

# **UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

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## **RULES OF APPELLATE PROCEDURE**



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**Published Together with the Joint Rules of Appellate Procedure**

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Together with Joint Rules of Appellate Procedure in Boldface Type

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# **I. GENERAL**

## **RULE 1. COURTS OF CRIMINAL APPEALS**

**(a) The titles of the Courts of Criminal Appeals of the respective services are:**

- (1) "United States Army Court of Criminal Appeals."**
- (2) "United States Navy-Marine Corps Court of Criminal Appeals."**
- (3) "United States Air Force Court of Criminal Appeals."**
- (4) "United States Coast Guard Court of Criminal Appeals."**

**(b) Each Court is authorized a seal in the discretion of the Judge Advocate General concerned. The design of such seal shall include the title of the Court.**

**(c) Consistent with Article 66(a), Uniform Code of Military Justice (UCMJ), and Rule for Courts-Martial (R.C.M.) 1203(a), the Judge Advocate General of each service shall certify individuals as qualified for duty as appellate military judges and assign them to the Court for a minimum of three years, except under any of the following circumstances:**

- (1) The appellate military judge voluntarily requests to be reassigned to other duties, and the Judge Advocate General approves such reassignment;**
- (2) The appellate military judge is selected for promotion to the next higher grade and is reassigned to duties commensurate with that grade by the Judge Advocate General or the Commandant of the Marine Corps;**
- (3) The appellate military judge retires or otherwise separates from military or federal civil service;**
- (4) The Judge Advocate General grants a written exception to this policy and the appellate military judge is reassigned to other duties based on compelling needs of the service; or**
- (5) The Judge Advocate General revokes the appellate military judge's certification for good cause.**

### Rule 1.1. Court Seal.

(a) The seal of the Court is used on decisions and orders of the Court and on other official documents and records that are executed and issued by the Clerk of Court, U.S. Army Judiciary. The seal authenticates documents as official Court documents. The Clerk of Court is the custodian of the seal and may delegate authority to employ the seal to other Court personnel.

(b) The official seal of the United States Army Court of Criminal Appeals (hereinafter ACCA) is comprised of: On a dark blue disc, a gold (yellow) balance (the scales of justice), the stem between the scales and below the beam surmounted by a reproduction in gold (yellow) of the branch insignia of The Judge Advocate General's Corps, United States Army, all within a white border with inner and outer gold (yellow) edgings and bearing in dark blue lettering the inscription "UNITED STATES ARMY" at the top and "COURT OF CRIMINAL APPEALS" at the base, the two phrases separated by two gold (yellow) five-pointed stars. The seal is available on the Court's website at [www.jagcnet.army.mil/acca](http://www.jagcnet.army.mil/acca). Permission to use this seal shall be requested from the Clerk of Court.

### Rule 1.2. Certification and Term of Appellate Military Judges.

(a) For purposes of Joint Rule of Appellate Procedure (JRAP) Rule 1(c)(4), The Judge Advocate General (TJAG) may only reassign an appellate military judge to other duties when the compelling needs of the service arise during a time of war or national emergency. *See* Interim Army Reg. 27-10, Legal Services: Military Justice [AR 27-10], para. 12-15c. (1 Jan. 2019).

(b) TJAG may withdraw an officer's certification as an appellate military judge for "good cause," defined as actions that: constitute misconduct, judicial misconduct, or unfitness; or violate the Code of Judicial Conduct for Army Trial and Appellate Judges (16 May 2008), Army Reg. 27-26, Legal Services: Rules of Professional Conduct for Lawyers (28 Jun. 2018), or other applicable standards. *See* AR 27-10, para. 15-10.

## **RULE 2. SCOPE OF RULES; TITLE**

**(a) These rules prescribe uniform procedures for the service Courts of Criminal Appeals pursuant to Article 66(h), UCMJ. Practice before each Court must also comport with rules issued under Rule 3.**

**(b) These rules are to be known as the Joint Rules of Appellate Procedure for Courts of Criminal Appeals or "JRAP."<sup>1</sup>**

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<sup>1</sup> Cite as Joint Rules of Appellate Procedure for the Courts of Criminal Appeals [J.R.A.P. R.], (1 Jan. 2019).

2.1 These rules for the Army Court of Criminal Appeals are to be known as the Army Court of Criminal Appeals Rules of Appellate Procedure.<sup>2</sup>

### **RULE 3. SERVICE COURT RULES**

**The Chief Judge of each Court may prescribe rules governing that Court's practice. These will be referred to hereinafter as "Service Court rules." Unless these rules provide otherwise, Service Court rules may not be inconsistent with these rules.**

Rule 3.1. Suggested Changes to the Internal Rules.

Suggested changes in internal rules should be addressed to the Chief Judge, ATTN: Clerk of Court.

Rule 3.2. Acting Chief Judge.

In any case in which the Chief Judge is disqualified from participating, the Judge Advocate General may designate an acting Chief Judge. In the event that the Judge Advocate General has not designated an appellate military judge to serve as the acting Chief Judge, the most senior appellate military judge will perform the duties of Chief Judge. For purposes of this rule, seniority will be the person who has served as Senior Judge for longest period of time. If no Senior Judge is available to serve, the appellate military judge with the greatest total amount of time on the Court shall be the most senior judge.

### **RULE 4. EFFECTIVE DATE**

**These rules shall apply to any case docketed with the Court on or after 1 January 2019 and shall not be construed to diminish the substantive rights of any party to a court-martial referred to trial prior to that date.**

### **RULE 5. JURISDICTION**

**(a) *Effect of Rules on Jurisdiction.* While this Rule provides a synopsis, nothing in these rules shall be construed to extend or limit the jurisdiction of the Courts of Criminal Appeals.**

**(b) The jurisdiction of the Court is as follows:**

**(1) *Automatic Review.* Pursuant to Article 66, UCMJ, courts-martial in which the sentence as entered in the judgment under Article 60c, UCMJ, includes:**

**(A) death;**

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<sup>2</sup> Cite as Army Court of Criminal Appeals Rules of Appellate Procedure [A.C.C.A. R.], (1 Jan. 2019).

**(B) dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge; or**

**(C) confinement for two years or more.**

**(2) *Appeal by the Accused.*** Pursuant to Article 66, UCMJ, in cases not subject to automatic review under paragraph (1), upon timely appeal by the accused, courts-martial in which:

**(A) the sentence as entered in the judgment under Article 60c, UCMJ, includes confinement for more than six months;**

**(B) the United States previously filed an appeal under Article 62, UCMJ; or**

**(C) the Judge Advocate General has sent the case to the Court for review of the sentence under Article 56(d), UCMJ.**

**(3) *Application by the Accused.*** Pursuant to Article 66, UCMJ, cases in which the Judge Advocate General has taken action and the Court has granted an accused's timely application for review under Article 69(d)(1)(B), UCMJ.

**(4) *Review by Order of the Judge Advocate General.*** Courts-martial in which:

**(A) there has been a finding of guilty and a sentence that is not reviewed under Article 66, UCMJ;**

**(B) the Judge Advocate General has taken action under Article 69, UCMJ; and**

**(C) the Judge Advocate General orders the case sent to the Court for review pursuant to Article 69(d), UCMJ.**

**(5) *Appeal by the United States under Article 62, UCMJ.*** In all general or special courts-martial or pretrial proceedings under Article 30a, UCMJ, cases in which the United States, after providing timely written notice, appeals in accordance with R.C.M. 908:

**(A) an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification;**

**(B) an order or ruling that excludes evidence that is substantial proof of a fact material in the proceeding;**

(C) an order or ruling that directs the disclosure of classified information;

(D) an order or ruling that imposes sanctions for nondisclosure of classified information;

(E) a refusal of the military judge to issue or enforce a protective order sought by the United States to prevent disclosure of classified information;

(F) an order or ruling of the military judge entering a finding of not guilty with respect to a charge or specification following the return of a finding of guilty by the members; or

(G) a ruling or order of a military magistrate in the same manner as had the ruling or order been made by a military judge, except that the issue shall first be presented to the military judge who designated the military magistrate or to a military judge detailed to hear the issue.

(6) *Petition for a New Trial.* Petitions for a new trial in cases of trial by court-martial that are referred to the Court by the Judge Advocate General under Article 73, UCMJ.

(7) *Sentence Appeal by the United States.* Sentences of a court-martial in which the Judge Advocate General has approved timely appeal by the United States under Article 56(d), UCMJ.

(8) *Review of Punishment for Contempt.* Punishments for contempt imposed by a military judge or military magistrate under Article 48, UCMJ.

(9) *Extraordinary Writs.* The Court may, in its discretion, entertain petitions for extraordinary relief including, but not limited to, writs of *mandamus*, prohibition, *habeas corpus*, and error *coram nobis*. The Court shall, to the extent practicable, give priority to the consideration of writs of *mandamus* filed by crime victims under Article 6b, UCMJ.

(c) *Waiver and Withdrawal.* In all courts-martial other than those that include a sentence of death, the Court shall not have jurisdiction to hear an appeal in which appellate review was properly waived or withdrawn. The Court shall have jurisdiction to determine the threshold issue of whether the appeal was properly waived or withdrawn pursuant to Rule 16.

Rule 5.1. Continuing Jurisdiction.

The Court retains jurisdiction over cases initially reviewed under Article 66, Uniform Code of Military Justice (hereinafter UCMJ), that are remanded for further proceedings notwithstanding any subsequent reduction of the sentence below the level requiring the Judge Advocate General to refer the case to this Court pursuant to Article 66(b), UCMJ.

Rule 5.2. Panel composition for cases under Continuing Jurisdiction.

(a) Cases returned to the Court following a remand under Article 66(f), and cases remanded to the Court from the Court of Appeals for the Armed Forces for further review shall, when practicable, be referred to the same numbered panel that last decided the case. If a judge who initially considered the case is assigned to a different panel when the case returns to the court, the Clerk of Court, acting for the Chief Judge, may, when practicable, substitute that judge for another judge who is serving on the same numbered panel but did not previously consider the case.

(b) Cases previously considered by a numbered panel under an interlocutory appeal or writ petition (*see* Article 62, UCMJ; Article 6b, UCMJ; 28 U.S.C. § 1651) may, if deemed practicable by the Clerk of Court, be returned to the same numbered panel if the case later comes before the court for review under Article 66(b), UCMJ. If a judge who initially considered the case is assigned to a different panel when the case returns to the court, the Clerk of Court, acting for the Chief Judge, may, when practicable, substitute that judge for another judge who is serving on the same numbered panel but did not previously consider the appeal or writ.

**RULE 6. COMPOSITION OF THE RECORD ON APPEAL**

**(a) Except as provided by subsection (b) below, in any case referred to the Court for review, the record shall be as follows:**

**(1) In any case which is reviewed under Rule 5(b)(1) or (2), the record shall be the contents described in R.C.M. 1112(b) and as certified under R.C.M. 1112(c).**

**(2) In any case reviewed under Rule 5(b)(3) or (4), the record shall be the contents described in R.C.M. 1112(b) and as certified under R.C.M. 1112(c) as well as any action of the Judge Advocate General in the case.**

**(3) In any case in which the United States filed an appeal under Rule 5(b)(5), the record shall be that described in R.C.M. 908(b)(5).**

**(4) In any case in which the accused files a petition for a new trial under Rule 5(b)(6), the record shall be those portions of the record as described in R.C.M.**

1112(b) that the parties submit as necessary for the Court's review as well as any new matter submitted under subsection (c) of this rule.

(5) In any case in which the United States filed an appeal under Rule 5(b)(7), the record shall be that described in R.C.M. 1117.

(6) In any case in which a punishment for contempt is reviewed under Rule 5(b)(8), the record shall be the contents described in R.C.M. 1112(b) of both the court-martial and the contempt proceeding that the parties determine are necessary for the Court's review.

(7) In the case of a petition for extraordinary relief, the record shall be as described in Rule 19(b)(3).

(8) In any case in which the record of trial was created and authenticated under R.C.M. 1104(a) of the 2016 edition of the Manual for Courts-Martial, the record of trial shall be the contents described in R.C.M. 1103(b)(2).

(b) In any case reviewed by the Court, the Court may consider matters not contained in the record of trial, as defined in Rule 6(a), if authorized by law to consider such matter, and:

(1) By agreement or stipulation of the parties;

(2) Upon taking judicial notice;

(3) When, upon motion filed in compliance with Rule 23, the Court determines the matters are relevant and necessary to determine an issue before it; or

(4) When, upon its own motion, the Court determines that it is necessary to consider matter contained outside the record. Prior to considering matter under this paragraph the Court shall provide the parties notice and an opportunity to object.

(c) *Correction of the Record.* Any party may move the Court to correct any substantial error in the record of trial, to include correcting a transcription of a court-martial proceeding that is attached to the record of trial. When necessary, the Court may order an Article 66(f) proceeding to resolve questions regarding the correctness of the record of trial.

Rule 6.1. Courts-Martial Transcript. A verbatim, written transcript of a court-martial proceeding, authenticated and certified in accordance with AR 27-10, para. 5-56, shall be attached to the record docketed with the Court for review in all cases: where the sentence

extends to death, dismissal, a dishonorable or bad-conduct discharge, or confinement for more than six months (*see* Rule for Courts-Martial [R.C.M.] 1114); and, any general or special court-martial with a finding of guilty, regardless of the sentence (*see* AR 27-10, para. 5-53b.(4)).

Rule 6.2. Government Appeals under Article 62, UCMJ. In addition to the requirements for the record contained in R.C.M. 908, a written, verbatim transcript of those portions of the proceedings necessary to resolving the government appeal shall be attached to the record when docketed with the Court.

Rule 6.3. Government sentence appeals under R.C.M. 1117. In addition to the matters specified in R.C.M. 1117(d), the government shall include with the record filed with its appeal with the clerk a written, verbatim transcript, certified pursuant to AR 27-10, para. 5-56, of, at a minimum, the findings and sentencing portions of the court-martial.

Rule 6.4. Extraordinary writs. In the case of an extraordinary writ, the Court may direct portions of the court-martial necessary for resolution of a petitioner's claim be transcribed verbatim and appended to the appellate record. Normally, the court will provide the government thirty days to produce the verbatim transcript.

Rule 6.5. Custody of Records.

Original copies of records of trial will not be removed from the Office of the Clerk of Court unless permission is granted by the Clerk or a Deputy Clerk.

Rule 6.6. Altering Records.

No notes or marks of any kind will be made on the pages of an original record of trial, including the accompanying papers and exhibits, nor shall any page be removed, rearranged, or inserted except in the Clerk of Court's Office by an employee of that office. Copies of records issued for use of appellate counsel remain subject to recall for further proceedings and for other necessary purposes; accordingly, the making of notes and other marks therein is discouraged, and such notes are not confidential or privileged.

