

35.255 Voting and rulings by court-martial members.

- (1) Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence, shall be by secret written ballot. The junior member of the court shall in each case count the votes, which 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 of a general or special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the military judge upon any interlocutory question other than a motion for a finding of not guilty, or the question of accused's sanity, shall be final and shall constitute the ruling of the court; but the military judge may change any such ruling at any time during the trial. Unless such ruling be final, if any member objects thereto, the court shall be cleared and closed and the question decided by a vote as provided in KRS 35.260 *viva voce*, 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 court as to the elements of the offense and charge the court as follows:
 - (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-finding 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.

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