

29B.52 Voting and rulings.

1. Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall immediately announce the result of the ballot to the members of the court.

2. The military judge and, except for questions of challenge, the president of a court-martial without a military judge, shall rule upon all questions of law and all interlocutory questions arising during the proceedings. A ruling made by the military judge upon a question of law or an interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon a question of law other than a motion for a finding of not guilty is final and constitutes the ruling of the court. However, the military judge may change a ruling at any time during the trial. Unless the ruling is final, if a member objects to the ruling, the court shall be cleared and closed and the question decided by a voice vote as provided in this code beginning with the junior in rank.

3. Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them as follows:

a. That the accused must be presumed to be innocent until guilt is established by legal and competent evidence beyond reasonable doubt.

b. That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted.

c. That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt.

d. That the burden of proof for establishing the guilt of the accused beyond reasonable doubt is upon the state.

4. Subsection 3 does not apply to a court-martial composed of a military judge only. The military judge of a court-martial composed only of a military judge shall determine all questions of law and fact arising during the proceedings, and, if the accused is convicted, adjudge an appropriate sentence. The military judge shall make a general finding and shall find the facts specifically on request. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear in the opinion or memorandum of decision.

[C66, 71, 73, 75, 77, 79, 81, §29B.52; 82 Acts, ch 1042, §32]