

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

RULES OF PRACTICE AND PROCEDURE



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**Published Together with The Joint Rules of Appellate Procedure
for Courts of Criminal Appeals**

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS
RULES OF PRACTICE AND PROCEDURE**

Together with Joint Rules of Appellate Procedure for Courts of Criminal Appeals (JRAP)
(in **Bold 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 Staff Judge Advocate to 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 Seal of the Court.

The official 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 the Court. The seal authenticates documents as official Court documents. The Clerk of the Court is the custodian of the seal and may delegate authority to employ the seal to other Court personnel.

Rule 1.2 Chief Appellate Judge; Senior Appellate Judge; and Appellate Judges.

(a) *Assignment to the Court.* The Judge Advocate General of the Air Force (TJAG) certifies each appellate judge of the Court and designates who shall serve as the Chief Appellate Judge or as the designated Chief Appellate Judge.

(b) *Panel Assignments.* The Chief Appellate Judge determines the number of Court panels and designates the panels on which each appellate judge will serve. The Chief Appellate Judge designates who will serve as a Senior Appellate Judge. A designated Senior Appellate Judge ordinarily presides over a designated panel of the Court and is responsible for performing the administrative duties necessary for the conduct of the panel in completing its statutory responsibilities and for maintaining official liaison between that panel and the Chief Judge.

(c) *Court Precedence.* The Chief Appellate Judge has the highest precedence on the Court. For all other appellate judges, precedence shall be based first on date of appointment as a designated Senior Appellate Judge or Appellate Judge, and then on tenure based on uninterrupted service on the Court.

(d) *Absence or Disqualification of the Chief Appellate Judge.* In the absence of the Chief Appellate Judge, the senior designated Senior Appellate Judge present for duty may perform the duties of the Chief Appellate Judge. In the absence of all designated Senior Appellate Judges, the senior appellate judge present for duty may perform the duties of the Chief Appellate Judge. In the event the Chief Appellate Judge is disqualified in a particular matter, TJAG designates an appellate judge to act as the Chief Appellate Judge in such matters.

(e) *Oath or Affirmation.* Prior to performing duties as an appellate judge, an oath or affirmation must be administered. TJAG, the Chief Appellate Judge, or the Chief Appellate Judge's representative administers the following oath or affirmation:

“I, _____, do solemnly (swear or affirm) that I will faithfully and impartially administer justice and, to the best of my ability and understanding, perform all the duties incumbent upon me as an appellate judge, under the Constitution of the United States and the Uniform Code of Military Justice (so help me God).”

Rule 1.3 Clerk's Office.

(a) *Custodian of Records.* The Clerk of the Court shall serve as custodian of the records of the Court and shall not permit any records be taken from the Court's chambers—which includes a designated area to view sealed materials—except when authorized by the Court.

(b) *Disposition of Procedural Matters.* The Clerk or designee, on behalf of the Court, may entertain and act on any motion for enlargement, motion to attach documents, motion to cite supplemental authorities, or motion to withdraw as counsel, provided such motion is not opposed and such action does not substantially affect the rights of the parties or the ultimate decision of the case. The order of the Clerk shall be deemed the order of the Court.

Rule 1.4 Conduct of Court Personnel.

Personnel of the Court shall maintain the confidentiality of the Court's proceedings and avoid improper *ex parte* communication with litigants. Court personnel shall be fair and impartial, avoiding favoritism or the appearance of favoritism toward any party concerning a matter before the Court. Court personnel are expected to conduct themselves in a professional manner at all times.

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."

Rule 2.1 Scope and Application of Rules.

The procedures contained within the Air Force Court of Criminal Appeals (AFCCA) rules apply to all persons assigned to the Court and persons having business before the Court. Questions regarding the AFCCA Rules of Practice and Procedure or requests for a general waiver of any provision of these rules shall be directed to the Clerk of the Court.

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 Administrative Matters.

(a) *Court Hours.* The Court's general business hours are from 0800 to 1600 hours on duty days. The Court's chambers may be closed upon direction of the Chief Appellate Judge.

(b) *Restricted Areas.* To preserve the confidentiality of Court communications, visitor access to the Court's chambers is limited to the reception area except upon invitation. Visitors, including counsel, shall not proceed beyond the reception area without first checking in with a Court staff member.

(c) *Examination of Records of Trial and Other Official Documents.*

(1) 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 Clerk's office. Any examination will be conducted in an area designated within the Court's chambers and at no time will an original record of trial be removed from the Court's chambers by non-Court personnel.

(2) Counsel who have properly filed a notice of appearance or notice of representation per Rule 12 may move the Court to examine sealed portions of the record. The motion

must concisely identify the counsel's need for the sealed portion of the record to perform official duties as well as the specific legal authority authorizing access to that portion of the record. Counsel filing a petition on behalf of a victim must provide the Appellate Defense Division (AFLOA/JAJA) and the Government Trial and Appellate Counsel Division (AFLOA/JAJG) with a courtesy copy of the petition.

(3) In the event the Court has granted a motion to examine sealed materials in accordance with Rule 23.3(f), counsel shall examine the materials in an area designated within the Court's chambers.

(d) *Requests for Information.* All requests for information from a party or a member of the Air Force Judge Advocate General's Corps shall be referred to the Clerk of the Court. Media inquiries or other inquiries from outside the Judge Advocate General's Corps shall be forwarded to the appropriate authority for further action at the discretion of the Clerk of the Court.

