

35.255 Voting and rulings.

- (1) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall 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.
- (2) The military judge shall rule upon all questions of law and 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 is final and constitutes the ruling of the court. However, the 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 KRS 35.260, beginning with the junior in rank.
- (3) 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:
 - (a) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;
 - (b) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused and he shall be acquitted;
 - (c) That 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
 - (d) That the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the state.
- (4) Subsections (1), (2), and (3) of this section 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 an 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 decision is filed, it will be sufficient if the findings of fact appear therein.

Effective: June 25, 2013

History: Amended 2013 Ky. Acts ch. 32, sec. 53, effective June 25, 2013. -- Amended 1970 Ky. Acts ch. 56, sec. 37. -- Created 1954 Ky. Acts ch. 99, sec. 50, effective July 1, 1954.