Rule 6.7. Erroneous or Incomplete Records.

Error and irregularities found in records of trial, if not made the subject of an appellant's assignment of error or an order of the Court, should be brought to the attention of the Clerk of Court for corrective administrative action.

Rule 6.8. Electronic Record of Trial (e-ROT) Filing.

The Office of the Clerk of Court, in its discretion, may grant permission to a General Court-Martial Convening Authority's servicing Staff Judge Advocate to submit records of trial electronically to the Office of the Clerk of Court. An office with e-ROT filing permissions shall submit the record of trial electronically in accordance with procedures established by the Clerk of Court. An original, hard-copy record of trial is still required and shall be provided to the Clerk of Court in a manner consistent with these rules, the Joint Rules of

Appellate Procedure, and the Manual for Courts-Martial. Submission of electronic records of trial is highly encouraged.

Rule 6.9. Sealed Records, Unclassified.

(a) Appellate counsel may examine sealed matters in the record of trial by motion, granted by the Court as set forth in this rule. "Examination" includes reading, inspecting, and viewing. A motion to examine sealed matters shall specify the matters to be reviewed (e.g. Appellate Exhibit XX) and the reasons why the matter was sealed in the first instance, if known.

(b.) Subject to (d), below, materials presented or reviewed at trial and sealed, as well as materials reviewed *in camera*, released to trial counsel or defense counsel, and sealed, may be examined by appellate counsel upon a colorable showing to the Court that examination is reasonably necessary to a proper fulfillment of counsel's responsibilities under the UCMJ, Manual for Courts-Martial, governing directives, instructions, regulations, these rules, or rules of professional conduct.

(c) Subject to (d), below, materials reviewed *in camera* by a military judge, not released to trial counsel or defense counsel, and sealed may be examined by the Court. Only after such an examination may appellate counsel, upon a showing of good cause and leave of the Court, examine such materials.

(d) Privileged sealed matters. In the case of a sealed exhibit that contains material that is colorably privileged under the military rules of evidence (e.g. matters sealed under Military Rule of Evidence [Mil. R. Evid.] 513 and 514), any motion to examine sealed matters shall:

(1) Contain a certification that:

(A) The privilege holder, or the guardian or authorized representative of the privilege holder, has been provided notice and a copy of the motion to examine sealed privileged materials; or

(B) Counsel has taken reasonable steps to provide notice to the privilege holder, or the guardian or authorized representative of the privilege holder, but has been unable to locate or provide notice to such person. In such an instance, counsel shall detail the efforts undertaken to contact the privilege holder.

(2) Include an explanation, with supporting affidavits or references to the record as may be necessary, as to why the privilege:

(A) Has been waived;

(B) Does not exist; or

(C) Does not apply because of a recognized exception to the privilege.

Rule 6.10. Sealed materials from other trials.

(a) Where appellate counsel seek matters sealed in a trial or other proceeding conducted under the UCMJ for a person other than the appellant, the other provisions under paragraph (b) of this rule shall apply. In addition:

(1) Appellate counsel must, by motion, provide to the court:

(A) A general description of the sealed matter that does not have the effect of revealing the nature, substance, or contents of a sealed record sought;

(B) Information as to where the sealed record is located and the identity of the record custodian;

(C) The legal basis that allows counsel to examine sealed matters from another trial.

(2) If the Court determines the record should be made available, and is in the custody and control of the Clerk of Court, the Court may issue an order to the Clerk of Court to obtain the record of trial in the case and provide it to the Court for review.

(3) In cases where the record of trial is not in the custody and control of the Clerk of Court, the Court may issue an order to appellate government counsel to obtain the sealed matters from the staff judge advocate office that is exercising custody and control of the sealed matter. Appellate government counsel will provide the sealed matter to the Court for review.

(4) If, upon review, the Court determines the sealed matter should be made available, it shall, by order, grant leave to appellate counsel to examine the sealed matters. Rule 17.2 and the other provisions of this rule shall govern the use or disclosure of any sealed matters

Rule 6.11. Disclosure of Sealed Matters

(a) Counsel shall not disclose any sealed material absent a motion granted by the Court. "Disclosure" includes photocopying, photographing, disseminating, releasing, manipulating, or communicating the contents of sealed materials in any way. If counsel intends to file a pleading or other matter with the court that contains sealed matters, counsel must first, by motion, seek leave of the Court to file such pleading or other matter under seal in accordance with Rule 17.2(b). Such motion must, without revealing the content of the sealed matter, explain why inclusion of sealed matters in a pleading or other matter is necessary.

(b) Attorneys will coordinate examination of sealed records with the Office of the Clerk of Court. Attorneys of record are responsible to return the sealed record matters, completely and without alteration, to the Clerk of Court's possession.

Rule 6.12. Classified Records.

(a) Attorneys of record in appellate cases that deal with classified information must provide proof of an appropriate security clearance to the Deputy Clerk of Court for Court Operations and Security to review the classified information. Classified information will remain secured throughout the proceedings. Attorneys will coordinate review of classified records with the Clerk of Court during duty hours in a secure place. Attorneys of record are responsible to return classified information to the Clerk of Court's possession. Written products encompassing use of classified information must be created solely on a properly classified portable laptop computer with a removable hard-drive. Both the hard-drive and the computers must be secured when not in use. Briefs and orders from the Court will be assigned the appropriate security classification. Asterisks will be substituted for classified information in all copies of the order except for the original record of trial copy.

(b) Court Security Manager. The Deputy Clerk of Court for Court Operations and Security shall serve as the Court's security manager to provide protection of classified information.

(c) Classified Documents and Controlled Materials. Except when in use by the Court, classified documents or materials will be stored by the Court Security Manager in designated secured areas within the Office of the Clerk of Court.

Rule 6.13. Presumption against ex parte examinations of sealed mater.

(a) Except as provided in (b) below, a motion to examine sealed matter under this rule, if granted, will constitute approval for both parties to review the sealed matter. When the Court has granted one party's motion to review sealed matter, a motion seeking to review the same matter filed by the other party is redundant and not necessary.

(b) A party may seek to review sealed matter without presumptively providing access to the other party. (E.g., such a motion may be appropriate when a privilege applies to one party but not the other). A motion under this exception shall clearly and specifically state that it is filed under this exception and will include the basis for seeking the exception.

**RULE 7. QUORUM**

**(a) When sitting in panel, a majority of the judges assigned to that panel shall constitute a quorum. When sitting *en banc*, a majority of the judges in regular active service with the Court shall constitute a quorum.**

**(b) The concurrence of a majority of such judges, whether present and voting or voting telephonically or electronically, shall be required for a final resolution of any matter before the panel or Court *en banc*, subject to subsections (c), (d), and (e).**

(c) Unless defined differently pursuant to Rule 7(d), a judge assigned to the Court shall be deemed to be in regular active service for the purposes of these rules if: (1) in the active component of the armed forces; (2) in the reserve component of the armed forces and serving on active duty with the Court for a period of more than 30 consecutive days; or (3) a civilian judge who is a full-time employee of the agency from which appointed. Also, when a reserve component military judge who does not meet the above criteria is duly assigned to a matter, that judge shall be deemed to be in regular active service with respect to that matter.

(d) Each service may establish its own definition of “regular active service” in its Service Court rules even if inconsistent with Rule 7(c).

(e) Notwithstanding Rule 7(b), a judge on the panel or Court considering a matter may, acting alone, issue all necessary orders, to include temporary orders or stays, provided the orders do not finally dispose of a petition, appeal, or case. A Court may delegate to its Clerk of the Court or other designated staff the authority to act on motions regarding procedural matters.

#### RULE 8. AMENDMENTS

Proposed amendments to these rules may be submitted to the Chief Judge of any Court named in Rule 1 or to any Judge Advocate General. Before acting on any proposed amendment not received from the Chief Judges, the Judge Advocates General shall refer the proposal to the Chief Judges for comment. The Chief Judges shall confer on any proposed amendments and shall report to the Judge Advocates General as to the suitability of the proposals and their impact on the operation of the courts and military justice.

## II. ATTORNEYS

#### RULE 9. QUALIFICATION OF COUNSEL

(a) *All Counsel.* Counsel in any case before the Court shall be a member in good standing of the bar of a federal court or the highest court of a state, territory, commonwealth, or possession of the United States.

(b) *Military Counsel.* Assigned military appellate counsel shall, in addition, be certified and detailed in accordance with Article 27(b) and, as applicable, Article 70(a), UCMJ.

(c) *Admission.* Each Court may admit counsel to appear before it. Otherwise, upon entering an appearance, counsel shall be deemed admitted *pro hac vice*, subject to filing a certificate setting forth required qualifications if directed by the Court.

**(d) Suspension.** No counsel may appear in any proceeding before the Court while suspended from practice by the Judge Advocate General supervising the Court.

Rule 9.1. Qualification of Counsel.

No person other than an appellant appearing *pro se* shall practice before this Court unless admitted to practice before this Court or appearing *pro hac vice* or *amicus curiae* by leave of the Court.

Rule 9.2. Admission to the Bar of the Court.

(a) The Court licenses counsel as permitted by J.R.A.P. R. 9(c). To be eligible for admission to the Bar of the Court, an attorney must be a member in good standing of the bar of the highest Court of a state, territory, commonwealth, or possession of the United States, bar of the District of Columbia, or bar of a federal Court, and possess good personal and professional character. There is no admission fee.

(b) Each applicant must file with the Clerk an application for admission on the form prescribed by the Court, together with a certificate from the presiding judge, clerk, or other appropriate officer of a court specified in Rule 9.2(a), showing the applicant is a member of the bar in good standing. The certificate must be an original and dated within one year of the actual date of admission to the Bar of this Court. Applicants currently certified by a Judge Advocate General pursuant to Article 26(b) or 27(b)(2), UCMJ, may be admitted without a certificate of good standing; however, the Court may require evidence of certification. Applications are available on the Court's website at [www.jagcnet2.army.mil/acca](http://www.jagcnet2.army.mil/acca).

(c) Admission is granted only on motion of a member of the Bar of the Court in good standing. The attorney to be admitted must be present. A Motion for Admission may be made at any session of the Court or, by leave of the Court, in chambers. Any judge present for duty may grant the Motion for Admission. For purposes of admission, a session of the Court may be held at such place and with such number of judges present as the Chief Judge may determine. The motion and oath shall be substantially in the following form:

MOTION

"May it please the Court, I move the admission of [full name], a member of the Bar of [qualifying jurisdiction]. I have examined [his/her] credentials on file in the Office of the Clerk and I am satisfied [he/she] possesses the necessary qualifications for membership in the Bar of this Court."

OATH

"I, [full name], do solemnly [swear/affirm] I will support the Constitution of the United States, and I will conduct myself as an attorney and counselor of this Court uprightly and according to law. [So help me God.]"

The form of the motion may be tailored for admission of more than one attorney. Also, the oath may be administered in interrogatory form (“Do you, [Full Name], solemnly swear...” “Do you and each of you solemnly swear...”).

#### Rule 9.3. Attorneys Roll; Certificate of Admission.

- (a) Each attorney admitted must sign the Roll Book and will receive a Certificate of Admission.
- (b) The Clerk of Court shall maintain a Roll of Attorneys admitted in practice before the Court and issue Certificates of Good Standing upon request.

#### Rule 9.4. Student Practice Rule

(a) Appearance by Law Student. With leave of this Court, an eligible law student acting under a supervising attorney may appear in a particular case, except a case in which any party is under or is potentially subject to a sentence of death, on behalf of any party, including the United States, provided that the student and supervising attorney comply with the provisions of this rule.

(b) Eligibility of Student. To be eligible to appear and participate in any case, a law student must:

- (1) be a student in good standing in a law school approved by the American Bar Association, or be a recent graduate of such school awaiting the result of a state bar examination;
- (2) have completed legal studies amounting to at least 4 semesters, or the equivalent if the school is on some basis other than a 3-year, 6-semester basis;
- (3) have completed and received a passing grade in courses in criminal procedure and criminal law;
- (4) neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the services are rendered; and;
- (5) be familiar with the UCMJ and the Rules of this Court.

(c) Supervising Attorney Requirements. A supervising attorney must:

- (1) be an attorney of record in the case;
- (2) be a member in good standing of the Bar of this Court;
- (3) have been admitted to practice for a minimum of 2 years and have appeared and argued in at least 1 case before this Court or appeared and argued in at least 3 cases before state or federal appellate courts;
- (4) not supervise more than 5 students at any one time;

- (5) appear with the student in any oral presentations before this Court;
- (6) read, approve, and sign all documents filed with this Court;
- (7) assume personal professional responsibility for the student's work in matters before this Court;
- (8) be responsible to supplement the oral or written work of the student as necessary to ensure proper representation of the client;
- (9) guide and assist the student in preparation to the extent necessary or appropriate under the circumstances;
- (10) be available to consult with the client; and
- (11) neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the services are rendered.

(d) Authorization and Certification.

- (1) The party on whose behalf the student appears must consent to the representation by that student in writing.
- (2) The supervising attorney must indicate in writing approval of the appearance by the law student and consent to supervise the student.
- (3) The law student must be certified by the dean of the student's law school as being of good character and competent legal ability.
- (4) Before commencing student representation in any case under this rule, the supervising attorney shall file a motion for leave to allow student representation in such case. The motion should put forth that the provisions of this rule have been met and that in counsel's view the case is an appropriate one for student representation. The written consent, approval, and certification referred to above shall be attached to the motion. A copy of the motion shall be served on opposing counsel, but no answer will be allowed except with leave of the Court. Once these documents are filed, the Court will decide, using its discretion on a case-by-case basis, whether to allow the student representation.

(e) Activities. Upon fulfilling the requirements of this rule, the student may enter an appearance in a case and:

- (1) assist in the preparation of briefs and other documents to be filed in this Court, but such briefs or documents must also be signed by the supervising attorney;
- (2) participate in oral argument, but only in the presence of the supervising attorney; and

(3) take part in other activities in connection with the case, subject to the direction of the supervising attorney.

(f) Termination. The dean's certification of the student:

(1) shall remain in effect, unless sooner withdrawn, until the publication of the results of the first bar examination taken by such student following the student's graduation. For any student who passes that examination, the certification shall continue in effect until the date the student is admitted to the bar;

(2) may be withdrawn by the Court at any time; and

(3) may be withdrawn by the dean at any time.

(g) Exceptions.

(1) This rule does not apply to an appearance or an oral argument by a law student on behalf of an amicus curiae. *See* Rule 25.

(2) Nothing in this rule shall preclude the Government or any agency, firm, or organization from compensating a law student for services rendered under such rule.

