

YOU CAN EXPECT YOUR TRIAL TO FOLLOW THE FOLLOWING PROCEDURAL LINES.

1. All trials, whether ultimately to be heard before the members or by judge alone, begin with an article 39(a) session. Sometimes the military judge and the lawyers will meet "off-the-record," in what's called an R.C.M. 802 session.
2. PRELIMINARY MATTERS.
 - a. Calling the session to order. This is done by the military judge. R.C.M. 803, 901.
 - b. Announcement of the convening of the court and referral of charges. This is normally done by the trial counsel, who refers to the convening order, any modifications thereto, and indicates the date of service of charges upon the accused.
 - c. Announcement of persons present at the article 39(a) session. The persons involved include counsel, military judge, members, and you. If the orders detailing the military judge and counsel have not been reduced to writing, an oral announcement of such detailing is required. The convening order will detail the members.
 - d. Swearing of the reporter, if not previously sworn. Art. 42(a), UCMJ.
 - e. Affirmation by trial counsel of the qualifications (Art. 27(b), UCMJ certified) and status as to oaths (Art. 42(a), UCMJ) of all members of the prosecution.
 - f. Statement by defense counsel of qualifications (Art. 27(b), UCMJ) and status as to oaths (Art. 42(a), UCMJ) and introduction of individual military counsel and / or civilian counsel.
 - g. A personal inquiry by the military judge of the accused to determine whether the accused understands his rights to counsel as set forth in Art. 38(b), UCMJ, and R.C.M. 901(d)(4).
 - h. Swearing of military judge and detailed counsel, if not sworn previously. Individual military counsel who is not certified in accordance with Art. 27(b), UCMJ, and / or civilian counsel, must be sworn in each case.
 - i. Statement by the trial counsel of the general nature of the charges.

- j. Disclosure of grounds for challenge of the military judge and challenge of the military judge for cause, if any.
 - k. Inquiry by the military judge of the accused to determine that the accused understands his right to request trial by military judge alone.
 - l. If the accused is enlisted, a determination by the military judge that the accused understands his right to request that at least one-third of the membership of the court be enlisted persons.
3. ARRAIGNMENT. Arraignment procedure includes the reading of the charges by trial counsel, unless waived by the accused, and stating the information from page 2 of the charge sheet as to preferral, referral, and service of the charges on the accused.
 - a. If service is within three days of the trial by special court-martial, or within five days of the trial by general court-martial, an accused may object to proceeding with the trial until these statutory periods have run.
 - b. Arraignment is complete when the accused is called upon to plead by the military judge.
4. MOTIONS. Prior to receiving the pleas of the accused, he is given the opportunity to present post-arraignment motions, either to seek dismissal of any charge and specification or for other appropriate relief.
5. PLEAS. Entry of the pleas of the accused.
 - a. If the accused pleads guilty to any offense, including any lesser included offense (LIO), the judge conducts an inquiry into the voluntariness of the accused's plea. Whether or not the judge enters findings at this stage depends on whether the government will be presenting evidence on the merits (as where the accused has plead guilty to an LIO and the government intends to prove the greater offense alleged).
 - b. The military judge may also resolve other evidentiary and procedural matters at the article 39(a) session to expedite the subsequent trial on the merits.
6. GUILTY PLEA CASE.

- a. Advice as to waiver of constitutional rights.
 - b. Advice as to meaning and effect of guilty plea.
 - c. Swearing of Accused.
 - d. Listing and discussion of elements of offenses.
 - e. Discussion and admission of any Stipulations of Fact.
 - f. Care inquiry.
 - g. Part I, pretrial agreement.
 - h. Finding as to PTA.
 - i. Announcement of Findings.
 - j. See below for Sentencing.
7. CONVENING THE COURT WITH MEMBERS.
- a. Once the members are seated, certain preliminaries are repeated (calling of the court to order, announcement of convening of the court, and persons present, etc.).
 - b. Swearing of the members of the court.
 - c. Announcement of the assembly of the court. R.C.M. 911.
 - d. Introductory remarks and preliminary instructions by the military judge concerning the duties of the court members.
 - e. Voir dire and challenges of court members by counsel. R.C.M. 912.
 - f. Announcement by the military judge of the prior arraignment and pleas of the accused.
8. TRIAL ON THE MERITS.
- a. Opening statements by counsel. R.C.M. 913(b).
 - b. Presentation of evidence by counsel. R.C.M. 913(c).
 - c. Motion for Finding of Not Guilty at close of prosecution and defense case.
 - d. Final argument of counsel. R.C.M. 919.

- e. Instructions on findings by the military judge. R.C.M. 920.
 - f. Closing the court for deliberations and voting by the members on the issue of the guilt or innocence of the accused. R.C.M. 921.
 - g. Announcement, in open court, of the findings of the court members. R.C.M. 922.
 - h. Griffith motion to set-aside one or more findings.
9. SENTENCING PROCEDURE.
- a. Matters presented by the prosecution. R.C.M. 1001(a)(1)(A).
 - i. Service data concerning the accused from the first page of the charge sheet.
 - ii. Personal data relating to the accused and of the character of the accused's prior service as reflected in the personal records of the accused.
 - iii. Evidence of previous convictions.
 - iv. Matters in aggravation.
 - v. Evidence of rehabilitative potential.
 - vi. Advice by the military judge concerning the accused's rights to make a sworn or unsworn statement in mitigation and extenuation or to remain silent. R.C.M. 1001(a)(3).
 - b. Presentation of matters in extenuation and mitigation by the defense. R.C.M. 1001(c).
 - c. Arguments of counsel on sentence. R.C.M. 1001(g).
 - d. Instructions on sentence and voting procedure by the military judge. R.C.M. 1005.
 - e. Closing the court for the members to deliberate and vote on sentence. R.C.M. 1006.
 - f. Announcement in open court of the sentence. R.C.M. 1007.
10. CONCLUSIONARY PROCEEDINGS.

- a. Pretrial agreement, Part II.
- b. Pretrial confinement credit.
- c. Appellate rights.