(e) *Cases Pending Before Other Courts.* Appellate counsel, including those identified in Rule 12, shall promptly inform the Clerk of the Court if a case that is presently before the Court is also pending before any other court.

Rule 3.2 The Docket.

(a) The Clerk of the Court or designee 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(e), 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.

(b) *ACM Number.* The Appellate Records Branch of AFLOA/JAJM shall assign the appropriate ACM number to all original records of trial docketed with the Court on the regular case docket. All pleadings or documents filed in a specific case shall bear the assigned ACM number.

(c) *Miscellaneous Docket Number.* The Clerk of the Court shall assign a miscellaneous docket number in all other cases once the initial pleading is accepted. All pleadings or documents filed in a specific case shall bear the assigned miscellaneous docket number.

(d) *Notice of Docketing.* AFLOA/JAJM shall notify the Court, AFLOA/JAJA, and AFLOA/JAJG of the receipt and docketing of cases on the regular docket as well as the applicable ACM number. The Clerk of the Court shall notify AFLOA/JAJM, AFLOA/JAJA, AFLOA/JAJG, and the Trial Defense Division (AFLOA/JAJD), when applicable, of receipt and docketing of cases on the miscellaneous docket. AFLOA/JAJM shall notify the Court, AFLOA/JAJA, and AFLOA/JAJG when any previously docketed case is returned to the Court. In matters in which a counsel representing a victim of an offense has filed a notice of appearance in accordance with Rule 12 or has been granted leave to file as amicus under Rule 22, that victim's counsel shall be similarly notified of re-docketing. Receipt of notice of docketing or re-docketing shall trigger the time limits set forth in Rule 18.

(e) *No Counsel Cases*. For cases in which an appellant has elected no appellate counsel representation via Air Force Form 304, *Request for Appellate Defense Counsel*, a notice of docketing will be mailed to the appellant's last known address included in the record of trial. The appellant shall have 60 days from the date of notice of docketing to file in accordance with Rule 18. The case will be reviewed on its merits in accordance with Rule 18.1 if no filing is received within 60 days.

(f) *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.

(g) *Decision of the Court*. The Clerk of the Court or designee shall prepare, certify, date, and release the filing decision of the Court. On the date a decision is released, the Clerk of the Court or designee shall distribute to TJAG and the parties an electronic copy of the decision as applicable.

Rule 3.3 Cases Involving Classified Material, Controlled Material, or Contraband.

(a) *Classified Material*. The Clerk of the Court shall coordinate with the appropriate AFLOA security manager to ensure classified information is properly stored and protected. Classified material will be stored by the appropriate Security Manager in a designated secured area within AFLOA.

(b) *Controlled Material and Contraband*. The Clerk of the Court is responsible for the proper storage and protection of controlled material and contraband within the Court's chambers.

(c) *Security Clearances*. The appropriate AFLOA Security Manager shall facilitate the obtaining of security clearances for Court personnel as necessary.

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;

(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, UCMJ, that are remanded for further proceedings or other corrective action, notwithstanding any subsequent reduction of the sentence below the level triggering review pursuant to Article 66, UCMJ.

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 Certificates of Correction.

(a) When the Court orders that a Certificate of Correction be produced in a particular case, the record of trial will be returned to AFLOA/JAJM, then returned to the convening

authority for action consistent with the appropriate Rule for Courts-Martial in effect at the time of referral (R.C.M. 1104(d), *Manual for Courts-Martial, United States* (2016 ed.) (2016 *MCM*) for cases referred before 1 January 2019, and R.C.M. 1112(d), *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*) for cases referred on or after 1 January 2019).

(b) Once a Certificate of Correction is produced by the military judge, the Certificate and original record of trial will be returned to AFLOA/JAJM. AFLOA/JAJM will re-docket the case and deliver the Certificate to AFLOA/JAJG. AFLOA/JAJG will then submit the Certificate of Correction and any other accompanying documentation to the Court via a Motion to Attach. *See* Rule 23.3(b).

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) Irrespective of Rule 3, 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 7.1 En Banc.

The Court as a whole shall include all appellate military judges who are deemed to be in regular active status as defined in Rule 7(c) above and are not recused or disqualified at the time that the matter is before the Court.

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.

Rule 8.1 Questions and Suggested Amendments.

Questions regarding the AFCCA Rules of Practice and Procedure shall be addressed to the Clerk of the Court. Suggested amendments to these rules shall be forwarded to the Chief Appellate Judge via the Clerk of the Court.

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 of the service concerned.

Rule 9.1 Qualification of Counsel.

No attorney shall practice before this Court unless admitted to practice before this Court or appearing *pro hac vice* or as *amicus curiae* by leave of the Court.

Rule 9.2 Admission to Practice Before the Court.

(a) *Application Procedure.* Each applicant shall file with the Clerk of the Court the *Application for Admission to Practice*, together with a certificate from the Clerk of the Court or other appropriate officer of a court specified in Rule 9(a) that states that the applicant is a member of an approved Bar in good standing. The certificate of good standing must be an original and must be dated within one year of the date of the application. The *Application for Admission to Practice* is located in Appendix E to these

rules and may also be obtained from the Clerk of the Court or downloaded from the Court's website. Upon leave of the Court, attorneys qualified and certified by TJAG pursuant to Article 26(b) and 27(b), UCMJ, may be admitted without application.

