

**WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY**

UNITED STATES)	SPECIAL COURT-MARTIAL
)	
v.)	
)	
VEGA, Nicolas)	GOVERNMENT REQUEST FOR
SSgt, USMC)	JUDICIAL NOTICE
XXX XX 4253)	
)	(14 Oct 10)
)	

1. **Nature of Motion.** Pursuant to M.R.E. 201, the Government respectfully requests the Military Judge to note judicially that DoD 5500.7-R (Joint Ethics Regulations), as authorized by DoD Directive 5500.7, dated 30 August 1993, and DoD Directive 5500.07, dated 29 November 2007, is a lawful general order. Additionally, pursuant to R.C.M. 906(13), the Government submits the instant motion to pre-admit DoD 5500.7-R as a Prosecution Exhibit.

2. **Summary of Facts.** SSgt Vega is currently charged in the Sole Specification of Charge I and the Sole Specification of Additional Charge I with Article 92, violation of a lawful general order, specifically paragraph 2-301(a) of DoD 5500.7-R (Joint Ethics Regulations), as authorized by DoD Directive 5500.7, dated 30 August 1993, and DoD Directive 5500.07, dated 29 November 2007, for wrongfully using a Government Owned Communication System for personal use.

3. **Burden of Persuasion.** Pursuant to R.C.M. 905(c)(1) and (c)(2), the Government bears the burden of persuasion by preponderance of the evidence.

4. **Discussion.**


M.R.E. 201(d) states that a military judge shall take judicial notice of adjudicative facts if requested by a party and supplied with the necessary information. Additionally, M.R.E. 201(b) defines judicially noticed facts as those “not subject to reasonable dispute in that it is either (1) generally known universally, locally, or in the area pertinent to the event or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” In the instant case, the regulations contained within DoD 5500.7-R are capable of accurate and ready determination because their source (the Joint Ethics Regulations themselves) has been published to all units covered by the Department of Defense and the accuracy thereof cannot reasonably be questioned by the Defense.

In the alternative, the Government would argue that DoD 5500.7-R is a “domestic law” pursuant to M.R.E. 201A, as it is “of consequence to the determination of the action” and specifically noted as the basis for Charge I and Additional Charge I and the Sole Specifications threunder. Since DoD 5500.7-R was authorized and issued by the Secretary of Defense, it qualifies as a lawful general order or regulation. Appendix 22, Manual for Courts-Martial (2008 ed.), specifically notes in its analysis of M.R.E. 201A that “domestic law” includes “the laws and regulations pursuant thereto of the United States... ‘Regulations’ of the United States include regulations of the armed forces.”

5. **Relief Requested.** The Government respectfully requests that its Request for Judicial Notice be granted and DoD 5500.7-R be pre-admitted into evidence.

6. **Evidence.** Pertinent sections of DoD 5500.7-R (Joint Ethics Regulations), DoD Directive 5500.7, dated 25 March 1996, with attached Attesting Certificate (Exhibit C); testimony SSgt M. A. Ecalnir, G-1 Adjutant Chief, MCRD San Diego (if necessary).

7. **Oral Argument.** The Government respectfully requests oral argument.


G. K. LOGAN
Capt, USMC
Trial Counsel

CERTIFICATE OF SERVICE

A true copy of this response was served upon the Defense on this date: 14 October 2010.

A handwritten signature in cursive script, appearing to read "G. K. Logan", followed by a horizontal line extending to the right.

G. K. LOGAN
Capt, USMC
Trial Counsel