(3) The Court retains the authority, on good cause shown, to establish exceptions to these procedures in any case. *See* Rule 32.

(h) Time for Filing. An amicus brief submitted under this Rule is not subject to the time limitation in Rule 24.3, but such brief shall be filed no less than 14 days before the scheduled date of oral argument. Both the appellant and the appellee may file a reply to such brief within 7 days of the filing thereof, subject to the limitations specified in Rule 17.1 and 17.2.

#### **RULE 10. CONDUCT OF COUNSEL**

**The conduct of counsel appearing before the Court shall be in accordance with rules of conduct prescribed pursuant to R.C.M. 109 by the Judge Advocate General of the service concerned. The Court, however, retains its authority to regulate counsel appearing before it, including the power to remove counsel from a particular case for misconduct in relation to that case or to punish counsel for contempt in accordance with Article 48, UCMJ, and Rule 28. Conduct deemed by the Court to warrant consideration of suspension from practice or other professional discipline shall be reported by the Court to the Judge Advocate General concerned.**

#### Rule 10.1. Conduct of Counsel.

Attorneys appearing before this Court are governed by the *Manual for Courts-Martial (MCM)* and Rules for Court-Martial and are subject to the Rules of Professional Conduct for Lawyers set forth in Army Regulation 27-26. Violation of the Rules of Professional Conduct for Lawyers may result in contempt proceedings, disciplinary action or referral to the attorney's state bar.

#### Rule 10.2. Reporting Requirements.

Any member of the Bar of this Court who is subjected to discipline that results in disbarment, suspension, or other loss of good standing in the Bar of any court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth, or possession of the United States, shall notify the Clerk of Court within 10 business days of such action. Likewise, any member of the Bar who is suspended from practice in courts-martial or another service court of criminal appeals, or whose certification pursuant to Article 26(b) or 27(b), UCMJ, is withdrawn for cause, shall notify the Clerk of Court within 10 days of such action.

#### Rule 10.3. Allegation of Professional Misconduct.

In addition to such action as may be taken by the Court pursuant to its inherent power as an appellate tribunal, allegations of professional misconduct, as defined in Army Regulation 27-26, Rules of Professional Conduct for Lawyers, shall be referred to the appropriate authority for further review and/or action. Such allegations of professional misconduct may also include claims of Ineffective Assistance of Counsel (IAC).

#### Rule 10.4. Contempt and Disciplinary Action.

If it appears an attorney admitted to practice before this Court has engaged in conduct unbecoming a member of the Bar, has persistently or deliberately failed to comply with these rules or any other rule of the Court, or has engaged in misconduct as defined by Army Regulation 27-26, Rules of Professional Conduct for Lawyers, a judge of the Court may, in accordance with procedures outlined in Rule 28, punish the attorney for contempt. In addition to contempt proceedings, a judge of the Court may enter an order affording the attorney an opportunity to show cause why the matter should not be forwarded to the Judge Advocate General for review and potential reporting to the member's applicable professional authority.

### **RULE 11. ASSIGNMENT OF COUNSEL**

**(a) Upon receipt of a notice that an appeal pursuant to Article 48, 56(d), 62, 66, 69(d), or 73, UCMJ, has been docketed with the Court, the appropriate Judge Advocate General or designee shall, unless already done, designate appellate military counsel to represent the parties and, as appropriate, victims as defined by Article 6b, UCMJ. In a case involving a petition for extraordinary relief when the United States is represented by counsel or when an accused has been denominated as the real party in interest by a filing party or by the Court, the**

Judge Advocate General or his designee shall also designate appellate military counsel to represent such accused. Nothing in this Rule creates a right to counsel beyond that required by regulation or law.

(b) When civilian counsel represents an accused before the Court, the Court will notify counsel when the record of trial is received. If both civilian and assigned appellate defense counsel represent the accused, the Court will regard civilian counsel as primary counsel unless notified otherwise. Ordinarily, civilian counsel will use the accused's copy of the record. Unless otherwise prohibited by the Court, civilian counsel may reproduce, at no expense to the government, appellate defense counsel's copy of the record.

#### RULE 12. NOTICE OF APPEARANCE AND WITHDRAWAL OF COUNSEL

(a) Military and civilian appellate counsel shall file a written notice of appearance with the Court. The filing of any pleading relative to a case which contains the signature of counsel pursuant to Rule 14 constitutes notice of appearance of such counsel.

(b) Leave to withdraw by any counsel who has entered an appearance under subsection (a) must be requested by motion in accordance with Rule 23. A motion by an appellate defense counsel must indicate whether the accused consents or objects to the withdrawal, the reasons for the withdrawal, and the provisions that have been made for continued representation of the accused. A copy of a motion filed by an appellate defense counsel shall be delivered or mailed to the accused by the moving counsel.

##### Rule 12.1. Notice of Appearance of Counsel.

(a) Civilian Counsel. Civilian counsel shall file a written notice of appearance with the Clerk of Court within 7 days of retention by the appellant. Signing of a motion or other pleading shall constitute a notice of appearance. Any written notice of appearance or other document that constitutes a notice of appearance shall include civilian counsel's email address below the signature block. See Appendix A.

(b) If an attorney named on a pleading has not been admitted to the Bar of this Court, the pleading shall be accompanied by an application for admission to the Bar or a Motion for Leave of the Court to Appear *pro hac vice* in the case in question.

(c) Civilian counsel with ongoing business before the Bar of this Court shall promptly notify the Clerk of Court of any changes in the above information.

##### Rule 12.2. Counsel Appearing Pro Hac Vice.

(a) Counsel appearing *pro hac vice* shall file a Certificate of Good Standing from a qualified Bar dated within one year of the appearance, as well as an affidavit stating

the attorney has never been disbarred or suspended from the practice of law and is not currently under investigation or pending disciplinary action. Counsel must be formally admitted to the Bar of this Court prior to making an oral argument to the Court.

(b) A Motion for Leave to Appear *pro hac vice* must accompany the pleading. The motion must identify the courts to which the movant is admitted to practice and must indicate whether any disciplinary proceedings are pending against the movant.

#### Rule 12.3. Withdrawal of Appellate Defense Counsel – Capital Cases.

Any appellate defense counsel who has entered an appearance in a capital case must request leave to withdraw by motion to the Court. Such motion must: (1) indicate the reason for the withdrawal; (2) identify by name the successor appellate defense counsel; and (3) state whether the appellant concurs with or opposes the motion to withdraw. Additionally, the successor appellate defense counsel must submit to this Court a Notice of Appearance in accordance with this rule within 7 days of assignment to the case or retention by the appellant.

### III. PRACTICE BEFORE THE COURT

#### RULE 13. FILING AND SERVICE

**(a) A notice of appearance, pleading, or other paper required or permitted to be filed with the Court must be filed with the Clerk of that Court in such place and manner as may be required by Service Court rules.**

**(b) At or before the filing of any pleading or other paper relative to a case, a copy thereof shall be served on all counsel of record, including *amicus curiae* counsel.**

**(c) Service by electronic means is complete upon transmission. If transmitted by mail or by other non-electronic means, service is complete upon receipt.**

#### Rule 13.1. Prescribed Method of Filing.

The prescribed method for filing documents with the Court is electronic filing at the following e-mail address:

usarmy.pentagon.hqda-otjag.mbx.clerk-of-court-efiling@army.mil

No other method of electronic filing will be accepted absent permission from the Clerk of Court.

Paper filing of matters containing classified material, material under seal, or sensitive information shall be submitted in compliance with Rule 13.3. In all other instances, paper filing shall only occur when electronic filing proves impractical due to the excessive size of the document(s), lack of access to e-mail, or similar reasons. Except as provided in Rule 6.9, 6.10 and 6.12, paper filings shall only be permitted by motion, granted by the Court.

Rule 13.2. Electronic Filing Format.

Any filing submitted electronically shall be converted into a single .pdf formatted file (without scanning, if practical, to reduce overall file size), typed, and double-spaced. The filing will use a font of Times New Roman 14-point so as to produce a clear black image on a single-side of white 8.5-inch by 11-inch paper. The margins shall be set to 1-inch on all four sides. *See also* Rule 17.1. Any appendix or attachment to the pleading will be combined with the pleading into a single .pdf file and submitted as a single document.

(a) All electronic filings shall contain the following naming convention to identify the filing in the e-mail subject line:

LAST NAME-ACMIS Number-Filing Title-(YYMMDD)

(Example): JONES-20170000-Appellant's Brief-(170530)

Additional examples are provided in Appendix D.

(b) All electronic filings shall contain the following language in the e-mail narrative block:

I hereby certify the following documents were transmitted on the date/time of this message.

LAST NAME-ACMIS Number-Filing Title-(YYMMDD)

attachment(s) were served.

Please acknowledge receipt of this message.

(Example): I hereby certify the following documents were transmitted on the date/time of this message.

JONES-20170000-Appellant's Brief-(170530)

1 attachment(s) was served.

Please acknowledge receipt of this message.

(c) All .pdf files shall use the following naming convention:

Last Name-ACMIS #-Filing Title-(YYMMDD)

(Examples): JONES-20180120-Appellant's Brief-(170530)  
JONES-20180120-Appellee Mot Ext (3)-(170530)

Additional examples are provided in Appendix D.

(d) All original filings shall certify each real party of interest was served with a copy of said filing. *See* Rules 13.5 and 13.6.

(e) Each filing with the court must be submitted in a separate email. Multiple filings with the Court in a single email will not be accepted.

### Rule 13.3. Place for Filing Paper Documents.

When not electronically filing, when permitted by the Clerk of Court, all hard-copies of pleadings and other papers relative to a case, to include materials stored on electronic media such as CD-ROMs and DVDs, shall be submitted to:

Clerk of Court  
United States Army Court of Criminal Appeals (JALS-CC)  
9275 Gunston Road (Building 1450)  
Fort Belvoir, Virginia 22060-5546

Any filing submitted in paper shall be printed single-sided, typed, double-spaced, using Times New Roman 14-point, with 1 inch margins so as to produce a clear black image on white 8.5-inch by 11-inch paper. The margins shall be set to 1 inch on all four sides. *See* Rule 13.2. Two copies of the filing shall also be provided

The document shall be printed single-sided; double-sided printing is not permitted, except under Rule 25.2 for Joint Appendices.

### Rule 13.4. Facsimile Filing.

Facsimile filing is highly disfavored and requires authorization by the Clerk of Court. Upon permission from the Clerk of Court, any filing not exceeding 25 pages in length in its entirety may be filed by facsimile transmission. Except as indicated below, if the facsimile shows the signature required by Rule 14.1 and the Certificate of Service on opposing counsel required by Rule 17.5, a signed original copy need not be sent unless so ordered by the Court. As exceptions, a signed original of the following documents, in addition to the facsimile copy, must be sent by the fastest available means: (1) a Petition for New Trial (Rule 21.1); (2) any statement made under oath or penalty of perjury (Rule 23(b)); (3) a Petition for Extraordinary Relief (J.R.A.P. R. Rule 19); and (4) any document submitted to comply with the requirement for an original copy of that document in the original record of trial, such as a Charge Sheet or Action of the Convening Authority. The paper copy in compliance with the requirements contained in Rule 17 and its applicable subsections, must show the sender's facsimile and voice telephone numbers, and e-mail address.

Current facsimile numbers:

Clerk of Court	(703) 806-0124
Defense Appellate Division	(703) 806-0676
Government Appellate Division	(703) 806-0656

Rule 13.5. Service of Pleadings.

Pleadings shall be served on all counsel of record, including civilian defense counsel, *amicus curiae* counsel, and counsel for the victim filing an interlocutory appeal of a trial ruling, and will be evidenced in the document by use of the certificate format noted below. Service to the approved organizational electronic workflow inbox constitutes sufficient service only in cases where the sole counsel of record is assigned to the Defense and Government Appellate Divisions. Once the electronically filed document has been received by counsel, the electronic certificate of service shall be executed and returned electronically to the sender.

Defense Appellate Division: usarmy.pentagon.hqda-otjag.mbx.dad-accaservice@army.mil

Government Appellate Division: usarmy.pentagon.hqda-otjag.mbx.gad-accaservice@army.mil

Rule 13.6. Proof of Service Attestation.

The Proof of Service attestation shall be made by a Certificate of Service attestation on the next page after the signature block of the counsel submitting said pleading. The attestation shall be in the following form:

Certificate of Service

I certify that a copy of the foregoing was (mailed) (delivered) (sent via electronic submission) to \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[Signature of Certifying Person] \_\_\_\_\_  
[Typed Name of Certifying Person]  
[Organization or Firm]  
[Address]  
[Telephone Number]  
[E-Mail Address]

When service is upon civilian counsel, the certificate must reflect contemporaneous service on associated military counsel, if any. The Certificate(s) of Service shall be signed by counsel of record or by a person authorized by said counsel.

Rule 13.7. Non-Compliance with Court Rules.

Failure to comply with any provision of this Court's Rules of Practice and Procedure may result in the rejection of the offered filing by the Clerk of Court. Returned filings will not be attached to the record of trial and will not serve to toll the filing deadline. Pleadings returned for errors may be corrected and re-filed within 48 hours of the email notification from the Court; if timely corrected, such pleadings will not be considered out of time.

## **RULE 14. SIGNING OF PAPERS**

**All formal papers shall be signed, either by hand or electronically, and shall include, at a minimum, the signer's name, military grade (if applicable), email address, and the capacity in which the paper is signed. Such signature constitutes a certification that the statements made therein are true and correct to the best of the knowledge, information, and belief of the person or persons signing the paper and that the paper is filed in good faith and not for purposes of unnecessary delay.**

### **Rule 14.1. Signing of Papers.**

Counsel of record admitted to practice before this Court may sign an electronically-filed pleading by use of any commonly-accepted mark that represents that person's scanned or electronic signature. Non-federal civilian counsel or an appellant proceeding *pro se* must also include the name of law firm (if applicable), mailing address, telephone number, and e-mail address below the signature line of each filing. If any signer, other than a *pro se* litigant, is not a licensed attorney, the filing must contain the signature of at least one attorney admitted to practice before this Court. Such signature of one or more attorneys admitted to practice before this Court attests that the signing attorney has supervised the signing non-attorney and assumes responsibility for the content of the filing. One counsel may sign a filing "for" another person whose name appears on the filing, provided that attorney is authorized to do so. The Court will regard such a filing as personally signed by the attorney granting such authority.

