigators who routinely work in civilian attire may wear appropriate clean, neat attire. With advance notice to, and approval from, the military judge, on-duty military and civilian law enforcement personnel normally armed in the course of their duties with a holstered sidearm – whether or not concealed – may remain so armed during their testimony. [See also Rule 4.9.]

## **EVIDENCE**

### **Rule 7.1. MARKING EXHIBITS**

Items intended to be used or introduced as prosecution or defense exhibits at trial will be given to and marked by the court reporter prior to trial, when possible. A combination of numeric and alphabetical exhibit markings should *not* be used (*e.g.*, Pros Ex 1A, or Def Ex A1). Mark original documents (*e.g.*, performance reports, citations, etc.) lightly in pencil or on an attached label so that the document is not permanently defaced.

(A) PROSECUTION EXHIBITS. Prosecution exhibits will be marked consecutively with Arabic numerals and will be labeled “for identification.” If more than one page in length, use the legend “Page \_\_\_ of \_\_\_ pages.”

(B) DEFENSE EXHIBITS. Defense exhibits will be marked consecutively with capital letters, using no more than double letters (*i.e.*, A-Z, AA, AB, AC-AZ, BA-BZ, CA-CZ, etc.), and will be labeled “for identification.” If more than one page in length, use the legend “Page \_\_\_ of \_\_\_ pages.”

(C) COURT EXHIBITS. Court Exhibits will be numbered consecutively with Arabic numerals at the direction of the military judge and will be labeled “for identification.”

(D) APPELLATE EXHIBITS. Appellate Exhibits will be numbered consecutively with Roman numerals at the direction of the military judge; however, the judge may permit Appellate Exhibits to be marked consecutively with Arabic numerals if there are a large number of them.

(E) INDEXING EXHIBITS. Multiple exhibits, such as defense sentencing documents should be preceded by a descriptive index, marked as a defense exhibit. In complex cases with numerous exhibits the prosecution may do likewise. This will expedite the proceedings by eliminating the necessity to describe the exhibits orally on the record.

(F) REJECTED EXHIBITS. With consent of the side proffering a rejected exhibit, it may be withdrawn at the direction of the military judge to reduce bulk in the record. Likewise, if an exhibit is

modified prior to consideration by the fact-finder, the original version may be withdrawn with the consent of the parties.

(G) COPIES. Counsel offering an exhibit shall ordinarily have copies made for the judge and opposing counsel. When counsel requests to publish a document to the members, that counsel will have previously made copies for each court member. When counsel offer an exhibit for which they wish a copy or reproduction to be substituted in the record, the counsel should be prepared with an exact copy or reproduction or accurate representation when offering the exhibit. The copy or reproduction should mirror the actual exhibit as closely as possible, to include the use of color copies for photographs, or 8 ½ x 11 paper copies for charts or PowerPoint slides, as appropriate.

## **Rule 7.2. GUARDING EVIDENCE**

The counsel sponsoring the exhibit will exercise care to prevent loss or inappropriate use (*e.g.*, drugs, weapons) and will ensure exhibits not yet received into evidence, or exhibits which have been offered and rejected, are not displayed to court members. Counsel will notify the military judge prior to trial whenever any weapon, ammunition, or explosive is to be brought into the courtroom during trial.

(A) CUSTODY OF EVIDENCE. The counsel offering an exhibit remains responsible for safeguarding the exhibit until turned over to the reporter or evidence custodian at the conclusion of trial. If chain-of-custody may be in issue, counsel will not sign for the evidence until admissibility is decided. In that event, the evidence custodian may, with the approval of the military judge, remain in the courtroom or at counsel table.

(B) WEAPONS AS EVIDENCE. Weapons – or objects capable of use as a weapon – will be treated with appropriate respect and precaution, and will be kept at all times under the personal supervision of the counsel offering them.

(1) Firearms. Any firearm brought into the courtroom as evidence will be “broken” or disabled in a manner to make it visibly inoperable to all persons in the courtroom. Additionally, a pencil will be inserted prominently into the chamber end of the barrel (or a nylon “zip-cuff” or a bicycle lock may be securely fastened through the barrel and chamber) to demonstrate that no round is present in the firing position. If counsel has any doubt as to the meaning of this rule, or any terminology in this rule, or how to properly handle the firearm, counsel will seek and obtain appropriate expert guidance prior to trial. Do not point the barrel of any firearm at any person.

(2) Ammunition. Live rounds of ammunition for any firearm will not be present in the courtroom at the same time as the firearm.

