

(B) After being warned by the military judge that disruptive conduct will cause the accused to be removed from the courtroom, persists in conduct which is such as to justify exclusion from the courtroom.

(3) *Remote presence of the accused.*

(A) Except as provided in R.C.M. 804(a)(3)(B), for Article 39(a) sessions, the military judge may order the accused be present via remote means through the use of audiovisual technology. Use of such audiovisual technology will satisfy the “presence” requirement of the accused only when the accused has a defense counsel physically present at the accused’s location or when the accused consents to presence by remote means with the opportunity for confidential consultation with defense counsel during the proceeding. Such technology may include two or more remote sites as long as all parties can see and hear each other.

(B) The accused may be present via remote means through the use of audiovisual technology for a plea inquiry under R.C.M. 910(d), (e) and (f), and presentencing proceedings before a military judge under R.C.M. 1001, only when there are exceptional circumstances that interfere with the normal administration of military justice, as determined by the military judge. The accused must consent to the use of audiovisual technology and defense counsel must be physically present at the accused’s location for the hearing.

(4) *Voluntary absence for limited purpose of child testimony.*

(A) *Election by accused.* Following a determination by the military judge that remote live testimony of a child is appropriate pursuant to Mil. R. Evid. 611(d)(3), the accused may elect to be voluntarily absent from the courtroom in order to preclude the use of procedures described in R.C.M. 914A.

(B) *Procedure.* The accused's absence will be conditional upon the accused being able to view the witness' testimony from a remote location. Normally, transmission of the testimony will include a system that will transmit the accused's image and voice into the courtroom from a remote location as well as transmission of the child's testimony from the courtroom to the accused's location. A one-way transmission may be used if deemed necessary by the military judge. The accused will also be provided private, contemporaneous communication with his counsel. The procedures described herein shall be employed unless the accused has made a knowing and affirmative waiver of these procedures.

(C) *Effect on accused's rights generally.* An election by the accused to be absent pursuant to R.C.M. 804(a)(4)(A) shall not otherwise affect the accused's right to be present at the remainder of the trial in accordance with this rule.

(b) *Military judge.*

(1) No court-martial proceeding, except the deliberations of the members, may take place in the absence of the military judge. The military judge may attend Article 39(a) sessions via remote means through the use of audiovisual technology.

(2) When a new military judge is detailed under R.C.M. 505(e)(2) after the presentation of evidence on the merits has begun in a trial before a military judge alone, trial may not proceed unless the accused requests, and the new military judge approves, trial by military judge alone, and a verbatim record of the testimony and evidence or a stipulation thereof is read to or played for the new military judge in the presence of the accused and counsel for both sides, or the trial proceeds as if no evidence had been presented.

(c) *Members.*