## **RULE 15. COMPUTATION OF TIME**

**In computing any period of time prescribed or allowed by these rules, order of the Court, or any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, or a day on which the Court is closed when the act to be done is the filing of a paper with the Court, in which event the period runs until the end of the next day that is not a Saturday, Sunday, holiday, or day on which the Court is closed. Unless specified otherwise, "days" indicates calendar days.**

## **RULE 16. WAIVER OR WITHDRAWAL OF APPELLATE REVIEW**

**Once a case has been received by the Court for appellate review, a waiver or withdrawal of appellate review filed in accordance with R.C.M. 1115 will be referred to the Court for consideration. At its discretion, the Court may require the filing of a motion for waiver or withdrawal, issue a show-cause order, or grant or deny the waiver or withdrawal without any further action. Once a**

**waiver or withdrawal is granted, the Court will return the record of trial to the Judge Advocate General.**

**Rule 16.1. Waiver or Withdrawal of Appellate Review.**

(a) When a waiver of appellate review filed with the convening authority or Clerk of Court, in substantial compliance with R.C.M. 1115, is received after a record of trial has been referred to the Court, but before the case is at issue, the Clerk of Court may revoke the referral and forward the record for review by an attorney within the Office of the Judge Advocate General or other attorney designated the Judge Advocate General under R.C.M. 1201.

(b) Except as provided in Rule 16.1(a), a case may be withdrawn from appellate review only by order of the Court granting a Motion to Withdraw Appeal. The motion must be accompanied by a document executed by both appellant and a detailed trial defense counsel, civilian counsel, or appellate defense counsel. The document must be dated and signed both by counsel and appellant. The Court will not accept a withdrawal until the accused/appellant is fully informed of his/her appellate rights and of the consequences of withdrawing from appellate review and the request for withdrawal must be in substantial compliance with R.C.M. 1115. If the Court grants the motion to withdraw appellate review, the Clerk of Court may revoke the referral and forward the record for review by an attorney within the Office of the Judge Advocate General or other attorney designated the Judge Advocate General under R.C.M. 1201.

(c) Government appeals pursuant to Article 62, UCMJ, are withdrawn as indicated in Rule 20.4. Other pending matters may be withdrawn by Motion to Withdraw, naming the matter to be withdrawn.

(d) In the event of the death of an appellant whose case is pending review before this Court, it is the sole responsibility of the assigned defense appellate counsel to obtain an original death certificate and submit a "Motion to Abate Proceedings" to this Court, with the death certificate appended thereto as an appellate exhibit. See Rule 23.6. This Court will review the documents and motion and determine if it is appropriate to abate the proceedings.

**RULE 17. BRIEFS**

**Except as otherwise expressly provided in these rules, form, content, and space limitations for pleadings and briefs shall be pursuant to Service Court rules. Chief Judges shall confer with one another and endeavor to make such rules as consistent among the services as practicable.**

**Rule 17.1. Format.**

(a) Generally. All pleadings raising or addressing an Assignments of Error or Specified Issue shall be filed in compliance with Rule 13 and Appendix A of these rules. For merits pleadings, see Rule 17.4.

(b) Except as provided for in Rule 13.2, any pleading or other document filed with the Court in paper form must be submitted as a signed original document, and two copies. The original document must be typed, with the body of the filing double-spaced, in 14-point Times New Roman font, so as to produce a clear black image on a single-side of white 8.5-inch by 11-inch, 20 pound paper. The margins shall be set to 1-inch on all four sides. All pages of the original filing shall be pre-punched for a two and three-fourths-inch-wide prong fastener at the top center for insertion into the appropriate record of trial. Any additional copies required by the Court may be reproduced by any means producing a clear black image on white paper.

(c) Citations must conform to the style prescribed by the current editions of the U.S. Army Court of Appeals Citation Guide, the Judge Advocate General's School Military Citation Guide, and The Bluebook: A Uniform System of Citation, published and distributed by the Harvard Law Review Association. The Court will permit variations when the U.S. Court of Appeals for the Armed Forces requires a different form in papers submitted to that Court.

(d) Parties shall attempt to state all Assignments of Error in a neutral manner and save argument for the body of the briefs. An appellee, after restating the Assignment of Error in a brief may, where appropriate, restyle the assignment of error to reflect the issue or matter in controversy raised by appellant.

(e) Any Supplemental Brief on Behalf of Appellant must be submitted by Motion for Leave to File, showing good cause for the delayed filing. If the motion is granted, the appellee must file a response within 30 days. But, when appellee's initial Brief on Behalf of Appellee has not previously been filed, the period for filing that brief is automatically extended to coincide with the time for filing a response to the Supplemental Brief on Behalf of Appellant.

#### Rule 17.2. Content of Filings.

(a) Classified Material. Briefs that include classified material will not be filed electronically. If such material needs to be filed, it will be submitted to the Court on paper as a supplemental filing to the document in which the material would otherwise appear. In such cases, counsel will include in the body of the e-mail message a notation that classified or sealed material is being filed separately. Persons wishing to file classified material with the Court on paper will file a Motion with the Court in accordance with Rule 23. When submitting filings containing classified information, counsel will ensure such matters are delivered to the Court in compliance with any statutes, rules, or regulations applicable to transferring classified information.

(b) Sealed Records. Pleadings, except as provided herein, shall not include information derived solely from sealed portions of the record of trial or contain descriptions that would have the effect of revealing the substance or contents of a sealed portion of the record of trial. If it is necessary in a particular case to include matters from the sealed portion of a record of trial in a pleading, counsel shall, by motion, seek leave of the Court to include sealed matters in the pleadings. Such motion must specify the pages or items within the sealed exhibit from which counsel seeks to extract information for

inclusion in the pleadings. Counsel must show good cause why the pleadings must include information contained in the sealed portion of the record and why it is not sufficient to reference the sealed item in a manner that does not reveal the content of the sealed record. If the Court grants the motion, counsel shall file the pleadings in paper, sealed, with the Clerk of Court and electronically file a redacted version of the pleading, removing any matters excerpted or derived solely from the sealed portion of the record of trial.

(c) Personally Identifiable Information (PII) and Sensitive Information. Counsel shall refrain from using private and sensitive information in all pleadings unless prior approval from the Court has been received. If it is necessary in a particular case to include personal or sensitive information in a pleading, the document may be filed in accordance with the procedure set forth in Rule 17.2(b). The following specific information shall be removed from any filing:

(1) Names of complainants, victims, law enforcement agents, and, when referencing testimony provided during a closed session of the trial, witnesses. If an identifier is used, use only the rank and initials of complainants, victims, law enforcement agents, and witnesses;

(2) Social Security Numbers. If an individual's social security number is relevant, use only the last four digits;

(3) Financial account information. If financial account numbers are relevant, use only the last four digits;

(4) Home addresses. If a home address is relevant, use only the city and state;

(5) Telephone numbers. If a telephone number is relevant, use only the last four digits;

(6) Personal e-mail addresses. If a personal e-mail address is relevant, use only the first two characters and domain separated by asterisks (e.g. a2\*\*\*@msn.com);

(7) Dates of birth. If a named individual's date of birth is relevant, use only the year, unless birth month is relevant to the charged offense.

(8) The Clerk of Court will not review any documents for redaction. Parties shall exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, individual financial information, employment history, information regarding an individual's cooperation with the Government, and national security related information. Particular attention should be focused on attachments and appendices to ensure appropriate redaction.

(d) Motions to Strike a Brief or to request other relief for violation of this rule must be filed as soon as possible, and ordinarily within 7 days from the date of the filing in question.

Rule 17.3. Length.

(a) Any brief in excess of 30 pages must include a table of contents contained therein, along with a table of cases (alphabetically arranged), statutes and other authorities cited, and references to the pages of the brief where cited. Use of a hyperlink to an unpublished Army Court of Criminal Appeals cases available on JAGCNet complies with the attachment requirement of J.R.A.P. R. 23(c).

(b) Briefs must not exceed 50 pages in length excluding tables and appendices; however, under extraordinary circumstances, counsel may submit a Motion for Leave to File Brief Exceeding 50 Pages demonstrating good cause to exceed the page limit. Any brief over 30 pages in length will include a table of contents and a table of authorities.

Rule 17.4. "Pro Forma" or "Merits" Pleadings.

In cases referred to the Court for review pursuant to Article 66, UCMJ, the appellant, without conceding the legal or factual correctness of the findings of guilty or the sentence, may file a pleading that does not assign error, does not raise error asserted personally by the appellant, and does not request specific relief. Such pleadings will follow the format set forth in Appendix B. In such cases, the Clerk will deliver the original record of trial to the Court without delay. Counsel for the United States need not respond to a case submitted on its merits. The Court may proceed with its review and may issue a decision unless notified within 7 days that the appellee intends to file a brief.

Rule 17.5. Proof of Service Attestation.

The Proof of Service attestation shall be made by a Certificate of Service statement on the next page after the signature block of the counsel submitting said brief. The attestation shall be in the form set forth in Rule 13.6.

When service is upon civilian counsel, the certificate must reflect contemporaneous service on associated military counsel, if any. The Certificate(s) of Service shall be signed by counsel of record or by a person authorized by said counsel.

Rule 17.6. Specified Issues.

The Court may specify any issue and order submission of briefs and or oral argument, setting an appropriate date the briefs are due to the Court and for any oral argument scheduled.

**RULE 18. APPEALS BY THE ACCUSED**

**(a) *Assignments of Error.*** Appellate counsel for the accused may file assignments of error, setting forth separately each error asserted.

**(b) *Grostejon Issues.*** Issues raised pursuant to *United States v. Grostejon*, 12 M.J. 431 (C.M.A. 1982), shall comply with Service Court rules and counsel shall articulate *Grostejon* issues with particularity.

**(c) *Pro Se Submissions.*** A litigant who is representing him or herself is known as a “*pro se*” litigant.

**(1) *In General.*** All litigants are expected to follow the rules that govern the practice of law and be familiar with these rules and any Service Court Rules established under Rule 3.

**(2)** An accused who is represented by counsel who has made an appearance in a matter before the Court may not file *pro se* submissions.

**(d) *Time for Filing and Number of Briefs.*** Any brief for an accused shall be filed within 60 days after appellate counsel has been notified that the Judge Advocate General has referred the record to the Court. If the Judge Advocate General has directed appellate government counsel to represent the United States, such counsel shall file an answer on behalf of the United States within 30 days after any brief and assignments of error have been filed on behalf of the accused. Appellate counsel for an accused may file a reply brief no later than 7 days after the filing of a response brief on behalf of the United States. If no brief is filed on behalf of an accused, a brief on behalf of the United States may be filed within 30 days after expiration of the time allowed for the filing of a brief on behalf of the accused.

**(e) *Appendix.*** The brief of either party may include an appendix. If an unpublished opinion is cited in the brief, a copy may be attached in an appendix. The appendix may also include extracts of statutes, rules, or regulations. A motion must be filed under Rule 23 to attach any other matter.

Rule 18.1. Format. Appellate counsel’s brief for the accused shall comply with Rules 17.1 – 17.3. Merits pleadings may be filed in accordance with Rule 17.4.

Rule 18.2. *Grostefon* Issues. In any case reviewed by the Court pursuant to Article 66, UCMJ, the appellant may personally raise the issue to the attention of the Court as follows:

**(a) Manner.** Counsel shall notify the Court of the issues appellant wishes to personally raise. Unless otherwise briefed or argued by appellate defense counsel, *Grostefon* issues shall be brought to the Court’s attention by footnote or in an Appendix to the Brief on Behalf of the Appellant. Counsel shall cite to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

**(b) Content.** Counsel shall identify the issues to the Court and may supply such briefs and argument as the appellate counsel feels will best advance the client’s interest. Substantive evidence not included in the contents of the record of trial, *see* R.C.M.

1112(b), that the appellant wishes the Court to consider in resolving issues submitted under this rule, shall be submitted by separate motion.

(c) Timing. Absent prior leave of the Court, *Grostepon* issues shall be submitted at the same time as appellant's brief.

(d) Format. All issues and arguments submitted under this rule shall conform to the same typeface and font size as that required for appellant's brief. See Rule 17.1; Appendix A. In all other respects, to include formatting, presentation of issues, and rules of citation may be done in the manner that appellant and counsel believe best advance appellant's interest.

#### **RULE 19. EXTRAORDINARY WRITS**

**(a) *Applicability.*** This rule applies to petitions for extraordinary relief filed pursuant to 28 U.S.C. § 1651 and pursuant to Article 6b, UCMJ.

**(b) *Petition for Extraordinary Relief***

**(1)** A petition for extraordinary relief shall be filed as soon as possible but, in any event, no later than 20 days after the petitioner learns of the action complained of. This does not, however, apply to petitions for writs of *habeas corpus* or *error coram nobis*, which may be filed at any time.

**(2)** A petition for extraordinary relief shall contain, at a minimum, the following:

**(A)** A history of the case including whether prior actions have been filed or are pending for the same relief in the Court or any other court and the disposition or status of such actions;

**(B)** A concise and objective statement of all facts relevant to the issue presented and of any pertinent opinion, order, or ruling;

**(C)** A copy of any order or opinion or any parts of the record that may be essential to understand the matters set forth in the petition;

**(D)** A statement of the issue(s);

**(E)** The specific relief sought;

**(F)** In the case of a petition filed in the course of an ongoing proceeding, a statement of whether a stay of proceedings is requested. A proceeding is

considered ongoing until it is docketed for appellate review pursuant to Article 66, UCMJ;

(G) Reasons for granting the relief requested;

(H) The jurisdictional basis for relief sought and the reasons why the relief sought cannot be obtained during the ordinary course of appellate review; and

(I) If necessary and authorized under Article 70, UCMJ, a request for appointment of appellate counsel.

(3) The petition for extraordinary relief shall be captioned "In Re [name of Petitioner]."

(c) *Filing and Service.* A petitioner for extraordinary relief shall serve a copy of the petition on all respondents, to include any military judge whose decision, judgment, or order is the subject of the petition.

(d) *Notice to the Judge Advocate General.* Immediately upon the Court's receipt of any petition, the Clerk of the Court shall forward a copy of the petition for extraordinary relief to the appropriate Judge Advocate General or designee.

(e) *Initial Action by the Court.* The Court may dismiss or deny the petition without answer, order the respondent to show cause and file an answer, or take whatever other action it deems appropriate.

(f) *Answer*

(1) The respondent may not file a response to a writ petition unless the Court issues an order directing the respondent to show cause or granting leave to file a response. In such cases, unless otherwise specified, the respondent may file an answer within 20 days of receipt of the order and the petitioner may file a reply to the answer within 7 days of receipt of the answer.

(2) When the Court directs that an answer be filed, two or more respondents may answer jointly.

(3) The Court may invite or order any military judge whose decision, judgment, or order is the subject of the petition to respond or may invite any *amicus curiae* to do so. A military judge may request permission to respond but may not respond unless invited or ordered to do so by the Court.