(b) *Admission by Oath or Affirmation.* If the documents submitted demonstrate the applicant possesses the necessary qualifications, the Clerk shall so notify the applicant, who may be admitted without appearing in Court by subscribing a written oath or affirmation. Applicants may be admitted in open court on oral motion by an attorney admitted to practice before this Court. After the applicant takes the oath, the Clerk shall issue a certificate of admission to the applicant.

(c) *Motion for Admission.* An attorney shall move for admission of an applicant by stating:

"May it please the Court, I am (Name), a member in good standing of the Bar of this Court. I move the admission of (Name of Applicant), a member of the Bar of (the highest court of the State/Commonwealth of (Name), (the United States District Court of). I have examined (his/her/their) credentials on file in the office of the Clerk, and I am satisfied that (he/she has) (they have) the qualifications for membership in the Bar of this Court."

(d) *Oath of Admission.* Prior to admission, each applicant shall take the oath below. The Chief Judge, presiding Senior Judge, or Clerk of the Court shall administer the oath to applicants seeking admission in open court. All others must subscribe the oath or affirmation.

"I, (name of applicant), do solemnly (swear) (affirm) that I will support the Constitution of the United States, and that I will conduct myself as an attorney and counselor of this Court uprightly and according to law, (so help me, God)."

(e) *Judge Advocate Staff Officer Course (JASOC).* Where the applicant is a current JASOC student at the United States Air Force Judge Advocate General's School (AFJAGS), an AFJAGS representative will verify that the applicant possesses an original certificate of good standing from an approved Bar. The certificate of good standing must be dated within one year of the date of application. An AFJAGS representative will forward all completed *Applications for Admission to Practice* to the Court. See Appendix E.

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.

In addition to rules applicable in the respective jurisdictions of counsel appearing before the Court, the professional conduct of such counsel is governed by the current Manual for Courts-Martial, Rule 10 of this Court's rules, the United States Air Force Rules of Professional Conduct (AFRPC), the Air Force Standards for Civility in Professional Conduct, Air Force Standards for Criminal Justice, and the Model Rules of Professional Conduct of the American Bar Association to the extent they are consistent with the aforementioned Air Force rules and standards.

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 the 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 27(b), UCMJ, is withdrawn for cause shall notify the Clerk of the Court within 10 business days of such action.

Rule 10.3 Professional Misconduct.

(a) In addition to other actions that may be taken by the Court, allegations of professional misconduct, as defined by Rule 8.4 of the AFRPC, shall be referred to the appropriate professional authority in accordance with Rule 8.3 of the AFRPC. For attorneys assigned to either AFLOA/JAJG or AFLOA/JAJA, the appropriate professional authority is the AFLOA Commander.

(b) If it appears that 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 or order of the Court, or has engaged in misconduct as defined by Rule 8.4 of the AFRPC, the Court may enter an order affording the attorney an opportunity to show cause why the matter should not be referred to the appropriate 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 his 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 11.1 Designation of Appellate Counsel.

(a) *Determination of Counsel Representation.* Upon docketing of a case before this Court, a Court paralegal shall review each record of trial to determine if the appellant has requested representation by appellate counsel. If the paralegal is unable to discern this from the record of trial, the Court shall return the record to the Appellate Records Branch of AFLOA/JAJM to obtain the AF Form 304, *Request for Appellate Defense Counsel*. In any case that has been remanded to a convening or supervisory authority for further proceedings, an appellant's prior request for appellate defense counsel remains effective in subsequent appellate proceedings before this Court unless the appellant affirmatively withdraws the request in writing.

(b) *Waiver of Appellate Counsel.* If the appellant has specifically waived the right to be represented by counsel before the Court, the appellant may proceed *pro se*. In such a case, the record of trial will be forwarded directly to the Court. The Court may thereafter notify TJAG or designee of any subsequent request for counsel submitted by the appellant.

Rule 11.2 Retention of Civilian Counsel.

In any case where the appellant has specifically requested named civilian counsel, AFLOA/JAJA will communicate with civilian counsel to coordinate representation of the appellant and ensure civilian counsel's proper appearance before the Court. All counsel must be familiar with these rules.

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 Representation by Non-Federal Civilian Counsel.

Within 15 business days of retention by the appellant or a real party in interest, non-federal civilian counsel shall submit to this Court a notice of appearance. This requirement remains in place despite the general rule that the filing of any pleading relative to a case which contains the signature of counsel constitutes notice of appearance of such counsel.

Rule 12.2 Victim Representation.

Within 15 business days of detailing or retention, any counsel representing a victim shall submit to this Court a *Notice of Representation*. Counsel must be formally admitted to the Bar of this Court prior to filing a notice of representation.

Rule 12.3 Counsel Appearing Pro Hac Vice.

All attorneys appearing *pro hac vice* shall file a certificate of good standing from a qualified Bar and a sworn affidavit stating that 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.

Rule 12.4 Withdrawal of Appellate Defense Counsel.

Any appellate defense counsel who has requested leave to withdraw in accordance with Rule 12(b) must also: (1) identify by name the successor appellate defense counsel and (2) affirm that a thorough turnover of the record between counsel has been completed. Additionally, the successor appellate defense counsel must submit to this Court a notice of appearance in accordance with this rule within 10 days of 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 Definition of Filing.

