

(B) *Secret ballot.* Voting shall be by secret written ballot.

(4) *Procedure.*

(A) *Initial process.* The members shall employ the following process for each charge and specification for which death may be determined.

(i) The members shall vote separately on each aggravating factor under R.C.M. 1004(c) that applies to the offense and on which the members have been instructed. The members shall not proceed to R.C.M. 1004(g)(4)(A)(ii) unless the members unanimously find that at least one of the aggravating factors existed beyond a reasonable doubt.

(ii) The members shall vote on whether the extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances, including any relevant aggravating factor(s) under R.C.M. 1004(c). The members shall not proceed to R.C.M. 1004(g)(4)(B) unless the members unanimously find that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances.

(B) *Voting on a sentencing determination if death may be adjudged.*

(i) If the members unanimously find both that at least one aggravating factor exists and that the extenuating and mitigating circumstances are substantially outweighed by the aggravating circumstances, the members shall vote on the following sentencing determinations, which shall be binding on the military judge. Except as permitted under R.C.M. 1004(i), the members must vote on potential sentence determinations in the order listed below. The members must vote on each option separately from the other option, considering only one option at a time. During the voting on a particular option, each member may cast one vote for or against that option. The order of the options to be considered is:

(I) Death; or

(II) Life in prison without eligibility for parole.

(ii) If all 12 members vote for death, the sentencing determination of the members shall be death. If any member does not vote for death, the sentencing determination of the members shall not be death.

(iii) If the members' initial vote does not reach the required unanimous consensus for death, the members shall vote on life in prison without eligibility for parole. If three-fourths or more of the members vote for life in prison without eligibility for parole, the sentencing determination of the members shall be life in prison without eligibility for parole.

(iv) If the members' vote does not reach three-fourths for life in prison without eligibility for parole, the offense shall be returned to the military judge for imposition of a sentence of a lesser punishment in accordance with R.C.M. 1001.

(C) *Voting on a sentencing determination if death may not be adjudged.*

(i) If the members do not unanimously find that at least one aggravating factor exists or the members do not unanimously find that the aggravating circumstances substantially outweigh the extenuating and mitigating circumstances, the members shall vote on life in prison without eligibility for parole.

(ii) If the members' vote does not reach three-fourths for life in prison without eligibility for parole, the offense shall be returned to the military judge for imposition of a sentence of a lesser punishment in accordance with R.C.M. 1001.

(D) *Counting votes.* The junior member shall collect the ballots and count the votes. The president shall check the count and inform the other members of the result.

(h) *Action after a sentence is reached.* After the members have agreed upon a determination by the required number of votes in accordance with this rule, the court-martial shall be opened, and