**(g) Oral Argument and Final Action.** The Court may set the matter for oral argument. However, on the basis of the pleadings alone, the Court may grant or deny the relief sought or make such other order in the case as the circumstances require.

Rule 19.1. Priority.

All writ petitions filed in the course of an ongoing proceeding, including those filed pursuant to Article 6b, UCMJ, will be given priority consideration by counsel as well as the Court.

Rule 19.2. Filing.

(a) A Petition for Extraordinary Relief and supporting briefs shall be filed electronically in accordance with Rules 13.2 and 17.5. Counsel and the Petitioner *pro se* may, upon receiving permission from the Court, file the petition and supporting briefs in paper form. See Rules 13.4. When doing so, it shall be filed in an original and 2 copies. Petitions for extraordinary relief and supporting briefs shall comply with the standards set forth in Rule 17 and this rule, and all applicable subsections.

(b) Petitions may only be filed by or on behalf of a single petitioner and must include a certificate of service on each named respondent, each real party in interest, and appellate counsel, as appropriate.

(c) Unless filed by the Chief, Government Appellate Division, a petition and brief filed on behalf of the United States or any officer or agent thereof shall be coordinated with the Chief, Government Appellate Division.

(d) Service of a copy of the petition on the Chief, Government Appellate Division, is deemed the notice to TJAG required by Rule 19(d) of the Joint Rules of Appellate Procedure.

Rule 19.3. Action on the Petition.

(a) If the Court orders a stay in the trial or other ongoing or prospective proceedings, the Clerk of the Court will cause copies of the “stay” order to be expeditiously delivered to the convening authority, military judge, and all counsel or unrepresented parties involved.

(b) In the event the Court orders the respondent(s) to show cause and file an answer, The Judge Advocate General shall designate appellate counsel to represent the named parties or, as appropriate, real parties in interest. Appellate government counsel will represent the United States. When a petition is filed on behalf of the United States, appellate defense counsel assigned to represent any individual who is a real party in interest will represent *pro forma*, rather than appearing in the name of any respondent, military judge, convening authority, or other official from whom relief is sought.

(c) In view of the time limit for filing a writ appeal with the United States Court of Appeals for the Armed Forces (*see* CAAF Rule 19(e)), the Clerk of the Court will serve counsel and expedite delivery to all other appropriate parties of any order terminating a stay or finally disposing of a petition for extraordinary relief.

## **RULE 20. APPEALS BY THE UNITED STATES**

### **(a) *Restricted Filing***

- (1) Only a representative of the United States designated by the Judge Advocate General concerned may file an appeal by the United States under Article 62, UCMJ.**
- (2) Only the Judge Advocate General may approve the filing of an appeal of a sentence by the United States under Article 56(d), UCMJ.**

### **(b) *Form of Appeal***

- (1) An appeal under Article 62, UCMJ must comply with R.C.M. 908, these rules, and Service Court rules. The appeal shall include the Notice of Appeal described in R.C.M. 908(b)(3). The Notice of Appeal must reflect the date and time of the military judge's ruling or order from which the appeal is taken and the date and time of service upon the military judge.**
- (2) An appeal under Article 56(d), UCMJ must comply with R.C.M. 1117, these rules, and Service Court rules.**

### **(c) *Time for Filing.* All procedural rules shall apply except as follows:**

#### **(1) *Appeal Under Article 62, UCMJ***

**(A) The trial counsel shall have 20 days from the date of the Notice of Appeal to forward the appeal, including the record, to the representative of the United States designated by the Judge Advocate General. The person designated by the Judge Advocate General shall, within 5 days of receipt, file the original record with the Court with a copy to opposing counsel. Appellate government counsel shall have 20 days from the date the appeal is filed with the Court to file a supporting brief. Should the United States decide to withdraw the appeal after it is received by the Court, appellate government counsel shall notify the Court in writing.**

**(B) Appellee shall have 20 days from the date the United States' brief is filed to file an answer.**

**(C) The United States shall have 7 days from the date Appellee's answer is filed to file a reply brief.**

**(2) Pursuant to R.C.M. 1117, an appeal under Article 56(d), UCMJ must be filed within 60 days after the date on which the judgment of the court-martial is entered into the record.**

**(d) The parties shall give appeals under Article 62, UCMJ priority over all other proceedings where practicable.**

Rule 20.1. Judge Advocate General's Designee. The Chief, Government Appellate Division, shall serve as the Judge Advocate General's designee for purposes of appeal under Article 62, UCMJ.

Rule 20.2. Processing of Appeals by the United States.

(a) Upon filing of an appeal under Article 62, UCMJ, the appropriate record of trial and the Notice of Intent to Appeal shall be forwarded to the Clerk of Court with 1 copy of the appeal being forwarded by counsel for the United States (appellant) to the Defense Appellate Division. Except upon motion granted for good cause, counsel for the United States shall have 20 days from the date the original record is deposited with the Court to file an appeal with supporting brief. The appeal shall be docketed under the same title given to the action in the court-martial with the accused and the United States denominated as the sole parties therein.

(b) Upon receipt of the Appeal under Article 62, UCMJ, the Clerk of Court shall assign the matter a Miscellaneous Docket Number and issue a notice of docketing (referral letter) to all parties of real interest.

(c) Once the Appeal under Article 62, UCMJ, and the associated brief are received by the Court, the Clerk of Court shall, when practical, assign the matter for priority consideration.

Rule 20.3. Matters to be Included in the Appeal.

(a) A copy of the Notice of Intent to Appeal under Article 62, UCMJ shall be appended to the Appeal and Brief on Behalf of the United States. The summary of proceedings shall include the date of the military judge's ruling, the date notice of appeal was filed, and the date the record of proceedings was filed with the Clerk of Court.

(b) The appeal shall be accompanied by a brief on behalf of the United States, which shall include:

(1) a statement of the issue(s) appealed;

(2) a statement of jurisdiction;

(2) a statement of the case setting forth a concise chronology, a statement of facts of the case material to the ruling appealed from, and any other pertinent information regarding the proceedings;

(4) a direct and concise argument showing why relief should be granted and including each issue and point of law presented, citing and quoting pertinent authorities;

(5) a statement showing good cause why the appeal was not filed within the time prescribed by J.R.A.P. R. 20(c)(1), if applicable;

(6) proof of service on the Defense Appellate Division (DAD) and civilian appellate counsel, if any;

(7) an appendix containing a record of proceedings prepared in accordance with R.C.M. 908(b)(5), or if the record has not been completed when the appeal is filed, a summary of the evidence pursuant to R.C.M.908(b)(6); and

(8) an appendix, including certificate of notice of appeal showing the date and time of the military judge's ruling and the date and time of service on the military judge.

#### Rule 20.4. Decision Not to Appeal or Withdrawal of Appeal.

After the original record is deposited with the Court, but before the appeal is filed, appellate government counsel shall notify the Court in writing if it decides not to pursue an Appeal under Article 62, UCMJ. The original record will then be returned directly to appellate government counsel. If the government elects to withdraw an existing appeal before the Court under Article 62, UCMJ, before the Court has issued a decision, appellate government counsel shall file a motion to withdraw the appeal.

#### **Rule 21. PETITIONS FOR NEW TRIAL**

**(a) Whether submitted to the Judge Advocate General by the accused in *propria persona* or by counsel for the accused, a timely petition for a new trial submitted under Article 73, UCMJ, while the accused's case is pending before a Court of Criminal Appeals shall be filed in accordance with these and Service Court rules and shall comply with R.C.M. 1210(c).**

**(b) Upon receipt of a petition for new trial submitted by other than appellate defense counsel, the Court will notify all appellate counsel of record of such fact.**

**(c) A petition for new trial shall explicitly state whether the petitioner intends to file a separate brief in support of the petition. Unless the petition specifically states that the petitioner intends to file a supplemental brief, the petition shall be construed as incorporating a brief in support of the petition and the respondent may file an answer within 30 days after filing of the petition. If, alternatively, the**

**petition indicates intent to file a separate brief in support of the petition, the petitioner shall have 30 days from filing the petition to file the brief in support of the petition and the respondent may file an answer within 30 days after filing of the brief. A reply may be filed no later than 7 days after the filing of the respondent's answer.**

**Rule 21.1. Petitions for New Trial.**

(a) **Cases Before the Court.** In cases pending before this Court or the United States Court of Appeals for the Armed Forces, a Petition for New Trial under Article 73, UCMJ, should be addressed to the Judge Advocate General but filed with the Clerk of Court, who receives such petitions and acts in a ministerial capacity in referring the petition to the appropriate Court for action.

(b) **Cases Not Before the Court.** If a Petition for New Trial under Article 73, UCMJ is received on a case not pending before the Court, the petition will be referred directly to the Criminal Law Division for action on behalf of the Judge Advocate General.

**RULE 22. AMICUS CURIAE BRIEFS**

**(a) A brief of an *amicus curiae* may be filed (1) by invitation of the Court; or (2) by motion for leave to file granted by the Court.**

**(b) Only an attorney admitted to practice as a member of the Bar of the Court or an attorney appearing *pro hac vice* may file an *amicus curiae* brief.**

**(c) All motions and briefs filed under Rule 22(a)(2) must contain a statement of the movant's interest and why the matters asserted are relevant to the disposition of the case. *Amicus curiae* briefs filed pursuant to Rule 22(a)(2) that bring relevant matter to the attention of the Court not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored. Unless the movant is a victim of an offense as defined by Article 6b, UCMJ, the motion must also provide a statement as to whether the parties consent to the filing of the *amicus curiae* brief.**

**Rule 22.1. Who may file.**

A brief of *amicus curiae* may be filed only by: (1) an appellate defense or appellate government division of an armed service; (2) invitation by the Court; or (3) leave of this Court granted on motion. A victim or witness of an offense in a case before the Court may request to appear before the Court through counsel by seeking leave to file as an *amicus curiae* under this rule. The brief may be conditionally filed with the motion for leave.

**Rule 22.2. Contents of Motion.**

A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of *amicus curiae* is desirable. Unless otherwise ordered by the Court, a brief of *amicus curiae* in support of a party shall be filed no later than 10 days after that party has filed its brief. If neither party is represented, the brief of an *amicus curiae* shall be filed no later than 10 days after the filing of the government's answer (Article 66, UCMJ, reviews) or the appellee's answer (Article 62, UCMJ, appeals). In the case of a petition for extraordinary relief, an *amicus curiae* brief should be submitted as soon as possible after the filing of the petition. Briefs of *amicus curiae* must be filed in accordance with the Courts rules and in the approved format. Such briefs must indicate service on all parties.

#### Rule 22.3. Student Rule.

A member of the Bar of the Court who represents an *amicus curiae* and is authorized to file a brief under paragraph (a) of this rule may file a motion for leave to have a law student enter an appearance on behalf of an *amicus curiae*. To be eligible to participate under this rule, a law student must be acting under the attorney's supervision and the attorney and the law student must substantially comply with the requirements of Rule 9.4. Argument by a law student granted permission to appear on behalf of an *amicus curiae* may be requested by motion filed under Rule 25.4.

#### Rule 22.4. Timing.

Neither the hearing nor the disposition of a case will be delayed pending action on a motion for leave to file an *amicus curiae* brief, or a motion of *amicus curiae* to participate in a hearing, or in order to await the filing of an *amicus curiae* brief.

#### Rule 22.5. Format and Notice.

An *amicus curiae* brief filed under this rule must comply with requirements for briefs set forth in Rule 17 and the filing and notice requirements under Rule 13.

### RULE 23. MOTIONS

**(a) Content.** All motions, unless made during the course of a hearing, shall state with particularity the relief sought and the grounds therefor.

**(b) Motions to Attach Documents.** If a party desires to attach a statement of a person to the record for consideration by the Court on any matter, such statement shall be made either as an affidavit or as an unsworn declaration under penalty of perjury pursuant to 28 U.S.C. § 1746. All documents containing language other than English shall have attached a certified English translation.

**(c) Opposition.** Unless prescribed otherwise by Service Court rules, any opposition to a motion shall be filed within 7 days after receipt of the motion by the opposing party.

**(d) *Leave to File.*** Any pleading not authorized or required by these or Service Court rules shall be accompanied by a motion for leave to file such pleading. A motion for leave to file the pleading and the pleading may be combined in the same document.

Rule 23.1. Expedited Rulings on Motions.

In appropriate cases, the Court may act immediately on any motion without awaiting an answer from the other party. Any party adversely affected by the Court's action may request reconsideration, vacation, or modification of such action.

Rule 23.2. Filing of Motions

(a) Except as otherwise provided by these Rules, counsel shall not consolidate more than one motion into one pleading.

(b) In order to expedite any given motion, counsel may consult opposing counsel to inform opposing counsel of the intended filing of a specific motion. If opposing counsel consents to the relief requested in the motion, the title of the motion shall begin with the words "Consent Motion." Consent motions will be immediately forwarded to the appropriate appellate judge for action without awaiting a response.

Rule 23.2. Service on Other Parties.

(a) Each motion should be formatted in accordance with Rule 17.1 and Appendix C. Each motion must include the certificate of service attestation prescribed by 13.6. Motions that do not seek an order that would remand or otherwise dispose of a case before the court should include the action block shown below. Examples of motions that seek a dispositive order, include a Motion to Withdraw Appeal, Motion to Abate Proceedings Due to Death of Appellant, and Motion for a Sanity Board.

(b) The action block, when used, will appear at the left margin on the last page of the motion text, with double spacing between each line:

PANEL No. \_\_\_\_\_

GRANTED \_\_\_\_\_

DENIED \_\_\_\_\_

DATE \_\_\_\_\_

When two or more motions are combined, a separately labeled action block will be included for each ruling sought. In addition to the original, the motion must be filed in sufficient copies to permit return of a signed copy to the moving party, all opposing parties, including civilian counsel, and any *amicus curiae*.

### Rule 23.3. Accompanying Documents.

(a) Except as provided in paragraph (b), a party who wants the Court to consider a document that is not contained in the contents of the record of trial as defined in R.C.M. 1112(b) shall file a motion to the Court.

(b) The exceptions discussed in (a) above are as follows:

(1) When an assignment of error includes a claim of error in the post-trial processing of the case, to include an allegation of untimely processing, the Court shall, absent an objection from a party, consider the post-trial documents attached to the record under R.C.M. 1112(f) that were submitted to the convening authority, in resolving the assigned error. This exception applies to documents submitted in accordance with R.C.M. 1106 and 1106A.

(2) When determining the appropriateness of the sentence, absent an objection from a party, the Court shall consider the submissions made under R.C.M. 1106 and 1106A.