(3) Other Weapons. Other weapons (or items capable of use as a weapon) will be kept out of the reach of the accused, witnesses, alleged victim, and spectators, except upon explicit approval of the military judge for purposes of identification or carefully supervised demonstration. Explosives, flammable or caustic liquids, or other hazardous materials will not be brought into the courtroom except on prior approval of the judge.

## **TRIAL PROCEDURE**

### **Rule 8.1. PROCEDURE GUIDE**

The Procedure Guide for use in Air Force courts-martial will be DA Pamphlet 27-9, as modified by the Chief Trial Judge, US Army Trial Judiciary, and the Chief Trial Judge, US Air Force Trial Judiciary. Military judges may depart from DA Pamphlet 27-9.

### **Rule 8.2. OFFERS OF PROOF**

Offers of proof are not evidence. Essential findings will not be based on offers of proof. Offers of proof will be utilized only in those circumstances set out in MRE 103(a)(2).

### **Rule 8.3. STIPULATIONS**

Counsel will attempt to narrow the issues to be litigated as much as possible by the use of stipulations of fact and testimony. Stipulations will normally be in writing. Oral stipulations will be offered only when circumstances have prevented preparation of a written stipulation.

### **Rule 8.4. PERSONS OF STANDING AND THEIR COUNSEL**

When a person of standing are permitted to address the Court, the individual and/or their counsel will enter the well of the courtroom. They may employ a podium or witness stand as appropriate. The well of the courtroom is defined as that part of the courtroom utilized by counsel and prohibited to spectators. At all other times, such persons and their counsel will refrain from entering the well of the court in any capacity except as a witness. Military counsel will state their qualifications and detailing information. Civilian counsel will state that they are members of good standing before the highest court of any State Bar.

## **RECORDS OF TRIAL**

### **Rule 9.1. SUBSTITUTING EXHIBITS IN THE RECORD OF TRIAL**

If an exhibit is not to be included in the record of trial, (*e.g.*, an automobile, a piano, any real evidence), it may be photographed and the photograph substituted in the record, or it may be described by its relevant physical or identification characteristics (*e.g.*, one 1985 Pontiac, Model Grand Prix, blue, two door, serial number 1234-45-6789, with a large dent in the right front fender). If an exhibit is not to be included in the record because of its nature (*e.g.*, drugs, money), it may be photographed or described. A photograph is preferable to a description. Counsel will obtain the permission of the military judge to substitute for an item of evidence in the record.

### **Rule 9.2. PREPARATION AND AUTHENTICATION OF RECORDS OF TRIAL**

(A) In all courts-martial, the trial counsel is responsible for completion of the record of trial. In discharging this duty, trial counsel will review the procedures outlined in RCM 1103, 1103A and 1104.

(B) The military judge—or the court reporter as authorized by the military judge in appropriate cases—is responsible for authenticating the record of trial. However, such authentication is limited to examining the trial transcript “record of proceedings” and exhibits, and no other documents which comprise the entire record of trial—*e.g.*, the pretrial investigation and allied papers.

(C) The defense counsel has the opportunity to examine and comment upon the record of trial prior to authentication.

### **PROMULGATION**

Consistent with RCM 108, the foregoing Rules of Court have been reviewed and approved by the Chief Trial Judge. These Rules of Court supersede the Rules of Court, which were promulgated on 6 June 2013. They will go into effect throughout the United States Air Force on 21 September 2015. With prior approval of the CTJ, CCMJs may supplement these Rules of Court within their respective regions, in a manner not inconsistent with these rules.

VANCE H. SPATH, Colonel, USAF  
Chief Trial Judge of the Air Force

**APPENDIX A**

Date

MEMORANDUM FOR CENTRAL DOCKETING OFFICE/CCMJ

FROM:

SUBJECT: Notice of Referral and Identification of Counsel, *United States v.* \_\_\_\_\_

On (date), Charge(s) in the case of *United States v. XXX* were referred for trial by (special) (general) court-martial. Charges were served on the accused on XXX. After consultation with the detailed defense counsel(s), we request that the case be docketed for trial. The following information is provided:

Detailed Trial Counsel: \_\_\_\_\_

Detailed Defense Counsel: \_\_\_\_\_

Detailed Special Victims' Counsel: \_\_\_\_\_

Estimated Length of Trial:

Need for separate arraignment/bifurcation?

