UNITED STATES	)
v.	) PRETRIAL ORDER
SALEH, Gary W. SPC, U.S. Army S&T Troop, Regimental Support Squadron 11 <sup>th</sup> ACR	) ) )
Fort Irwin, CA 92310	) ) 28 May 2011

- 1. Trial for the above case will be held in the **Fort Irwin** courtroom at 0900 on **28-30 June 11**. A motions hearing will be held at the above location at 0900 on **27 June 11**. Pursuant to R.C.M. 801, the following orders are issued to ensure a fair, orderly, and expeditious court-martial:
- a. Defense counsel will provide the Trial Counsel and the Court with the plea, written forum selection and motions not later than 1700 hours on **13 June 11**. Such motions will be in writing and comply with the requirements of the Uniform Rules of Court. The original of all motions will be filed with the court reporter.
  - The plea shall include the actual language of the plea, should the accused plead by exceptions, exceptions and substitutions, or to a lesser-included offense.
  - ii. Counsel need to consider the issues required to be raised prior to entry of plea (R.C.M. 905(b)(1)-(6) and 906), the issues that must be raised prior to final adjournment of the court-martial (R.C.M. 906 and 907(b)(2)), and the grounds for motions that are not waived (R.C.M. 907(b)(1)). The following issues, if relevant, will be addressed in motions:
    - (1) Objections based on defects in the preferral, forwarding, investigation or referral of charges (R.C.M. 905(b)(1)).
    - (2) Objections based on defects in the charges and specifications (R.C.M. 905(b)(2) and R.C.M. 907(b)(1)).
    - (3) Any motions to suppress evidence (R.C.M. 905(b)(3)).
    - (4) Any motions for discovery, or for production of evidence or witnesses (to include requests for expert witnesses or investigative assistants) (R.C.M. 701, 703, 905(b)(4), and 906(b)(7)) (except as noted in subparagraph 1i below). Counsel are reminded of (and should plan ahead for) the requirement to submit requests for production of expert witnesses first to the convening authority. R.C.M. 703(d). Only

## PRETRIAL ORDER SPC SALEH, Gary W.

- requests submitted to, and denied by, the convening authority are ripe for consideration by the military judge.
- (5) Any motions for severance of charge or accused (R.C.M. 905(b)(5); R.C.M. 906((b)(9)-(10)).
- (6) Any objections based on denial of individual counsel (R.C.M. 903(b)(2)).
- (7) Any request for continuance (R.C.M. 906(b)(1)).
- (8) Objections based on corrections or defects in the Article 32 Investigation or pretrial advice (R.C.M. 906(b)(3)).
- (9) A request for relief from pretrial confinement (R.C.M. 906(b)(8)).
- (10) A request for a bill of particulars (R.C.M. 906(b)(6)).
- (11) Any request for change of venue (R.C.M. 906(b)(11)).
- (12) Any motions on multiplicity (R.C.M. 906(b)(12)).
- (13) Any evidentiary issues capable of resolution before trial by motion *in limine* (for example, hearsay issues under Mil. R. Evid. 801, 802, 803, 804 and 807; R.C.M. 906 (b)(13)).
- (14) Any request for a sanity board, or whether there is any good faith basis to question the mental capacity or responsibility of the accused (R.C.M. 906(b)(14)).
- (15) Any motion to dismiss:
  - a. On speedy trial grounds (R.C.M. 907(b)(2)(A)).
  - b. On statute of limitations grounds (R.C.M. 907(b)(2)(B)).
  - c. On the grounds of double jeopardy or that the prosecution is otherwise barred (R.C.M. 907(b)(2)(C)-(D)).
- b. The Government must strictly comply with the Section III disclosure provisions of MRE 304(d), 311(d) and 321(c). Notice of intent to admit Section III evidence (statements of the accused, evidence seized from the person or property of the

## PRETRIAL ORDER SPC SALEH, Gary W.

accused, or prior identification of the accused) shall be provided to counsel for the accused at the earliest possible time.

- c. Trial Counsel will provide the Defense Counsel and the Court with any motions no later than 1700 hours on **13 June 11**. Such motions will be in writing and comply with the requirements of the Uniform Rules of Court. The original of all motions will be filed with the court reporter.
- d. Both counsel will file responses to any motions no later 1700 hours on **17 June 11**.
- e. Trial Counsel and Defense Counsel will submit to each other, to the Court and to the Court Reporter, a complete list of witnesses IAW R.C.M. 701 (full names with correct spelling) each party intends on calling in all phases of the trial by 1700 hours on **21 June 11**.
- f. Trial Counsel will provide to the Court, not later than 1700 hours on **21 June 11**, all Court-Martial Convening Orders and (in cases tried to members) a seating chart, the flyer, electronic copies of the Findings and Sentence Worksheets, and copies of completed panel member questionnaires.
- g. In cases tried before members, both counsel will provide to the Court and to each other, no later than 1700 hours on **21 June 11**, a list of proposed voir dire questions and any proposed nonstandard instructions. Neither counsel may ask voir dire questions unless previously approved by the Court. A list of authority and an explanation as to why the standard instructions do not address the issue must accompany any requested nonstandard instructions. See United States v. Damatta-Olivera, 37 M.J. 474 at 478 (CMA 1993).
- h. Defense Counsel will notify the Trial Counsel of any local military witnesses (including experts) whose production by the Government the Defense requests, no later than 1700 hours on **13 June 11**. The Defense Counsel will notify the Trial Counsel of any other witnesses (including experts) whose production by the Government the Defense requests, no later than 1700 hours on **13 June 11**. This notification will comply with RCM 703(c)(2). Counsel are reminded of R.C.M. 703(b) and (c) concerning what must be contained in the request (*United States v. Rockwood*, 52 M.J. 98 at 105 (1999) and potential penalties for failure to submit the name of a witness in a timely manner. If any witnesses requested by counsel are represented by their own Defense Counsel, counsel shall contact their counsel and determine (1) is the witness a suspect or accused, and (2) will the witness invoke his or her Article 31, UCMJ rights.
- i. Trial Counsel will notify the Defense Counsel of any witnesses it does not intend to produce in compliance with the above-mentioned requests no later than 1700 hours

## PRETRIAL ORDER SPC SALEH, Gary W.

on **14 June 11**. The Defense Counsel will file any motions to compel production of those denied witnesses no later than 1700 hours on **15 June 11**. The Trial Counsel will file any responses to these motions to compel no later than 1700 hours on **16 June 11**.

- j. Defense Counsel will provide notice of any defenses described in R.C.M. 701(b)(2), in writing, to the Trial Counsel no later than 1700 hours on **13 June 11**.
- 2. Questions regarding this order should be directed to the undersigned at (915) 568-7225 or david.robertson@us.army.mil.

DAVID H. ROBERTSON

COL, JA

Military Judge