(c) Motions to file or judicially notice documents, except documents on file in the Office of the Clerk of Court or already attached to the record under R.C.M. 1112(b) must be accompanied by a legible copy of the document, including a certified translation of any foreign language material and a typed copy of any handwritten material in English, if required for legibility.

### Rule 23.4. Motions for Supplemental Citations of Authority.

In the event relevant new law has been issued or discovered by counsel subsequent to the submission of their brief, answer, or reply, counsel shall supplement their filings by bringing the citation of a relevant authority to the attention of the Court in a motion to cite supplemental authorities. Such motions will briefly explain the relevance of each newly cited authority to the issues before the Court.

### Rule 23.5. Sealed materials.

A motion to examine sealed matters in a record shall comply with Rule 6.9.

### Rule 23.6. Motion to Abate Proceedings.

A motion to abate proceedings may be filed when appropriate. In the case of an appellant who dies pending review under Article 66, UCMJ, such motion shall be accompanied by sufficient evidence of the appellant's death. It is the responsibility of the assigned appellate defense counsel to obtain an original death certificate and submit the motion to this Court, which will review the documents and motion and determine if it is appropriate to abate the proceedings. See Rule 16.1(d).

#### Rule 23.7. Response to Motions.

Unless otherwise specified by the Court, responses to motions for extensions of time must be filed within 2 business days after receipt by the responding party. Responses to all other motions, except for a response to a motion for oral argument filed contemporaneously with a brief, must be filed within 7 calendar days after receipt by the responding party. Where opposing counsel files a motion for oral argument contemporaneously with a brief, responding counsel may likewise address the motion contemporaneously with responding counsel's response brief. With all motions, if opposing counsel know that he or she will not be filing a response, counsel shall inform the appropriate panel commissioner as soon as practicable.

## IV. PROCEEDINGS OF THE COURT

### RULE 24. EXTENSIONS OF TIME AND INTERLOCUTORY MATTERS

**Except as otherwise provided in Rule 31(d), the Court, in its discretion, may extend any time limits prescribed and may dispose of any interlocutory or other appropriate matter not specifically covered by these rules, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case.**

#### Rule 24.1. Motion for Extension of Time.

(a) Upon motion and for good cause shown, the Court may grant an extension of time for counsel to file a brief, motion, motion response, or other filing permitted under these rules. Except for reply briefs, any motion for extension shall be requested at least 5 days prior to the filing being due. Motions for extension of time to file reply briefs shall be requested at least 1 business day prior to the filing being due. Each motion for extension of time shall note whether it is the first, second, third, or subsequent such motion in the case, and include the original and current due dates. Until a motion for an extension of time has been granted, the original filing deadline remains in effect.

(b) Except for those motions for an extension of time permitted by Rule 24.2 to be consolidated, all such motions require a particularized showing of necessity for the extension, and shall state the length of extension sought which, in any event, shall not exceed 30 days. When citing engagement in other litigation as a cause for delay, counsel must provide specific information concerning the number and type of cases and the Courts involved. When citing the complexity of issues on appeal as a cause for delay, counsel shall explain the number and nature of those issues. Counsel shall fully and adequately explain hardship to counsel as a cause for delay. In each case, the motion shall include information on whether the trial was contested, the number of transcript pages, the approved sentence and date of sentencing, and the appellant's current status as to confinement. When possible, counsel shall also indicate if the appellant concurs with the request for delay; if not possible, counsel shall indicate why appellant's concurrence cannot be obtained.

Rule 24.2. Consolidated Motion for Extension of Time.

(a) Counsel for the appellant or for the government may consolidate cases within their first request for extension of time to file initial briefs in cases before this Court for appellate review under Article 66(b), UCMJ. However, this does not apply to:

- (1) Cases in which counsel for the appellant designated pursuant to Article 70(c), UCMJ, have been excused by the appellant or by the appellant's civilian counsel;
- (2) Cases appealed to the Court by the accused under Article 66(b)(1), UCMJ.
- (3) Cases remanded to this Court by its superior court(s);
- (4) Cases returned to this Court following proceedings at the trial or convening authority level as ordered by this or its superior court;
- (5) Responses to an issue specified by the Court or to a supplemental assignment of error permitted by the Court to be filed;
- (6) Cases referred to the Court pursuant to Article 69(d)(1)(A), UCMJ.
- (7) Cases returned to the Court following a *DuBay* hearing.

(b) A consolidated motion for extension of time shall be electronically filed with the Clerk of Court and served on opposing counsel in the manner prescribed in Rules 13.1 and 13.2., with the following exception:

(1) the email subject line for electronic filing will use the following format:

DAD Consolidated EOT Motion-(YYMMDD); or  
GAD Consolidated EOT Motion-(YYMMDD).

(2) the body of the email will contain a listing of case names and ACMIS numbers for all cases contained in the motion for enlargement of time.

(2) the consolidation motion for extension will be presented in a .pdf format with the following naming convention:

DAD Consolidated EOT Motion-(YYMMDD); or  
GAD Consolidated EOT Motion-(YYMMDD).

(c) Unless otherwise specified by the Court, a consolidated motion for extension of time will be granted for a period not to exceed 90 days from the date the filing was due.

(d) A consolidated motion for enlargement of time to file must indicate that the Division Chief of Acting Division Chief of the Defense Appellate Division or the Government Appellate Division has determined the extension requested is necessary in the interest of justice due to the volume of the appellate workload then pending within the division.

(e) The Clerk of Court may grant a consolidated motion for extension of time to file, subject to reconsideration pursuant to Rule 31.1.

#### Rule 24.3. Motion for Extension of Time – Out of Time.

Any motion for extension of time not filed at least 5 days prior to the filing being due will be titled as a motion filed out of time. The proponent of such a motion shall, via email, serve a copy of the motion on the commissioner of the panel to which the case is assigned. Good cause shall be shown as to why the filing was submitted out of time. The Court may order a status conference to discuss the out of time filing. The filing of a motion for extension of time does not automatically toll the filing deadline, and counsel should not presume such motion will be granted by the Court.

### **RULE 25. ORAL ARGUMENTS**

**Oral arguments may be heard in the discretion of the Court upon motion by either party or when otherwise ordered by the Court. The motion of a party for oral argument shall be made no later than 7 days after the filing of an answer to an appellant's brief. Such motion shall identify the issue(s) upon which counsel seek argument. The Court may, on its own motion, identify the issue(s) upon which it wishes argument.**

#### Rule 25.1. Oral Argument Motions.

A Motion for Oral Argument may be filed contemporaneously with the filing of a Brief. The Court's hearing calendar is established by Notice of Hearing issued by the panel in each case. The Court sets the hearing calendar. Counsel for either party may express a preference for argument dates and alert the Court of any conflicts or hardships. If the Court's calendar conflicts with that of another Court in which said counsel is scheduled to appear, counsel shall so notify the Court, orally or in writing, within 2 days after this Court's Notice of Hearing is issued. Otherwise, a party desiring rescheduling shall file a Motion to (Postpone) (Expedite) (Advance) Oral Argument. Rescheduling is subject to a showing of good cause.

#### Rule 25.2. Joint Appendix.

(a) In all cases in which this Court hears oral argument, no later than 10 days prior to the date of the oral argument or from the date of issuance of the notice of hearing, whichever is earlier, the parties shall file before this Court four printed copies of a Joint Appendix. Should this Court hear oral argument *en banc*, the parties shall file sufficient additional printed copies of the Joint Appendix for each judge and commissioner assigned to the Court (including the Chief Judge's commissioner).

(b) The Joint Appendix shall contain:

(1) The notice of hearing

(2) All briefs and required attachments filed in this case, including reply briefs.

- (3) The promulgating order and the charge sheet(s).
- (4) The index to the record of trial.
- (5) Relevant portions of the pleadings, charges, and findings from the proceeding below to assist the judges in resolving the issues addressed at oral argument.
- (6) Other parts of the record of trial to which the parties wish to direct the Court's attention to assist the judges in resolving the issues addressed at oral argument.
- (7) Relevant extracts of UCMJ articles, rules, and regulations.

(c) Format. The Joint Appendix will be produced on 8.5 by 11 inch white paper, be printed on a single side of the page, bound in a manner that is secure and does not obscure the text, and will permit the contents to lie reasonably flat when open. As an exception, a joint Appendix exceeding 100 pages shall be printed on both sides of the page. The Joint Appendix shall contain a table of contents, to include a description of the portion of the record of trial it references. Pages in the Joint Appendix shall be sequentially numbered in a manner that does not obscure any page numbers reflected in the record of trial. Classified material or matters under seal that are to be included in a Joint Appendix shall be submitted in a separate volume, clearly designated as containing sealed or classified material. Sealed or classified sealed material shall be handled in accordance with Rules 6.9 – 6.11.

(d) Agreement and Designation. The parties are encouraged to agree on the contents of the Joint Appendix. In the absence of agreement, the parties must, within 5 days of the Joint Appendix due date, serve on each other a designation of the parts of the record to be included in the Joint Appendix. The parties must then assemble the Joint Appendix by designating each parties' respective portions of the Joint Appendix.

### Rule 25.3. Argument

(a) Unless the Court specifies otherwise, each side will be allotted 30 minutes to present oral argument. Counsel desiring additional time shall show good cause by Motion for Leave to Exceed Time Limit for Oral Argument. Counsel representing the appellant or petitioner (or the moving party when the subject of the hearing is a motion) shall argue first, but may reserve any portion of the time for rebuttal. Surrebuttal ordinarily is not permitted.

(b) Only one counsel may present oral argument for each party. Any party wishing to deviate from this rule must obtain leave of the Court by motion. Any counsel who has entered an appearance in the case may be seated at the counsel table. Absent leave of Court, only members of the Bar, counsel appearing *pro hac vice*, or *amicus curiae* may be seated at the counsel table. Military counsel shall appear in the Army Service Uniform. Civilian counsel shall wear similarly dignified business attire. Use of tobacco products, eating, drinking (counsel arguing the case may have water in the courtroom), or chewing gum is not permitted in the Courtroom. Cellular telephones, watch alarms, and other similar devices, will be turned off. Recording devices (audio recording devices,

cameras, video cameras, phone cameras, web cameras, and similar devices) are prohibited unless the Court grants prior approval.

Rule 25.4. Argument by Amicus Curiae or Appellant Pro Se.

The Court, at its discretion, may grant a motion by *amicus curiae* counsel or by appellant *pro se* for leave to participate in oral argument. A motion of *amicus curiae* to participate in oral argument will not normally be granted, except where good cause is demonstrated for *amicus curiae*'s participation in oral argument.

Rule 25.5. Supplemental citations of authority.

(a) Supplemental citations of authority may be submitted electronically in accordance with Rule 13.2 and 13.3 by Motion for Leave to File no later than 5 business days prior to oral argument unless otherwise authorized by the Court. Moving counsel shall file a number of copies sufficient for each judge and commissioner.

(b) Within 2 business days following oral argument, counsel may submit a Motion for Leave to File a Memorandum of Argument or for a Motion for Leave to File a Supplemental Citation of Authority for any argument or citation made during the hearing that was not set forth in the brief filed prior to argument.

(c) Moving counsel citing unpublished opinions shall file paper copies sufficient for each judge and commissioner and opposing counsel. Moving counsel are not required to provide paper copies of previously published supplemental citations of authority. If moving counsel provides paper copies to the Court, paper copies shall be provided equally to opposing counsel.

Rule 25.6. Failure to Appear.

The Court may regard the failure of appellate counsel to appear at the time and place set for oral argument as a waiver of argument. The Court may proceed without argument or continue the case until a later date. At its discretion, the Court may issue a show cause order requiring counsel to provide a written explanation for the failure to appear.

**RULE 26. RECORDING, PHOTOGRAPHING, BROADCASTING, OR TELECASTING OF HEARINGS**

**The recording, photographing, broadcasting, or televising of any session of the Court or other activity relating thereto is prohibited unless specifically authorized by the Court.**

Rule 26.1. Photographing, Televising, Recording, or Broadcasting of Oral Argument.

(a) An audio recording of an oral argument before the Court is ordinarily produced by Court staff or other personnel working on behalf of the Court. The recording of an oral argument in an individual case may be cancelled by order of the Court for good cause, including

unavailability of equipment or personnel. This rule does not create any right to a recording by any party in a case pending before this Court.

(b) Army personnel may request access to an existing recording of an oral argument by contacting the Clerk of Court.

(b) Any other photographing, televising, recording, or broadcasting of an oral argument is prohibited unless specifically authorized by the Court.

#### **RULE 27. EN BANC PROCEEDINGS**

(a) A majority of judges who are in regular active service, as defined in Rule 7 or Service Court rules, and not disqualified may, *sua sponte* or in response to a suggestion, order that an appeal or any other proceeding be considered or reconsidered by the Court *en banc*. *En banc* consideration or reconsideration is not favored and ordinarily will not be ordered unless: (1) necessary to secure or maintain uniformity of the Court's decisions; (2) the opinion overrules a binding precedent of the Court; (3) the proceeding involves a question of exceptional importance; or (4) a sentence being reviewed pursuant to Article 66, UCMJ, extends to death.

(b) A party may suggest consideration or reconsideration of a proceeding *en banc*. In cases being reviewed pursuant to Article 66, UCMJ, a suggestion for *en banc* consideration must be filed with the Court within 7 days after the United States files its answer to the assignments of error, or the appellant files a reply under Rule 18(d). In other proceedings, the suggestion must be filed with the party's initial pleading, or within 7 days after the response thereto is filed. A suggestion for *en banc* reconsideration must be made within the time prescribed by Rule 31 for filing a motion for reconsideration. No response may be filed to a suggestion for *en banc* consideration or reconsideration unless the Court so orders.

(c) A suggestion for *en banc* consideration or reconsideration shall be transmitted to each judge of the Court who is in regular active service and not disqualified, but a vote need not be taken to determine whether the case shall be considered or reconsidered *en banc* unless a judge requests a vote.

(d) Although only the Court *en banc* may overrule a binding precedent, a party may argue, in its brief and oral argument, to overrule a binding precedent without petitioning for hearing *en banc*. The panel will decide whether to ask the remaining judges to consider hearing the case *en banc*.

Rule 27.1. Definitions. Within the meaning of J.R.A.P. R. 27(a):

(a) “uniformity of the Court’s decision” refers to panels of this Court and of the other service courts of criminal appeals.

(b) a “question of exceptional importance” includes a novel question of law not previously considered by a military appellate court and argument that existing case law should be overruled or modified.

(c) Reserve appellate judges recalled to active duty, or otherwise serving on active duty orders in accordance with the provisions contained within Title 10, United States Code, will ordinarily be counted in determining quorum and participation in an *en banc* decision.

Rule 27.2. *En Banc* Proceedings.