Proposed Government Ready Date:

Brief explanation of rationale for this date

Proposed Defense Ready Date:

Brief explanation of rationale for this date

Despite the ready dates identified above, is there an agreed upon date between the parties? If so, what is that date?

Do counsel agree on an exclusion of time under RCM 707? If so what is the time period?

**SIGNATURE BLOCK**

2 Attachments:

1. DD Form 458 (served)
2. Convening Order





**APPENDIX B**

UNITED STATES OF AMERICA )  
 )  
v. ) Defense Motion to Dismiss  
 ) (Statute of Limitations)  
SSgt John Q. Accused )  
123 SFS (AETC) )  
Current Base of Assignment AFB, AK ) XX Month 20XX

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**MOTION**

The Defense raises a Motion to Dismiss, with prejudice, Specification 1 of the Charge because it alleges conduct which occurred before the five year Statute of Limitations. The authority for this Motion is Article 43, UCMJ and RCM 907(b)(2)(B).

**FACTS**

1. [Procedural background of the case.]
2. [Contention of the alleged victim about the dates the offenses occurred (last offense occurred on 1 Dec 01.)]
3. The sworn charges were received by the Summary Court-Martial Convening Authority on 9 Jan 07.

**LAW**

4. Article 43, UCMJ, sets forth the applicable Statute of Limitations for alleged violations of the punitive articles of the UCMJ. In recent history, the Statute of Limitations was five years from the receipt of sworn charges and specifications by an officer exercising summary court- martial jurisdiction for the vast majority of alleged offenses, unless otherwise specified.
5. [More law.]
6. [More law.]

**ARGUMENT**

7. The acts alleged by ABC are claimed to have occurred more than five years prior to preferral of the resulting charge(s) and specification(s) and receipt thereof for the officer exercising Summary Court-Martial Convening Authority (9 Jan 07) in this case.

8. In two recent cases, Army and Navy-Marine Corps trial judges have held that the Statute extension cannot be applied retroactively. Those respective service appellate courts, however, which are traditionally quite conservative, have recently overturned what the Defense contends was the correct application of the law by trial judges. *See, United States v. Ratliff*, 65 M.J. 806 (N.M.Ct.Crim.App. 2007); *Lopez de Victoria*, 65 M.J. 521.<sup>1</sup> The Defense, like the respective trial judges, asserts the applicable Statute of Limitations that applies in this case is the five-year statute of limitations set forth in UCMJ Article 43 for all non-rape child sexual abuse allegations which allegedly occurred before the FY 2004 National Defense Authorization Act, Public Law 108-136.

9. In making a decision on this issue, the Defense believes the Court should also take into account the Air Force's failure to pursue this case in 2001 when the allegations were brought to the attention of both SSgt Accused's Commander at the time, as well as officials at Anybase AFB, TX. Consequently, the Air Force had access to all available information about the 2001 allegations, at that time, at two separate levels, and chose to take no action. Accordingly, the Government should not now be permitted to complain that the 04 NDAA must be applied retroactively to revive a prosecution they declined when it was originally reported – at a time when all available evidence was fresh, as well as witness memory.

10. Based on the arguments articulated above, our position is that the allegations embraced by Specification 1 of the Charge are time-barred by the law that existed at the time of the alleged acts and by the state of current military law with precedential impact. The exceptions to the previous five-year statute of limitations provided for by the 2004 NDAA do not apply to the allegations in this case. The allegations in this case do not fall under any other exception to the Article 43 five-year statute. Consequently, Specification 1 of the Charge should be dismissed with prejudice.

11. The Defense does not request an Article 39(a) session to present additional argument or evidence.

### **RELIEF REQUESTED**

12. THEREFORE, the Defense respectfully requests this Honorable Court grant the Motion to Dismiss (with prejudice) Specification 1 of the Charge for violation of the applicable Statute of Limitations.

Respectfully Submitted,

(Signature Block)

I certify that I have served a true copy (via e-mail) of the above on Judge (Name) and (Trial Counsel's Name) on XX Nov 0X.

(Signature Block)

## APPENDIX C

### DEPARTMENT OF THE AIR FORCE USAF TRIAL JUDICIARY -- EUROPEAN CIRCUIT

7 January XXXX

MEMORANDUM FOR TC (Maj XXX, Capt XXX)  
DC (Maj XXX, Capt XXX)

FROM: (Trial Judge)

SUBJECT: Scheduling Conference Summary and Scheduling Order – US v. A1C Charles R. Smith (Ramstein)

1. **Background.** This case was set for trial on 9 Feb XX with me as the military judge. On 5 Jan XX, an RCM 802 Scheduling Conference was held with the counsel in order to ensure trial occurs on/before the trial date. As a result of the conference, the subjects were covered and I now establish the deadlines as set forth below.

