

Department of the Navy, DoD

§ 762.62

by the Commander in Chief, U.S. Pacific Fleet. In the absence of an appointment to the contrary, the most senior in date of rank of those appointed shall act as senior judge.

(b) The Senior Judge shall appoint someone under his authority to act as Clerk of the Court who will be responsible for maintaining a public docket containing such information as the Senior Judge may prescribe.

(c) Sessions of the court are held on the Midway Islands at times and places designated by the Senior Judge.

(d) Normally, not more than one judge shall be required to hear any individual case.

[41 FR 29672, July 19, 1986, as amended at 51 FR 22283, June 19, 1986]

§ 762.52 Attorney for the United States.

The Senior Judge may appoint any judge advocate or attorney to represent the United States in any criminal case in the Midway Islands Court or on appeal to the Commander, U.S. Naval Base, Pearl Harbor or such other command as may be designated by the Commander in Chief, U.S. Pacific Fleet.

§ 762.54 Criminal jurisdiction.

The Midway Islands Court has jurisdiction over all petty offenses and other minor violations of this part. The United States District Court for the District of Hawaii shall have jurisdiction over all other offenses adopted under § 762.16, over offenses against the laws of the United States, and over those offenses committed within the special maritime jurisdiction contained in the Act of June 15, 1950 (chapter 253, 64 Stat. 217).

§ 762.55 Venue.

Trial of all offenses under the jurisdiction of the Midway Islands Court shall be had at the U.S. Naval Air Facility, Midway Island; trial of all other offenses shall be in the United States District Court for the District of Hawaii.

§ 762.56 Rules of criminal procedure.

(a) Sections 762.56 through 762.79 govern the procedure in criminal proceedings in the Midway Islands Court.

They shall be construed to ensure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expenses and delay.

(b) The judge of the court who presides at any trial or other criminal proceeding is responsible for the making of an appropriate record of the proceeding.

§ 762.58 Release prior to trial and bail.

(a) The release of any person arrested on the Midway Islands for a violation of this part shall be in accordance with 18 U.S.C. 3146 as it now appears or as it may be amended or recodified.

(b) When an offense has been charged by a citation issued by a security patrolman, shore patrolman, or other duly designated peace officer or the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, bail shall be set in the amount prescribed by the Senior Judge for the violation. The bail shall be paid in cash to the Clerk of the Court. The bail may be forfeited by the accused and the proceedings thereby terminated in the case of a violation of § 762.28 that does not involve a moving vehicle collision or intoxication while driving, or with permission of the court in the case of any other offense charged by citation pursuant to § 762.84.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.62 Information.

(a) Any petty offense may be prosecuted by a written information signed by the attorney charged with prosecuting the case. If, however, the offense is one for which issue of a citation is authorized by this part and a citation for the offense has been issued, the citation serves as the information. Offenses against the laws of the United States, offenses committed against the laws made applicable by the Act of June 15, 1950 (chapter 253, 64 Stat. 217), and offenses adopted under § 762.16, except those which are subject, under title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than \$500, or both, shall be referred to the United States Attorney, Hawaii, for appropriate disposition.

(b) A copy of the information shall be delivered to the accused or his counsel as soon as practicable after it is filed.

(c) Each count of an information may charge one offense only and must be particularized sufficiently to identify the place, the time, and the subject matter of the alleged offense. It shall refer to the provision of law under which the offense is charged, but any error in this reference or its omission may be corrected by leave of court at any time before sentence and is not grounds for reversal of a conviction if the error or omission did not mislead the accused to his prejudice.

§ 762.64 Motions and pleas.

(a) Upon motion of the accused at any time after filing of the information or copy of citation, the court may order the prosecutor to allow the accused to inspect and copy or photograph designated books, papers, documents, or tangible objects obtained from or belonging to the accused, or obtained from others by seizure or process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable.

(b) When the court is satisfied that it has jurisdiction to try the accused as charged, it shall require the accused to identify himself and state whether or not he has counsel. If he has no counsel, but desires counsel, the court shall give him a reasonable opportunity to procure counsel. If he cannot afford counsel or is unable to procure counsel after reasonable efforts have been expended, the court shall advise him of his right to have counsel appointed, and shall appoint a judge advocate or other lawyer counsel for the accused unless the accused shall have made a voluntary and intelligent waiver of his right to counsel.

(c) When both sides are ready for arraignment, or when the court determines that both sides have had adequate opportunity to prepare for arraignment, the court shall read the charges to the accused, explain them (if necessary), and, after the reading or stating of each charge in court, ask the accused whether he pleads "guilty" or "not guilty." The court shall enter in

the record of the case the plea made to each charge.

(d) The accused may plead "guilty" to any or all of the charges against him, except that the court may at its discretion refuse to accept a plea of guilty, and may not accept a plea without first determining that the plea is made voluntarily and with understanding of the nature of the charge.

(e) The accused may plead "not guilty" to any or all of the charges against him. The court shall enter a plea of not guilty if the answer of the accused to any charge is such that it does not clearly amount to a plea of guilty or not guilty.

(f) The accused may, at any stage of the trial, with the consent of the court, change a plea of not guilty to one of guilty. The court shall then proceed as if the accused had originally pleaded guilty.

(g) Nothing contained in this subpart shall be construed to diminish any additional rights afforded military personnel under the Uniform Code of Military Justice.

§ 762.66 Trial.

(a) If the accused pleads not guilty or if a plea of guilty is not accepted by the court and a consequent plea of not guilty entered, the accused is entitled to a trial on the charges in accordance with the procedures prescribed in the Rules of Criminal Procedure for the United States District Courts, 18 U.S.C., except as otherwise provided in this part. There is no trial by jury for petty offenses.

(b) All persons shall give their testimony under oath or affirmation. The Senior Judge shall prescribe the oath and affirmation that may be administered by any judge or the Clerk of the Court.

(c) Upon completion of the trial, the court shall enter a judgment consisting of a finding or findings and sentence or sentences, or discharge of the accused.

§ 762.68 Sentence.

(a) If the court accepts a plea of guilty to any charge or charges, it shall make a finding of guilty on that charge.

(b) After a finding of guilty is made, either by virtue of an accepted plea of