

SUMMARIZED RECORD OF TRIAL - ARTICLE 39(a) SESSION

(Insert at place in record of trial where session takes place.)

PROCEEDINGS OF A _____ COURT-MARTIAL

In the case of _____
(Name: Last, First, Middle Initial) *(Social Security Number)* *(Rank)*

The military judge called the Article 39(a) session to order _____

_____ at _____ hours, _____, _____, pursuant to the following orders: ¹

¹ Insert a copy of the convening orders and copies of any amending orders. Any written orders detailing the military judge or counsel will be attached. Any request of an enlisted accused for enlisted court members will be inserted immediately following the convening orders, together with any declaration of the non-availability of such enlisted person. Any request for trial by the military judge alone (MCM, 1984, RCM 903(b)) or, in a special court-martial, any statement that qualified defense counsel (Article 27(c)) or military judge (RCM 201(f)(2)) could not be obtained will also be inserted at this point.

PERSONS PRESENT ¹

PERSONS ABSENT

The accused and the following (regularly detailed defense counsel) (and assistant defense counsel) (counsel introduced by him/her) were present.

The following detailed (reporter) (and) (interpreter) (was/were) (had been previously) sworn: ²

The trial counsel announced the legal qualifications and status as to oaths of all members of the prosecution (and that he/she) (and _____) had been detailed by (_____).

The trial counsel further stated that no member of the prosecution had acted as investigating officer, military judge, court member, or as a member of the defense in this case, or as counsel for the accused at a pretrial investigation or other proceeding involving the same general matter except as indicated below. ³

¹ List by rank and name (last, first, middle initial).

² Applicable only when a reporter or interpreter is used.

³ If a member of the prosecution is disqualified because of prior participation, the disqualifying fact will be shown, together with the action taken under RCM 505(d)(1) and 805(c).

The defense counsel announced the legal qualifications and status as to oaths of all members of the defense (and that he/she) (and _____) had been detailed by (_____).

The military judge ascertained that the accused had been informed of his/her right to be defended by legally qualified counsel, certified by The Judge Advocate General, at no expense to him/her. The military judge asked the accused if he/she understood this right. The accused responded that he/she did. ¹

The military judge ascertained that the accused had been informed of his/her rights concerning counsel as set forth in Article 38. The military judge asked the accused if he/she understood that he/she had the right to be represented by civilian counsel if the accused provided that counsel; that he/she had the right to be represented by military counsel of his/her own selection if reasonably available, and if he/she did have civilian counsel, the detailed counsel or military counsel of his/her own selection, if available, would act as associate counsel if the accused so desired. The accused responded that he/she understood his/her rights with respect to counsel.

²

The defense counsel stated that no member of the defense had acted as the accuser, a member of the prosecution, investigating officer, military judge, or a member of the court in this case except as indicated below. ³

¹ The record should reflect that the accused was afforded the opportunity to be defended by qualified counsel, declined qualified counsel, or that qualified counsel could not be obtained. Delete if accused represented by detailed qualified counsel.

² If the accused is represented by civilian counsel or military counsel of his/her choice, that part of the inquiry need not be conducted and the inapplicable words should be deleted.

³ If a member of the defense has acted as a member of the prosecution, the record will show that he/she was excused and withdrew from the court. If a member of the defense acted in another capacity, the record will show that the military judge explained to the accused that this counsel could represent him/her only at his/her express request, and that the accused so requested or that suitable action was taken, either by excusing the particular counsel or by adjournment pending the procurement of a counsel satisfactory to the accused (RCM 502(d)(4), 505(d)).

The following detailed members of the defense were excused by the military judge at the express wish of the accused:

The military judge and the personnel of the prosecution and defense who were not previously sworn in accordance with Article 42(a) were sworn.

The prosecution and each accused were extended the right to challenge the military judge for cause.

The military judge was (not) challenged for cause (by _____) (on grounds that _____). ¹

¹ The record should show the grounds for the challenge, a summary of evidence presented, if any, and the action taken.

The military judge ascertained that the accused had been advised of his/her right to request trial by the military judge alone (and that the accused did not desire to submit such a request).

The military judge, after ascertaining that the accused's request was made voluntarily and understandingly, (approved) (disapproved) the accused's request for trial by the military judge alone (and directed that the written request be appended to the record as Appellate Exhibit _____). ¹

The trial counsel announced that the accused had (not) made a request in writing that the membership of the court include enlisted persons. The defense counsel announced that the accused had been advised of his/her rights in this respect prior to trial and had stated that he/she did (not) desire enlisted persons as court members. ²

¹ *If the military judge approved the accused's request for trial before the military judge alone, the record should reflect, "The Article 39(a) session was terminated and the military judge announced that the court was assembled." The proceedings following assembly should then be summarized using DD Form 491 summary pages (see Appendix 13, MCM). If the military judge disapproves the accused's request for trial by the military judge alone, the fact of such disapproval and the reason therefor must be recorded.*

² *Line out if the accused is an officer.*

FURTHER PROCEEDINGS ¹

The session adjourned at _____ hours, _____, _____.

¹ All further proceedings disposing of interlocutory matters, including rulings upon the admissibility of evidence, will be summarized. Exhibits admitted in evidence, or offered but excluded, should be identified in the summarization. Matters relating to arraignment, pleas, and entry of findings will be summarized as indicated in Appendix 13, MCM, 1984. Use appropriate pages of DD Form 491. Subsequent sessions should be summarized on additional sheets. The time and date of the beginning and ending of each session of the court should be noted in the record.