Under these Rules, the term “filings” includes any pleading or other paper relative to a case and any attachment or appendix.

Rule 13.2 Method of Filing.

(a) The method for filing documents with the Court is electronic filing at the following e-mail address: usaf.pentagon.af-ja.mbx.af-jah-filing-workflow@mail.mil. No other method of electronic filing will be accepted absent permission from the Clerk of the Court.

(b) Paper filing should normally only occur when the document to be filed contains classified material or matter under seal or where electronic filing proves impractical due to the size of the document(s), lack of access to e-mail, or similar reasons. Persons wishing to utilize paper filing must contact the Clerk's office during normal business hours for permission and instructions. The place for filing papers is:

Clerk of the Court
U.S. Air Force Court of Criminal Appeals
1500 West Perimeter Road, Suite 1900
Joint Base Andrews-Naval Air Facility Washington, MD 20762

Rule 13.3 Service of Pleadings.

Pleadings filed with the Court shall be served on all counsel of record, including civilian counsel who have filed an appropriate notice of appearance in compliance with Rule 12, and will be evidenced in the document by use of the certificate format below. Service to the approved organizational electronic workflow inbox constitutes sufficient service for counsel assigned to AFLOA/JAJA or AFLOA/JAJG. Upon receipt, the electronic certificate of service shall be executed and electronically returned to the sender. Should a filing be in paper form, a Certificate of Service shall be executed and returned to the sender.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were [mailed][delivered][sent via ____] to the Court and served on [name and title of recipient] on [date].

(Typed Name of Certifying Person)
(Organization or Firm) (Address)
(Address)
(Telephone No.)
(Email Address – Non AF/JA Only)

Rule 13.4 Non-Compliance with Rules.

Failure to comply with any of these rules may result in rejection of the offered filing by the Clerk of the Court. Returned filings will not be attached to the record of trial and do not serve to toll the filing deadline.

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 Signatures.

(a) 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 electronic signature. Non-federal civilian counsel must also include a business address, business telephone number, e-mail address, and state bar number below the signature line of each filing.

(b) An appellant proceeding *pro se* may sign a filing by use of any commonly accepted mark that represents that person's signature. A *pro se* appellant should also include current contact information below the signature line.

(c) If any signatory who is not a *pro se* appellant 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.

(d) One attorney 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 Form of Waiver/Withdrawal.

An appellant moving to waive or withdraw their case from appellate review must do so via the appropriate DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial*. A completed DD Form 2330, Jul 2016, is required for all courts-martial referred before 1 January 2019. A completed DD Form 2330, Jan 2019, is required for all courts-martial referred on or after 1 January 2019. *See* Rule 23.3(i).

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 Filing Format.

(a) All appellate filings, excluding attachments, shall appear in proportional 12-point type—e.g., Times New Roman or Century Schoolbook—typed and double-spaced so as to produce a clear black image on a single side of white 8.5-inch by 11-inch paper. Margins must be at least one inch on all four sides. Citations in filings shall conform to current version of the U. S. Air Force Court of Criminal Appeals Citation Guide and the most recent edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al.).

(b) Any filing submitted electronically to the Court shall be converted into .pdf format. To reduce overall file size, avoid scanning if practicable. All electronic filings shall contain the following language in the e-mail subject line: Certificate of Service – DD MMM YY – ACM or Misc. Dkt. No. (Example: Certificate of Service – 15 Mar 19 – S11111).

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

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

1. [Appellant’s Name] – [ACM or Misc. Dkt. No.] (DD MMM YY)

[X] attachment(s) were served.

(d) All .pdf files shall utilize the following naming convention: Appellant’s Last Name – ACM No. – Brief Title of Filing (DD MMM YY) (Example: Doe – 12345 – Motion for EOT (01 Mar 19)). If there is personally identifiable or sensitive information included in the filing, as set forth in Rule 17.2(c), append “SENSITIVE” to the file name. If an attachment includes personally identifiable or sensitive information, it should be submitted as a

separate electronic document from the pleading and shall include the “SENSITIVE” designation in the file name.

(e) All filings shall certify that each real party in interest was served with a copy of that filing.

Rule 17.2 Content of Filings.

(a) Classified material. Classified material or information derived from such material will not be filed electronically. Counsel seeking to file such material shall first contact the Clerk of the Court and the appropriate AFLOA Security Manager for further instructions.

(b) Material under seal. Material under seal or information derived from such material shall be separately filed in accordance with Rule 13.2(b). The remainder shall be filed in compliance with Rule 13.2(a), indicating which portions of the pleading have been filed under seal. In such cases, counsel will include in the text of the e-mail message a notation that sealed material is being filed separately. Persons wishing to file material under seal with the Court on paper will contact the Clerk’s office during normal duty hours for permission and instructions. See Rule 23.3(o).

(c) Personally Identifiable and Sensitive Information.

(1) All filings must be filed with an awareness that they are, generally, publicly releasable without further screening or redaction. Accordingly, except as provided in subparagraph (2) of this Rule, no filing shall include personally identifiable or sensitive information, to include the following:

(A) Names of complainants, victims, or witnesses. If an identifier is used, use only the rank and initials of complainants, victims, or witnesses;

(B) Social security numbers. If an individual’s social security number is necessary, use only the last four digits;

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

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

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

(F) Personal email addresses. If a personal email address is necessary, use only the first two characters and domain separated by asterisks (e.g. a2***@yahoo.com);

(G) Dates of birth. If an individual’s date of birth is necessary, use only the year; and

(H) Other matters protected by the Privacy Act of 1974, 5 U.S.C. § 552a.