2. **Issues Covered.** The following issues were addressed during the Scheduling Conference:

- \* **Filing of Required Notifications – e.g., RCM 701(b)(2), MREs 304(d), 404(b), 412, 413, 414, 513, and 514.**

- \* **Notice of Special/Affirmative Defenses IAW RCM 916**

- \* **Mental Capacity/Responsibility.**

- \* **Status of Discovery.**

- \* **Witness Availability/Production.**

- \* **Depositions.**

- \* **Immunity.**

- \* **Expert Consultants.**

- \* **Expert Witnesses.**

- \* **Expected Motions.**

- \* **Expected Pleas and Forums.**

- \* **PTA Discussions/Alternative Dispositions**

- \* **Media and/or Security issues.**

3. **Deadlines.** In light of the foregoing, counsel will meet the following deadlines and provide the requested documentation to opposing counsel AND the military judge (with the exception of the member credit data and potential sentencing exhibits).

<b><u>Deadlines</u></b>	<b><u>Due Date</u></b>
<b>TC Provide Member Credit Data to DC (NOT req'd to MJ)</b>	<b>ASAP</b>
<b>Action on Outstanding Witness Request(s)</b>	<b>ASAP, set by MJ as needed</b>
<b>Decision on/Provision of Outstanding Discovery</b>	<b>ASAP, set by MJ as needed</b>
<b>Signed Stipulations of Fact or Expected Testimony</b>	<b>ASAP</b>
<b>Offer Portion of Pretrial Agreement (if applicable)</b>	<b>ASAP</b>
<b>Filing of Required Notifications (e.g., MRE 304(d), 404(b), 412, 413, 414, 513)</b>	<b>16 Jan (Fri)</b>
<b>Defense Requests for Expert Consultant/Witness</b>	<b>16 Jan (Fri)</b>
<b>Gov't Action on Defense Requests for Consultant/Witness</b>	<b>27 Jan (Fri)</b>
<b>Notice of Special/Affirmative Defenses (RCM 701)</b>	<b>27 Jan (Tue)</b>
<b>Exchange of Gov't and Defense Witness Lists</b>	<b>16 Jan (Fri)</b>
<b>Notice of Pleas and Forum</b>	<b>30 Jan (Fri)</b>
<b>Notice of Conditional Guilty Plea (if applicable)</b>	<b>ASAP</b>
<b>Motions</b>	<b>23 Jan (Fri)</b>
<b>Response to Motions</b>	<b>30 Jan (Fri)</b>
<b>Alternatives to Testimony Notice</b>	<b>23 Jan (Fri)</b>
<b>Proposed Instructions (use attached checklist)</b>	<b>4 Feb (Wed)</b>
<b>Proposed Limiting Instructions for anticipated testimony</b>	<b>ASAP</b>
<b>Voir Dire Proposed Questions</b>	<b>4 Feb (Wed)</b>
<b>TC's Proposed Flyer, Findings &amp; Sentencing Worksheets</b>	<b>4 Feb (Wed)</b>
<b>Potential sentencing exhibits, character letters that were not previously provided (NOT req'd to MJ)</b>	<b>4 Feb (Wed)</b>
<b>Trial</b>	<b>9 Feb XX (Mon)</b>

4. Counsel will have read and are familiar with the Air Force Rules of Practice. Counsel will ensure that paralegals who are assisting counsel have also read and are familiar with the Air Force Rules of Practice.

5. Joint Status Updates: Trial and Defense Counsel will send me a **brief joint** e-mail on 10 Jul 15, 24 Jul 15, 7 Aug 15, 21 Aug 15, 28 Aug 15, and 4 Sep 15 (note all are Friday updates). In that e-mail, I would like counsel to indicate if there are any current discovery issues, expert witness issues, witness production issues, witness access issues, PTA negotiations occurring, and any other information that the parties deem relevant regarding this case.

6. If this order is silent on a matter, then counsel must comply with the Air Force Rules of Practice or the MCM. If my order conflicts with the Air Force Rules of Practice or the MCM, follow the order of the court.

7. Please use [vance.h.spath.mil@mail.mil](mailto:vance.h.spath.mil@mail.mil) (trial judge's email) for all correspondence related to this case. Ensure counsel for both sides are copied.

Military Judge, European Circuit