(a) A suggestion that a proceeding be considered or reconsidered by the Court sitting as a whole (*en banc*) may be made by a party or any judge. The term “proceeding” refers to the disposition of an appeal under Article 62 or 66, UCMJ, a case referred to the Court pursuant to Article 69(d)(1)(A), UCMJ, or a petition for extraordinary relief. The term does not include interlocutory matters, such as a motion that would not otherwise finally dispose of a case.

(1) A party’s Suggestion for Consideration by the Court *en banc* will be filed in conformance with the requirements of Rules 13.1 and Rule 13.2 including the requirements for service. For cases filed under 17.2 the Court may direct submission of additional copies of any pleading by either party. The suggestion shall state with specificity the basis upon which the consideration or reconsideration *en banc* is requested.

(2) When the suggestion is filed with a party’s initial pleading, the Court need not act upon the suggestion until the opposing party’s response to that pleading is filed. If the opposing party is not filing a response, they shall notify the Clerk of Court.

(3) The Court will issue a notice or order responding to the suggestion.

(A) If the suggestion is adopted, each party must, within 7 days, file sufficient additional copies of its pleadings for each judge and commissioner assigned to the Court (including the Chief Judge’s commissioner). All subsequent papers filed with the Court either by a party or an *amicus curiae*, must be filed in a like number of copies.

(B) If a suggestion is not adopted and the vote is not unanimous, the notice or order responding to the suggestion will annotate the vote was not unanimous and list the judges by name who voted for an *en banc* consideration or reconsideration.

(b) Under Rule 31.2(e), a party may suggest that the Court sit *en banc* in reconsidering a decision issued by a panel of the Court. The party suggesting the Court sit *en banc* to reconsider a decision by a panel must demonstrate reconsideration in appropriate because:

(1) Consideration by the full Court is necessary to secure or maintain uniformity of decision; the proceedings involve a question of exceptional importance; or a sentence being reviewed pursuant to Article 66 extends to death; and

(2) A material legal or factual matter was overlooked or misapplied in the decision; a change in the law occurred after the case was submitted and was overlooked or misapplied by the Court; or the decision conflicts with a decision of the Supreme Court of the United States, the United States Court of Appeals for the Armed Forces, another service Court of Criminal Appeals, or this Court.

#### Rule 27.3. Opportunity to Respond.

The Court permits a party to file a response to a suggestion for consideration or reconsideration *en banc*. Such response shall be filed within 7 calendar days from the original suggestion.

### RULE 28. CONTEMPT

#### (a) *Contempt Proceedings*

(1) Under Article 48, UCMJ, any judge of the Court may punish any person for contempt. :

(2) ***Summary Disposition.*** A judge of the Court may summarily punish contempt when the judge directly witnesses the contemptuous conduct during the course of an appellate proceeding. Prior to holding a person in contempt, the judge shall provide the alleged offender with an opportunity to make a statement. If the alleged offender declines to make a statement, no negative inference will be drawn. If a contempt is punished summarily, the judge shall ensure there is an adequate record accurately reflecting the misconduct that the judge directly witnessed.

(3) ***Disposition upon Notice and Hearing.*** If the judge did not personally witness the contemptuous conduct at issue, the alleged offender shall be provided written notice of the alleged contempt and given a reasonable opportunity to respond and to present evidence before the Court. The written notice shall include notice that the alleged offender has the right to be represented by counsel and that no negative inference will be drawn from failure to respond and to present evidence. The government shall provide military alleged offenders counsel at no expense to them. The

contempt must be proved beyond a reasonable doubt before it may be punished.

- (4) *Appeal.* A person found in contempt by the Court shall be notified of their right to appeal the contempt findings and sentence to the United States Court of Appeals for the Armed Forces in accordance with that Court's rules and Article 48, UCMJ.
- (5) *Stays.* Upon written request or upon its own motion, the Court may stay the imposition of punishment pending an appeal.

**(b) Appeals from Contempt Proceedings Below**

- (1) *Notice of Appeal.* Any person found in contempt by a military judge or military magistrate may appeal the punishment by filing a notice of appeal with the Clerk of the Court within 20 days of being found in contempt. The notice of appeal must:
  - (A) be titled *In Re [Contempt-Appellant]*;
  - (B) specify the person taking the appeal;
  - (C) list the parties to the proceeding, the name of the judicial officer who made the contempt finding, any alleged victims as defined under Article 6b, UCMJ, and the punishment awarded;
  - (D) list the names and addresses of counsel for all parties to the proceeding and any alleged victims; and
  - (E) indicate whether the contempt-appellant requests a stay of unexecuted punishment.
- (2) *Action by United States upon Service.* Within 20 days of receiving or filing a notice of appeal, the trial counsel shall forward a record of the contempt proceedings to appellate counsel for the United States. Appellate counsel for the United States shall promptly file the original record with the Clerk of the Court and forward copies to opposing counsel.
- (3) *Action by Court upon Service.* Upon receipt of any notice of appeal, the Clerk will docket the case and forward a copy of the notice to the appropriate Judge Advocate General or designee.

**(4) Resolution of Appeal**

**(A) Briefing.** A contempt-appellant must file a brief in support of his or her appeal within 30 days of being served with a copy of the record under subsection (b)(2) of this rule. Opposing counsel may respond within 20 days of receiving the contempt-appellant's brief. If the appellate government division is conflicted or elects not to respond, the Court may direct the Judge Advocate General to detail appellate counsel to defend the finding of contempt and punishment.

**(B) Argument.** The Court may, in its discretion, order oral argument.

**(C) Final action.** An appeal of a finding of contempt will be reviewed for an abuse of discretion. The Court may affirm or set aside the finding or the punishment, in whole or in part, or make any other order in the case as the circumstances require.

**RULE 29. ARTICLE 66(F) PROCEEDINGS**

**(a) In General.** The Court may, upon motion by any party or *sua sponte*, order a remand under Article 66(f)(3), UCMJ for further proceedings. Such orders shall be directed to the Chief Trial Judge. The Judge Advocate General or designee shall designate a general court-martial convening authority who shall provide support for the hearing. Although within the discretion of the Court, remand is generally not appropriate to determine facts or investigate matters which could, through a party's exercise of reasonable diligence, have been investigated or considered at trial, or to resolve post-trial claims that are:

- (1) inadequate on their face;
- (2) facially adequate but appellate filings and the record as a whole compellingly demonstrate their improbability;
- (3) uncontested; or
- (4) based on statements or documents not included in the record of trial and
  - (A) the statement is unsworn or not filed in compliance with Rule 23(b); or
  - (B) the statement is made by a person who lacks personal knowledge of the material facts that the Court is asked to rely on.

**(b) Jurisdiction.** The Court ordering remand retains jurisdiction unless it expressly dismisses the appellate proceeding.

(1) *Remand When Court Retains Jurisdiction.* When a Court remands but does not dismiss the appellate proceeding, such as for fact-finding or issuance of a certificate of correction, the remand does not return jurisdiction over the case to the court-martial and military judge. Rather, the Court retains jurisdiction over the case throughout the Article 66(f) proceeding. Such a remand is an appellate proceeding conducted on behalf of the Court but presided over by a military judge or magistrate. Any finding or recommendation arising out of a proceeding shall be forwarded to the Court for consideration and action.

(2) *Remand When Court Dismisses Appellate Proceeding and Returns Jurisdiction.* A remand of a case that returns jurisdiction over the case to the military judge and court-martial will specifically state the scope of the remand and the range of actions that may be taken. If an action during a remand terminates the case, an appellate attorney authorized to act on behalf of the United States shall so inform the Court. Such a remand may be appropriate, for instance, when a matter in the case requires corrective action by the trial court such as to correct an error in the judgment or to address an inconsistency or omission in the factual basis of an accused's plea.

(c) *Remand Impracticable.* The general court-martial convening authority designated to provide support for the proceeding pursuant to R.C.M. 810(f)(1) may determine that the proceeding is impracticable. In such a case, an appellate attorney authorized to act on behalf of the United States shall forward this determination, accompanied by an explanation for the determination, to the Court. The Court may direct that the proceeding continue. If the Court does not direct that the proceeding continue, the Court may take any other action authorized by law that does not materially prejudice the substantial rights of the accused.

(d) *Article 66(f) Hearings.* The military judge detailed to an Article 66(f) proceeding may order one or more Article 66(f) hearings as may be necessary to fulfill the purpose of the remand. The following procedural rules shall apply at Article 66(f) hearings directed under this rule:

- (1) A record of the proceedings shall be created and certified in substantial compliance with R.C.M. 1112.
- (2) The parties may question and challenge the military judge as provided by R.C.M. 902.
- (3) In the case of a remand in which the Court has returned jurisdiction over the case under subsection (a)(2) the rules applicable to the conduct of a post-trial Article 39(a) shall apply.

**(4) In the case of a remand in which the Court has maintained jurisdiction over the case under subsection (a)(1) the following rules shall apply:**

**(A) The Judge Advocate General shall provide the accused with the same right to counsel as would be had at a post-trial Article 39(a) session.**

**(B) The accused's right to personally be present at a proceeding shall generally be the same as for similar proceedings held in United States District Courts. The military judge may authorize remote appearances of witnesses and parties as provided by R.C.M. 914A and 914B.**

**(C) The military judge may apply any other Rule for Courts-Martial which the military judge determines is appropriate to apply to a post-conviction fact-finding hearing for the just determination of the issues involved. In applying such a rule, the military judge shall construe the rule to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.**

Rule 29.1. Continuing Jurisdiction. The Court retains jurisdiction over cases initially reviewed under Article 66, Uniform Code of Military Justice, that are remanded for further proceedings notwithstanding any subsequent reduction of the sentence below the level requiring the Judge Advocate General to refer the case to this Court pursuant to Article 66(b), UCMJ.

#### **RULE 30. ORDERS AND DECISIONS OF THE COURT**

**The Court shall give notice of its orders and decisions by promptly serving them, when rendered, on appellate counsel, including civilian counsel, if any, and the Judge Advocate General, or designee, as appropriate.**

Rule 30.1. Opinions of the Court.

(a) Published opinions of this Court are to be reported (published) in WEST'S MILITARY JUSTICE REPORTER. Published opinions are those that call attention to a rule of law or procedure that appears to be currently overlooked, misinterpreted, or which constitutes a significant contribution to military justice jurisprudence. Published opinions serve as precedent, providing the rationale of the Court's decision to the public, the parties, military practitioners, and judicial authorities.

(b) Any panel of the Court or an individual judge of the Court may propose an opinion be published as an Opinion of the Court.

(c) Forwarding of Opinions. The Clerk of Court shall forward a copy of each of the Court's published opinions to West Publishing Company for inclusion in the MILITARY JUSTICE REPORTER and the WESTLAW electronic research database during the week in which the opinion is released. Opinions provided to West Publishing Company shall also be forwarded for inclusion in the LEXIS electronic research database.

Rule 30.2. Opinions that are not an Opinion of the Court.

This Court issues decisions in the form of Summary Affirmances, Summary Dispositions, and Memorandum Opinions, which may be cited and considered by the Court as persuasive authority.

Rule 30.3. Orders of the Court.

An order of the Court is a command or directive issued by the Court and may be either interlocutory or final in nature. An order of the Court may be signed by an appellate judge or it may be authenticated by signature of the Clerk of Court or his or her designee. When an order of the Court is authenticated, the official signature block of the signee will be included in the authentication and the Court seal shall be affixed to the document.

Rule 30.4. Types of Orders of the Court.

(a) Specifying an Issue. If the Court desires additional briefs on an issue, whether or not raised by counsel, it may issue an order specifying the issue(s) to be briefed and the time frame within which the response(s) shall be filed with the Court.

(b) Miscellaneous Orders of the Court. The Court may issue any further orders necessary for the resolution of an issue.

Rule 30.5. Effective Date of Decision.

Decisions of this Court are not self-executing. Normally, decisions of this Court become final when the time period for requesting reconsideration has expired and neither of the parties has timely filed to have the issue heard by the Court of Appeals for the Armed Forces.

Rule 30.6. Service.

The Clerk of Court shall serve all Opinions and Orders of the Court on the Defense Appellate Division and Government Appellate Division by transmitting the document via e-mail to the organizational email addresses specified in Rule 13.5. Where the appellant is represented by civilian counsel, service shall be accomplished by emailing a copy of the document to the email address specified in Rule 12.1.

**RULE 31. RECONSIDERATION**

**(a) The Court may, in its discretion and on its own motion, enter an order announcing its intent to reconsider its decision or order in any case not later than 30 days after service of such decision or order on the appellate defense counsel or on the appellant, if the appellant is not represented by counsel, provided a petition for grant of review or certificate of review has not been filed with the United States Court of Appeals for the Armed Forces, or a record of trial**

for review under Article 67(b) has not been received by that Court. No briefs or arguments shall be received unless the order so directs.

(b) Provided a petition for grant of review or certificate for review has not been filed with the United States Court of Appeals for the Armed Forces, or a record of trial for review under Article 67(b) or writ appeal has not been received by the United States Court of Appeals for the Armed Forces, the Court may, in its discretion, reconsider its decision or order in any case upon motion filed either by appellate counsel within 30 days after receipt by counsel, or by the appellant if the appellant is not represented by counsel, of a decision or order.

(c) A motion for reconsideration shall briefly and directly state the grounds for reconsideration, including a statement of facts showing jurisdiction in the Court. A reply to the motion for reconsideration will be received by the Court only if filed within 7 days of receipt of a copy of the motion. Oral arguments shall not be heard on a motion for reconsideration unless ordered by the Court. The original of the motion filed with the Court shall indicate the date of receipt of a copy of the same by opposing counsel.

(d) The time limitations prescribed by this rule shall not be extended under the authority of Rule 24 or Rule 32 beyond the expiration of the time for filing a petition for review or writ appeal with the United States Court of Appeals for the Armed Forces, except that the time for filing briefs by either party may be extended for good cause.

#### Rule 31.1. Motion to Reconsider Interlocutory Orders.

Upon motion by a party or on its own motion, the Court may reconsider an interlocutory order previously rendered by it, provided that jurisdiction of the case has not been transferred to the Court of Appeals for the Armed Forces. Jurisdiction vests with the Court of Appeals for the Armed Forces when a petition or certificate has been filed with that Court. A motion for reconsideration must state with particularity the interlocutory order the moving party seeks to have reconsidered, and whether any other court has acquired jurisdiction over the case.

For example, a party may move for reconsideration of an order to conduct a hearing under *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967). Such a motion must provide a showing of good cause before the Court will reconsider a court order.