(2) If it is necessary in a particular filing to include personally identifiable or sensitive information, that portion of the filing containing such information shall be submitted separately. If a brief includes personally identifiable or sensitive information with

respect to some but not all assignments of error, only the assignment of error and answer containing such information shall be submitted separately.

(d) Parties must exercise caution and exclude, to the extent practicable, 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.

Rule 17.3 Length of Filings.

Unless otherwise authorized by the Court, filings shall not exceed either 50 pages or 20,000 words, excluding indices, tables, attachments, and appendices. Headings, footnotes, and quotations count toward the word limit. Counsel may, in accordance with Rule 23.3(q), move to exceed these limits for good cause shown. See Rule 18.1 for additional guidance pertaining to briefs.

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) *Grostefon Issues.* Issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), shall comply with Service Court rules and counsel shall articulate *Grostefon* 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 Assignments of Error.

Assignments of error on behalf of an appellant shall be filed in compliance with Appendix A of these rules. Additionally, all briefs shall comply with the requirements set forth in Rule 17. Any briefs in excess of 30 pages, excluding indices, tables, attachments, or appendices, must include a subject index of the matters contained therein, along with a table of cases (alphabetically arranged), statutes, and other authorities cited and the page numbers of the brief where the cite appears. Briefs submitted on the merits of a case without any assignment of error shall conform to the format set forth in Appendix B of these rules.

Rule 18.2 Grostefon Issues.

(a) Issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), shall be presented in a separate Appendix to the brief filed under Rule 18.1. If the brief contains more than one appendix, the *Grostefon* brief shall be the first appendix. Unless the Court grants leave for good cause shown, this appendix shall be type-written and conform to Rule 17.1(a), shall not exceed 30 pages, and shall be submitted in conjunction with the brief filed under Rule 18.1.

(b) Counsel shall identify *Grostefon* issues with particularity and in the following form:

APPENDIX A

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant, through appellate defense counsel, personally requests that this Court consider the following matters:

[List issues and include relevant legal authority and argument for each issue.]

Rule 18.3 Subsequent Briefs.

Answer briefs and any reply briefs will follow the same format as assignments of error and respond separately to each assigned error. Answers may adopt the appellant's or petitioner's statement of the case and may state additional facts. Government counsel need not respond to a case submitted on its merits.

Rule 18.4 Supplemental Filings.

Supplemental filings must be submitted by motion for leave to file in accordance with Rule 23(d). If the motion is granted, the opposing party may file a response to the supplemental filing within 30 days.

Rule 18.5 Filings Out of Time.

Any filing that is submitted out of time shall so indicate in the caption and shall articulate good cause for why the filing is out-of-time. A filing is out of time when it is submitted after the deadline for filing.

Rule 19. EXTRAORDINARY RELIEF

(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 Filing and Service.

(a) 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 the chief of the opposing appellate division and other appellate counsel of record as appropriate. Any petition filed on behalf of the United States or any officer or agent thereof shall be coordinated with the Chief, AFLOA/JAJG. Service of a copy of the petition on the Chief, AFLOA/JAJM, is deemed the notice to TJAG required by Rule 19(d).

(b) A notice of docketing shall serve as notice that the petition has been accepted by the Court.

Rule 19.2 Action on the Petition.

If the Court orders a respondent to show cause and file an answer to the petition, the petitioner may file a reply to the response within 7 days of its receipt.

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 Processing Appeals by the United States.

(a) TJAG Designee. The Chief, AFLOA/JAJG, shall serve as the representative of the United States in compliance with Rule 20(a)(1).

(b) Filing and Service. Upon receipt of the Notice of Appeal under Article 62, UCMJ, including the record, the Clerk of the Court will assign the matter a miscellaneous docket number and issue a notice of docketing to all interested parties. AFLOA/JAJG shall promptly deliver one copy of the appeal to AFLOA/JAJA, AFLOA/JAJD and, as appropriate, AFLOA/CLSV.

(c) Contents of the Appeal.

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

(A) a statement of the issues appealed;

(B) 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;

(C) 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;

(D) a statement showing good cause why the appeal was not timely filed, if applicable;

(E) proof of service on the Chief, AFLOA/JAJA, and other appellate counsel of record, if any;

(F) 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

(G) an appendix including a 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.

(2) If the appeal and brief are filed without a verbatim record of proceedings, the appellant will file the original and one copy of the record as soon thereafter as possible.

(d) Withdrawal of Appeal. If the United States elects to withdraw an appeal, appellate government counsel shall file a motion to withdraw the appeal. If the motion is granted, the original record shall be released to the Chief, Appellate Records Branch of AFLOA/JAJM.

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 Filing Petitions for New Trial.

Petitions for new trial shall not be filed directly with the Court. Consistent with Article 73, UCMJ, and R.C.M. 1210, all petitions for new trial shall be submitted to TJAG via AFLOA/JAJM. If the petitioner's case is already pending before this Court or the United States Court of Appeals for the Armed Forces, TJAG shall refer the petition to the appropriate court for action. For petitions referred to this Court, the Clerk of the Court shall forward the petition to the panel to which the case is assigned and ensure that appellate counsel are notified of such receipt. Thereafter, the parties shall be subject to the time limits set forth in Rule 21(c).

