

**48-2716. (KCMJ Art. 51) Voting and rulings.** (a) Voting by members for a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge on questions of challenge, shall be by secret written ballot. The junior member of the court shall in each case count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) 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. Any such ruling made by the military judge upon any question of law or any 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 any 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, or the president of a court-martial without a military judge, may change the ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in K.S.A. 48-2717 and amendments thereto beginning with the junior in rank.

(c) Before a vote is taken on the findings, the 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 that:

(1) The accused must be presumed to be innocent until guilt is established by legal and competent evidence beyond reasonable doubt;

(2) 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;

(3) 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; and

(4) the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the state.

(d) Subsections (a), (b) and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge and impose appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

**History:** L. 1972, ch. 203, § 48-2716; L. 1988, ch. 191, § 33; July 1.