#### Rule 31.2. Motion to Reconsider Decisions or Orders Terminating Cases.

(a) In General. Upon its own motion and within 30 days of its decision or order, or upon motion by a party within 30 days after service of the decision to the respective parties, the Court may reconsider a decision or order terminating the case previously rendered by it, provided that jurisdiction of the case has not been transferred to the Court of

Appeals for the Armed Forces. Jurisdiction vests with the Court of Appeals for the Armed Forces when a petition or certificate has been filed with that Court. A motion for reconsideration must state the date on which the party was served with a copy of the Court's prior decision, which portions of the decision the moving party seeks to have reconsidered, the basis for reconsideration, and whether any other court has acquired jurisdiction over the case.

(b) Determination of Reconsideration. Ordinarily, reconsideration will not be granted without a showing that one of the following grounds exists:

- (1) A material legal or factual matter was overlooked or misapplied in the decision;
- (2) A change in the law occurred after the case was submitted and was overlooked or misapplied by the Court;
- (3) The decision conflicts with a decision of the Supreme Court of the United States, the Court of Appeals for the Armed Forces, or another service court of criminal appeals, or this Court; or
- (4) New information is received that raises a substantial issue as to the mental responsibility of the accused at the time of the offense or the accused's mental capacity to stand trial.

(c) Order Granting Reconsideration. Unless otherwise announced, an order granting reconsideration vacates the decision to be reconsidered.

(d) Panel Reconsideration. A motion for reconsideration of a panel decision shall, when practical, be referred to the same designated panel that originally decided the case. If the composition of the panel has changed since issuance of the decision, the Chief Judge may appoint a special panel consisting of those members of the initial panel still available to serve. When an appellate judge who participated in the decision is unavailable, the Chief Judge may appoint a substitute judge.

(e) Motion for Reconsideration of a Panel Decision *En Banc*. A motion for reconsideration of a panel decision may be accompanied by a Suggestion for Reconsideration by the Court sitting as a whole (*en banc*) in accordance with Rule 27. In addition to specifying all grounds for reconsideration per Rule 31.2(b), the Suggestion for *en banc* Reconsideration must establish that *en banc* consideration is appropriate because: (1) consideration by the full Court is necessary to secure or maintain uniformity of decision; or (2) the proceedings involve a question of exceptional importance; or (3) the sentence being reviewed pursuant to Article 66, UCMJ extends to death.

### **RULE 32. SUSPENSION OF RULES**

**For good cause shown, the Court acting *en banc* or in panel may suspend the requirements or provisions of any of these rules in a particular case on a motion**

**of any party or *sua sponte* and may order proceedings in accordance with its direction.**

Rule 32.1. Suspending the Internal Rules.

For good cause shown, the Court acting as a whole or a panel may suspend the requirements or provisions of any of these internal rules on petition of a party or on its own motion and may order proceedings in accordance with its direction.

## **V. ADDITIONAL INTERNAL RULES**

### **RULE 33. CLERK OF COURT**

The Clerk of Court receives documents for filing with the Court and has authority to reject any submitted filing that does not comply with these Rules. The Clerk maintains the Court's records and will not permit any of them to be removed from the Court except as authorized by the Court. Any document filed with the Clerk and made a part of the Court's records may not thereafter be withdrawn from the official Court files.

### **RULE 34. ADMINISTRATIVE MATTERS**

Rule 34.1. General Administrative Matters.

(a) Court Hours. The Court's general public business hours are from 0830 to 1530 hours, every day except Saturdays, Sundays, and legal holidays, or as otherwise ordered by the Court. The Court's chambers may be closed upon direction of the Chief Judge.

(b) Restricted Areas. Visitors, including counsel, shall not proceed beyond the reception area without first checking in with a paralegal or the Clerk of Court.

(c) Requests to Examine Records of Trial and Other Official Documents. Requests by appellate counsel to examine unclassified original records of trial and other official documents that are not protected by judicial privilege shall be made by contacting the Office of the Clerk of Court. Examination shall be done in a designated area within the Office of the Clerk of Court. Removal of an original record of trial from the Court will only be permitted upon motion with the approval of the Clerk of Court or his or her designee.

(1) Counsel representing a victim, as defined in 10 U.S.C. § 806b(b), in a matter within the jurisdiction of the Court, may petition the Court to examine unclassified original records of trial and other official documents that are not protected by judicial privilege. Such petitions must identify the person represented by counsel and include a concise statement regarding the counsel's need for the record of trial or other documents to perform his or her official duties. Counsel filing a petition on behalf of a victim must comply with Rule 8.1 concerning qualification of counsel and must serve all counsel of record with a copy of the petition.

(2) Counsel representing a victim, as defined in 10 U.S.C. § 806b(b), in a matter within the jurisdiction of the Court, may petition the Court to examine sealed or classified portions of the record. Such filing must include in their petition the specific legal authority authorizing access to that portion of the record of trial.

(d) Requests for Information. All requests for information concerning a matter or case pending before the court from a party or a member of the Judge Advocate General's Corps of the Army shall be referred to the Clerk of Court. Media and other inquiries from outside the Judge Advocate General's Corps shall be forwarded at the discretion of the Clerk of Court to the appropriate office within the Judge Advocate General's Corps for further action.

(e) Cases Pending Before Other Courts. Appellate counsel shall promptly inform the Clerk of Court if a case that is presently before the Court is also pending before any other court.

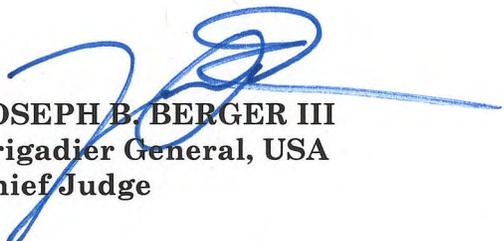
#### Rule 34.2. Court Docket.

The Office of the Clerk of Court shall maintain: (1) a regular case docket for cases referred to the Court by TJAG under Articles 66 and 69, UCMJ, and cases returned to the Court under Article 67, UCMJ; (2) a miscellaneous case docket for petitions for new trial under Article 73, UCMJ, petitions for extraordinary relief, appeals brought by the United States under Article 62, UCMJ, and other matters not covered in the regular case docket; and (3) an oral argument docket.

(a) ACMIS Number. The Army Courts-Martial Information System (ACMIS) will automatically assign the appropriate ACMIS docket number to all original records of trial docketed with the Court. All pleadings or documents filed in a specific case shall bear the assigned ACMIS docket number.

(b) Notice of Docketing (Referral to Panel). The Office of the Clerk of Court shall electronically serve upon all counsel of record a Referral Letter indicating the date the case was docketed with the Court as well as the panel of assignment. All pleadings and documents filed shall bear the applicable panel number.

(c) Pleadings. All pleadings and documents filed, and any action by the Court relative to a case, shall be entered in the appropriate docket. Entries in each docket shall show the date, the nature of each pleading or document filed, and the substance of any action by the Court.



**JOSEPH B. BERGER III**  
Brigadier General, USA  
Chief Judge

**OFFICIAL:**

A handwritten signature in black ink, reading "Malcolm H. Squires, Jr." with a long horizontal flourish extending to the right.

**MALCOLM H. SQUIRES, JR.**  
**Clerk of Court**

## Appendices

### *Appendix A – Format for Brief on Behalf of Appellant*

#### IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**BRIEF ON BEHALF OF  
APPELLANT**

v.

Docket No. ARMY 2017XXXX

[Rank of Appellant]

**[NAME OF APPELLANT]**

United States Army

Appellant

Tried at [trial location], on [date(s)],  
before a [general/special] court-martial  
appointed by [convening authority],  
[military judge] presiding.

TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

#### **Assignment(s) of Error**

[Set forth each assignment of error, capitalized and in bold type. If asserting more than one error, number each assignment of error with consecutive Roman Numerals. *See* ACCA Rule 17.3 regarding issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).]

#### **Statement of the Case**

[Set forth a concise summary of the chronology of the case, including dates of trial, the general nature of the charges, pleas, findings, and sentence at trial. Include the action of the convening authority and any other pertinent information about the processing of the case.]

#### **Statement of Facts**

[Accurately set forth all facts pertinent to the issues raised, including specific page references and exhibit designations. Answers may adopt the appellant's statement

**Panel X**

of facts if there is no dispute; may state additional facts; or, if there is a dispute, may restate the facts as they appear from the appellee's viewpoint. The repetition of uncontroverted matters is not desired. Assertions of fact should be supported by specific citations to the record of trial, exhibits, or allied papers, as appropriate.]

### **Argument**

[Set forth each assignment of error in bold type, followed by separate argument for each error. Arguments shall discuss briefly the question presented, citing and quoting such authorities as are deemed pertinent. Each argument shall include a statement of the applicable standard of review and must be followed by a prayer for the specified relief requested.]

### **Appendix**

[An appendix may set forth matters for the convenience of the Court, such as extracts from the record of trial, statutes, rules, or regulations. Appendices may not be used to submit extra-record factual matters, which must instead be submitted to the Court by separate motion.]

[Signature of Counsel]

[Name, rank and branch of military counsel, or name of civilian counsel]

[Title]

[Organization]

[Phone Number (if civilian counsel)]

[Email Address (if civilian counsel)]

## Certificate of Service

I certify that a copy of the foregoing was (mailed) (delivered) (sent via electronic submission) to \_\_\_\_\_ at \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[Signature of Certifying Person] \_\_\_\_\_

[Typed Name of Certifying Person]

[Organization or Firm]

[Phone Number (if civilian counsel)]

[Email Address (if civilian counsel)]

*Appendix B – Format for Merits Brief*

**IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

UNITED STATES

Appellee

**BRIEF ON BEHALF OF  
APPELLANT**

v.

Docket No. ARMY 2017XXXX

[Rank of Appellant]

**[NAME OF APPELLANT]**

United States Army

Appellant

Tried at [trial location], on [date(s)],  
before a [general/special] court-martial  
appointed by [convening authority],  
[military judge] presiding.

TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

The undersigned appellate defense counsel attests that [he/she] has, on behalf of Appellant, carefully examined the record of trial in this case. Appellant does not admit that the findings and sentence are correct in law and fact, but submits the case to this Honorable Court on its merits with no specific assignments of error.\*[if *Grosteffon* matters are submitted].

[Signature of Counsel]

[Name, rank and branch of military counsel, or name of civilian counsel]

[Title]

[Organization]

[Phone Number (if civilian counsel)]

[Email Address (if civilian counsel)]

---

\*Pursuant to *United States v. Grosteffon*, 12 M.J. 431 (C.M.A. 1982), appellant personally requests this Court consider those matters set forth in the Appendix.

**Panel X**

## Certificate of Service

I certify that a copy of the foregoing was (mailed) (delivered) (sent via electronic submission) to \_\_\_\_\_ at \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[Signature of Certifying Person] \_\_\_\_\_

[Typed Name of Certifying Person]

[Organization or Firm]

[Phone Number (if civilian counsel)]

[Email Address (if civilian counsel)]

*Appendix C – Format for Motion/Opposition*

**IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

UNITED STATES

**[MOTION/OPPOSITION TO  
MOTION]** \_\_\_\_\_

Appellee

v.

Docket No. ARMY 2017XXXX

[Rank of Appellant]

**[NAME OF APPELLANT]**

United States Army

Appellant

Tried at [trial location], on [date(s)],  
before a [general/special] court-martial  
appointed by [convening authority],  
[military judge] presiding.

TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

[Set forth basis for motion/opposition].

[Signature of Counsel]

[Name, rank and branch of military counsel, or name of civilian counsel]

[Title]

[Organization]

[Phone Number (if civilian counsel)]

[Email Address (if civilian counsel)]

PANEL No. \_\_\_\_\_

GRANTED \_\_\_\_\_

DENIED \_\_\_\_\_

DATE \_\_\_\_\_

## Certificate of Service

I certify that a copy of the foregoing was (mailed) (delivered) (sent via electronic submission) to \_\_\_\_\_ at \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[Signature of Certifying Person] \_\_\_\_\_

[Typed Name of Certifying Person]

[Organization or Firm]

[Phone Number (if civilian counsel)]

[Email Address (if civilian counsel)]

*Appendix D –File Naming Conventions*

Use of the following file name conventions for the electronic file name of pleadings and the subject line of the email transmitting the filing. Below each electronic file name is the recommended naming convention for the pleading itself. Where not included on the list, the naming convention used by counsel shall be consistent in format with the examples below.

- Last Name-ACMIS#-Appellant’s Brief (YYMMDD)  
“BRIEF ON BEHALF OF APPELLANT”
- Last Name-ACMIS#-Appellant’s Reply Brief (YYMMDD)  
“REPLY BRIEF ON BEHALF OF APPELLANT”
- Last Name-ACMIS#-Appellant’s Supp Brief (YYMMDD)  
“SUPPLEMENTAL BRIEF ON BEHALF OF APPELLANT”
- Last Name-ACMIS#-Appellant’s Brief Specified Issues (YYMMDD)  
“BRIEF OF SPECIFIED ISSUES ON BEHALF OF APPELLANT”
- DAD Consolidated EOT Motion-(YYMMDD);  
“DAD CONSOLIDATED MOTION FOR EXTENSION (1)”
- Last Name-ACMIS#-Appellant’s Mot Ext (2) (YYMMDD)  
“MOTION FOR EXTENSION (2)”
- Last Name-ACMIS#-Appellant’s Mot Ext (3) (YYMMDD)  
“MOTION FOR EXTENSION (3)”
- Last Name-ACMIS#-Appellant’s Mot Att (YYMMDD)  
“MOTION TO ATTACH”
- 
- Last Name-ACMIS#-Appellee’s Brief (YYMMDD)  
“BRIEF ON BEHALF OF APPELLEE”
- Last Name-ACMIS#-Appellee’s Reply Brief (YYMMDD)  
“REPLY BRIEF ON BEHALF OF APPELLEE”
- Last Name-ACMIS#-Appellee’s Supp Brief (YYMMDD)  
“SUPPLEMENTAL BRIEF ON BEHALF OF APPELLEE”
- Last Name-ACMIS#-Appellee’s Brief Specified Issues (YYMMDD)  
“BRIEF OF SPECIFIED ISSUES ON BEHALF OF APPELLEE”
- GAD Consolidated EOT Motion-(YYMMDD)  
“GAD CONSOLIDATED MOTION FOR EXTENSION (1)”
- Last Name-ACMIS#-Appellee’s Mot Ext (2) (YYMMDD)  
“MOTION FOR EXTENSION (2)”
- Last Name-ACMIS#-Appellee’s Mot Ext (3) (YYMMDD)  
“MOTION FOR EXTENSION (3)”
- Last Name-ACMIS#-Appellee’s Mot Att (YYMMDD)  
“MOTION TO ATTACH”