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. Filing and Service.

(a) Any attorney seeking leave to file as amicus under Rule 22(a)(2) may conditionally file a brief with the motion for leave to file.

(b) A member of the Bar of the Court who represents an amicus curiae and is authorized to file a brief under Rule 22(a) may file a motion for leave to have a law student enter an appearance on behalf of an amicus curiae. Argument by a law student granted permission to appear on behalf of an amicus curiae may be requested by motion filed in accordance with Rule 25.3.

(c) Unless otherwise ordered by the Court, an amicus curiae brief in support of a party shall be filed no later than 10 calendar days after that party has filed its brief. If neither party is supported, the amicus curiae brief shall be filed no later than 10 calendar days

after the filing of the Government's answer (Article 66, UCMJ, reviews) or the appellee's reply brief (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.

(d) Amicus curiae briefs must be signed in accordance with Rule 14.1(b), filed in accordance with Rule 17, and served in accordance with Rule 13.2.

(e) 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 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 Filing of Motions.

(a) Using the format contained in Appendix C, each motion will state with particularity the relief sought, the grounds therefor, and the specific Rule authorizing such relief. Except as otherwise provided in these Rules, each motion (and any opposition to a motion) will be separately filed before the Court and shall not be incorporated in any other pleading or consolidated in one motion.

(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. In the case of a defense motion, if appellate counsel for the United States has not yet been assigned to the case, appellate defense counsel may consult with any appropriate AFLOA/JAJG representative. If the opposing counsel consents to the relief requested by the motion, the title of the motion shall begin with the words "Consent Motion."

Rule 23.2 Response to Motions.

Responses to motions for enlargement of time, motions for waiver/withdrawal of appellate review, motions to examine previously disclosed materials and motions to exceed page limit must be filed within 2 business days after receipt by the responding party. Responses to all other motions must be filed within 7 calendar days after receipt by the responding party.

Rule 23.3 Types of Motions.

Those persons with standing to do so may file any appropriate motion with the Court. Any motion that is not expressly authorized by these rules must be accompanied by a motion for leave to file, setting forth the basis upon which the filing shall be permitted. The following motions do not require an accompanying motion for leave to file:

(a) Motion for Oral Argument. See Rule 25.

(b) Motion to Attach Documents. A motion to attach documents to the record of trial shall include a title and summary of the proposed items to be attached and a statement as to their relevance and necessity to the case. Statements must comply with Rule 23(b) to be accepted. If a document other than a statement is moved for attachment and the authenticity of the document is not readily apparent, an affidavit or unsworn declaration as to its authenticity shall be included. See Rule 6.1 regarding the procedure for attaching certificates of correction to the record.

(c) Motion to Stay Proceedings. See, for example, Rule 19.1.

(d) Motion to Cite Supplemental Authorities. In the event that relevant new law has been issued or discovered by counsel subsequent to the submission of a brief, counsel shall supplement the brief by bringing the citation of a relevant authority to the attention of the Court. Such motions will briefly explain the relevance of each newly cited authority to the issues before the Court. See Rule 25.2(e).

(e) Motion to Compel. A motion to compel an action may be submitted when necessary and appropriate. Such a motion should identify with particularity the action being sought and why it is necessary and appropriate to compel such action.

(f) Motion to Examine.

(1) A motion to examine sealed materials may be filed as appropriate. If the requested material was previously released to trial or defense counsel, counsel shall comply with the colorable showing requirements set forth in R.C.M. 1103A(b)(4)(B)(i), 2016 *MCM*, if the case was referred prior to 1 January 2019, or R.C.M. 1113(b)(3)(B)(i), 2019 *MCM*, if the case was referred on or after 1 January 2019. If the requested material was previously reviewed in camera but not released to trial or defense counsel, counsel shall comply with the requirements for good cause set forth in R.C.M. 1103A(b)(4)(B)(ii), 2016 *MCM*, if the case was referred prior to 1 January 2019, or R.C.M. 1113(b)(3)(B)(ii), 2019 *MCM*, if the case was referred on or after 1 January 2019.

