

Amend R.C.M. 201(e)(3) by inserting the following immediately after the words "armed force":

"using the implementing regulations and procedures prescribed by the Secretary concerned of the military service of the accused."

Amend the Analysis accompanying R.C.M. 201(e)(3) by inserting the following paragraph:

"200 *Amendment*: This rule clarifies that when a service member is tried by a court-martial convened by a combatant or joint commander, the implementing regulations and procedures of the service to which the accused is a member shall apply."

Amend R.C.M. 201(e)(4) by adding the words "member, or counsel" after the words "military judge."

Amend the Analysis accompanying R.C.M. 201(e)(4) by inserting the following paragraph:

"200 *Amendment*: Subsection (e)(4) was amended to clarify that members and counsel from different services may be detailed to a court-martial convened by a combatant or joint commander."

Amend the Discussion following R.C.M. 201(e)(7)(B) by adding this sentence to the beginning of the Discussion:

"As to the authority to convene courts-martial, see R.C.M. 504."

Amend R.C.M. 503(a)(3) by inserting an "s" to the word "court" of the term "court-martial."

Amend R.C.M. 503(b)(3) by inserting "a combatant command or joint command" after the words "A military judge from one armed force may be detailed to a court-martial convened in a different armed force".

Amend the Analysis accompanying R.C.M. 503(b)(3) by inserting the following paragraph:

"200 *Amendment*: Subsection (b)(3) was amended to clarify that a military judge from any service may be detailed to a court-martial convened by a combatant or joint commander."

Amend R.C.M. 503(c)(3) by inserting the phrase "a combatant command or joint command" after the words "A person from one armed force may be detailed to serve as counsel in a court-martial in a different armed force".

Amend the Analysis accompanying R.C.M. 503(c)(3) by inserting the following:

"200 *Amendment*: Subsection (c)(3) was amended to clarify that counsel from any service may be detailed to a court-martial convened by a combatant or joint commander."

Amend R.C.M. 504(b)(2)(A) by inserting the following at the end thereof:

"A subordinate joint command or joint task force is ordinarily considered to be 'separate or detached.'"

Amend R.C.M. 504(b)(2)(B) by inserting the following as a third element thereof:

"(iii) In a combatant command or joint command, by the officer exercising general court-martial jurisdiction over the command."

Amend the Analysis accompanying R.C.M. 504(b)(2)(B) by inserting the following paragraph:

"200 *Amendment*: Subsection (b)(2)(B) was amended to clarify those authorized to determine when a unit is 'separate or detached.'"

Amend R.C.M. 912(f)(4) by deleting the entirety of the fifth sentence and inserting the following words immediately after the words "When a challenge for cause has been denied" in the fourth sentence:

"the successful use of a peremptory challenge by either party, excusing the challenged member from further participation in the court-martial, shall preclude further consideration of the challenge of that excused member upon later review. Further,"

Amend the Analysis to R.C.M. 912(f)(4) by inserting the following paragraph:

"200 *Amendment*: This rule change is intended to conform military practice to federal practice and limit appellate litigation when the challenged panel member could have been peremptorily challenged or actually did not participate in the trial due to a peremptory challenge by either party. This amendment is consistent with the President's lawful authority to promulgate a rule that would result in placing before the accused the hard choice faced by defendants in federal district courts—to let the challenged juror sit on the case and challenge the ruling on appeal or to use a peremptory challenge to remove the juror and ensure an impartial jury. See *United States v. Miles*, 58 M.J. 192 (C.A.A.F. 2003); *United States v. Wiesen*, 56 M.J. 172 (C.A.A.F. 2001), petition for reconsideration denied, 57 M.J. 48 (C.A.A.F. 2002); *United States v. Armstrong*, 54 M.J. 51 (C.A.A.F. 2000).

Amend R.C.M. 1004(c)(10) by deleting the words "death is authorized under the law of war for the offense" and replacing with the words "the violation constitutes a grave breach of the law of war."

Insert the following Discussion to accompany R.C.M. 1004(c)(10):

"Grave breaches of the laws and customs of war are defined by the 1949 Geneva Conventions and customary

international law. For the definition of what may constitute a grave breach see The First Geneva Convention, Aug. 12, 1949, art. 50, 6 U.S.T. 3114, T.I.A.S. 3362; The Second Geneva Convention, Aug. 12, 1949, art. 51, 6 U.S.T. 3217, T.I.A.S. 3363; The Third Geneva Convention, Aug. 12, 1949, art. 130, 6 U.S.T. 3316, T.I.A.S. 3364; and The Fourth Geneva Convention, Aug. 12, 1949, art. 147, 6 U.S.T. 3516, T.I.A.S. 3365."

Amend the Analysis accompanying R.C.M. 1004(c)(10) by inserting the following paragraph:

"200 *Amendment*: Subsection (c)(10) was amended to clarify which law of war violations may subject the accused to capital punishment."

Amend R.C.M. 1301(a) by inserting the following after the second sentence:

"Summary courts-martial shall be conducted in accordance with the regulations of the military service to which the accused belongs."

Amend the Analysis accompanying R.C.M. 1301(a) by inserting the following paragraph:

"200 *Amendment*: Subsection (a) was amended to clarify that summary courts-martial convened by a combatant or joint commander are to be conducted in accordance with the implementing regulations and procedures of the service to which the accused is a member."

Amend M.R.E. 317(b) replacing the word "Transportation" with the words "Homeland Security."

Amend the Analysis to M.R.E. 317(b) by replacing the word "Transportation" with the words "Homeland Security."

Amend the Analysis to M.R.E. 801(d)(1)(B) by substituting the following therefor:

"Rule 801(d)(1)(B) makes admissible on the merits a statement consistent with the in-court testimony of the witness and 'offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.' Unlike Rule 801(d)(1)(A), which addresses prior inconsistent statements given under oath, the earlier consistent statement need not have been made under oath or at any type of proceeding."

Rule 801(d)(1)(B) provides in pertinent part that a statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive. The court has interpreted the rule to require that a prior statement,