- (2) If a motion to examine is granted, counsel will arrange such viewings directly with the Court's administrative staff.
- (3) No counsel granted access to the materials may photocopy, photograph, reproduce, disclose, or make available their contents to any other individual without the Court's prior written authorization.
- (g) Motion to File Amicus Curiae Brief. See Rule 22.3.
- (h) Motion for Withdrawal of Appellate Defense Counsel. See Rule 12.3.
- (i) Motion for Waiver or Withdrawal of Appellate Review. See Rule 16.
- (j) Suggestion for *En Banc* Proceedings. See Rule 27.
- (k) Motion for Reconsideration. See Rule 31.
- (l) Motion to Abate Proceedings. A motion to abate proceedings may be filed where appropriate. In the case of an appellant who dies while their case is pending review under Article 66, UCMJ, a motion to abate proceedings shall be accompanied by sufficient evidence of the appellant's death.
- (m) Motion for Enlargement of Time:
- (1) Upon motion and for good cause shown, the Court may grant an enlargement of time to file a brief, motion, motion response, or other filing permitted under these rules. Any motion for enlargement must be requested at least 7 calendar days before the filing is due. Each motion for enlargement of time will note whether it is the first, second, third, or subsequent such motion in the case.
 - (2) An appellant's first motion for enlargement may be granted for up to 60 calendar days and does not require a showing of good cause.
 - (3) Any subsequent motions for enlargement by either party will only be granted when good cause is shown with particularity and may be granted for periods not to exceed 30 calendar days.
 - (4) An appellant's motion for enlargement requiring a showing of good cause shall contain the basis for the requested enlargement and the following information: the number of days that have elapsed since the case was first docketed with the Court; the number of days that will have elapsed since docketing on the date requested; the number of litigated specifications, if any, and the findings and sentence approved by the convening authority; the length of the transcript of the appellant's trial and the number of trial and appellate exhibits; whether the appellant is confined; and any other information counsel deems relevant to the request.
 - (5) An appellee's motion for enlargement to file an answer shall contain the following information: the number of days that have elapsed since the case was first docketed with the Court; the number of days that will have elapsed since docketing on the date requested; the reason for the requested delay; and, if counsel's workload is cited as the reason for the delay, an explanation of counsel's other duties since the assignment of error brief was filed.

(6) A motion for an enlargement that, if granted, will expire more than 180 days after docketing in the case of an appellant or more than 240 days in the case of an appellee will contain, in addition to the above-referenced information, the following: a detailed explanation of the number and complexity of counsel's pending cases; a statement of other matters that have priority over the subject case; and a statement as to progress being made on the subject case (whether the record has been reviewed, whether a brief has been drafted, etc.).

(7) Motion for Enlargement of Time Out of Time. Any motion for enlargement of time not filed at least 7 calendar days before the filing is due will be titled as a motion filed out of time. Good cause must specifically be shown why the filing was submitted out of time in addition to any other showing of good cause for the enlargement. Any motion for enlargement of time out of time does not automatically extend the filing deadline, and counsel should not presume a motion for enlargement of time out of time will be granted. In the absence of a granted motion for enlargement of time out of time, the original filing deadline remains in place.

(n) Motion to Amend Pleading. If counsel discovers a pleading previously submitted to the Court requires correction, counsel may file a motion to amend the pleading. The motion will include a proposed corrected copy of the page(s) of the pleading that require correction.

(o) Motion to File Under Seal. See Rules 13.2(b) and 17.2(c)(2).

(p) Motion to Strike. A motion to strike any portion of a filing may be filed if counsel discovers a violation of Rule 17.3 or for other good cause shown.

(q) Motion to Exceed Page Limit. See Rule 17.3.

(r) Motion to Suspend the Rules. See Rule 32.

Rule 23.4. Conferences.

At its discretion, the Court may, upon motion of any party or *sua sponte*, order a conference in its chambers to discuss a pending motion in a particular case. Any such conference requires the attendance of at least one counsel per party.

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 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 Notice.

A matter before the Court will be docketed on the oral argument docket by a notice of hearing. The order will notify all parties of the location, date, time, panel hearing oral argument, and any limitations of said argument. Upon motion by either party or at the Court’s discretion, the Court may close oral argument, or portions thereof, to the public.

Rule 25.2 Administration of Oral Argument.

- (a) **Argument Procedure.** The senior judge of the panel presides at oral argument.
- (b) **Length and Order of Oral Argument.** 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 a motion for leave to exceed time limit for oral argument. The appellant, petitioner in the case of argument on extraordinary writs, or movant in the case of argument on motions commences the argument. Counsel for the appellant, petitioner, or movant may reserve a portion of the allotted time for rebuttal. Ordinarily, surrebuttal is not permitted.
- (c) **Counsel.** 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 the Court, only members of the Bar or counsel appearing pro hac vice or as amicus curiae may be seated inside the bar of the Court.
- (d) **Decorum.** Military counsel shall appear in the Service Dress uniform (Class A). Civilian counsel shall wear similarly conservative business attire. Smoking, “vaping,” using smokeless tobacco products, drinking, eating, and chewing gum are prohibited in the courtroom. Counsel arguing the case are permitted to drink water. Electronic devices shall be turned off or silenced in the courtroom.
- (e) **Supplemental Citations of Authority.** Before oral argument, counsel may submit supplemental citations of authority in accordance with Rule 23.3(d). Such supplemental citations of authority shall be filed no later than 2 business days prior to oral argument except for good cause shown. A supplemental citation of authority lists any legal authority not previously cited that counsel wishes to raise for the Court’s consideration in oral argument. A supplemental citation of authority may contain a brief statement as to the relevance of the cited authorities; extensive argument is not appropriate in a supplemental citation of authority. Counsel may also submit a supplemental citation of

authority within 7 days following oral argument to cite any legal authority presented in oral argument that was not previously cited.

(f) Memorandum of Argument. Within 7 calendar days following oral argument, counsel may submit a motion for leave to file a memorandum of argument, addressing matters arising during the oral argument or correcting any representation by counsel made during oral argument. If such motion is granted, the opposing party may submit a reply to a memorandum of argument without motion for leave to file within 7 calendar days following the submission of the memorandum of argument.

Rule 25.3 Argument by Amicus Curiae or an Appellant Pro Se.

The Court, at its discretion, may grant a motion by counsel for amicus curiae or by an 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 shown for amicus curiae's participation in oral argument.

Rule 25.4. 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.

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 is not intended to create any right to a recording by any party in a case pending before the Court.

Rule 26.2 Dissemination of Recorded Hearings.

When practical, recordings of oral arguments are available to the public via the Court's website. Absent extraordinary circumstances and at the discretion of the Clerk of the Court, the Court will not grant individual requests for copies of the recordings.

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, 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.

For purposes of this rule, "uniformity of the Court's decisions" refers to panels of this Court and of the other service courts of criminal appeals. 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.

Rule 28. CONTEMPT

(a) *Contempt Proceedings*

(1) Under Article 48, UCMJ, any judge detailed to 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 as designated by the Judge Advocate General. 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 United States elects not to respond or is the contempt-appellant, 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 28.1 Contempt.

Judges of this Court may punish for contempt any person who uses any menacing word, sign, or gesture in the presence of the Court during its proceedings; disturbs the proceedings of the Court by any riot or disorder; or willfully disobeys the lawful writ, process, order, rule, decree, or command issued with respect to the proceeding of the Court.

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 his or her 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 Effective Date for Article 66(f), UCMJ, Proceedings.

This rule applies only to cases referred on or after 1 January 2019.

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 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 the Court or designee. All orders will contain the official signature block of the signee and the Court seal shall be affixed to the document.

Rule 30.2 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 to be briefed and the time frame within which the responses shall be filed with the Court.

(b) **Mental Competence/Responsibility Matters.** If, in the opinion of the Court, good cause has been shown to order the convening of a board of medical officers to inquire into the mental competence or responsibility of the appellant, the Court will issue an order directing that such proceedings be instituted. The order may be issued by the Court at its discretion after a review of the record or upon motion by counsel accompanied by sufficient documentation to justify the order. Requests by appellate counsel for psychiatric evaluation of an appellant in a case pending before the Court are made directly to the Court. The request is made as a petition for psychiatric evaluation

supported by a concise statement justifying the need for a current psychiatric evaluation. A copy of the petition is served on appellate government counsel at the same time it is filed with the Court. The petition must include a motion to stay proceedings for the period of time required to accomplish the evaluation. Counsel for the United States has 7 days to file a reply. If the Court grants the petition, the case is sent to TJAG through the Director, USAF Judiciary, who arranges for the evaluation. The petition described in these rules is not a prerequisite and does not limit an appellant's right to petition for a new trial under Article 73, UCMJ.

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

Rule 30.3 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 United States Court of Appeals for the Armed Forces (CAAF).

Rule 30.4 Publication of Opinions.

(a) Published Opinions. Published opinions are those that call attention to a rule of law or procedure that appears to be overlooked or misinterpreted or those that make 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) Motion to Publish Decision. The Court may authorize publication of a previously unpublished opinion at its discretion or upon written motion to the Court. Such motion to publish a decision shall be submitted no later than 14 days following issuance of the unpublished decision. The opposing party may respond to the motion to publish a decision within 7 days of the motion to publish a decision.

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 the CAAF has not obtained jurisdiction of the case. Jurisdiction vests with the CAAF 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 oral argument, an order to compel production of documents, or an order to conduct a hearing under Article 66(f)(3), UCMJ, or *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967). Such a motion must make a showing of good cause before the Court will reconsider a court order.

Rule 31.2 Motion to Reconsider Decisions or Orders Disposing of Cases.

(a) In General. At the Court's discretion and within 30 days of its decision or order, or upon motion by a party within 30 days after delivery of the decision to the respective appellate divisions or to the place of business of civilian appellate defense counsel, the Court may reconsider a decision or order terminating the case previously rendered by it, provided that the CAAF has not obtained jurisdiction of the case. Jurisdiction vests with the CAAF when a petition or certificate has been filed with that court. A motion for reconsideration must state the date on which the appellate division or civilian counsel received 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. In addition to serving the opposing party, the moving party must also serve a copy of the motion on the Chief of the Appellate Records Branch of AFLOA/JAJM.

(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 CAAF, 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. To the extent practicable, the same judges who originally decided a matter shall constitute the panel to act on a motion for reconsideration and, if granted, the matter on reconsideration. To the extent that is not practicable, the Chief Appellate Judge shall retain the discretion to assign the matter to a standing or special panel.

Rule 31.3 Motion for Reconsideration with Suggestion for En Banc Consideration.

If a party wishes the Court as a whole to reconsider a previous decision issued by a panel, one consolidated pleading may be submitted moving for reconsideration and suggesting that the motion be considered—and the matter reconsidered, if granted—*en banc*.

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.



KAREN E. MAYBERRY, Colonel, USAF
Chief Appellate Military Judge



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

***UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS
RULES OF PRACTICE AND PROCEDURE***

APPENDICES

Appendix A – Format for Brief on Behalf of Appellant

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	BRIEF ON BEHALF OF
<i>Appellee</i>	)	APPELLANT
)	
v.	)	Before Panel No. X
)	
[Rank of Appellant]	)	No. ACM XXXXX
[NAME OF APPELLANT])	
United States Air Force	)	[Date Filed]
<i>Appellant</i>)	

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Assignment(s) of Error

[Set forth each assignment of error in bold type. If asserting more than one error, number each assignment of error with consecutive Roman Numerals. See AFCCA Rule 18.2 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. All references to matters contained in the record shall show record page numbers and any exhibit designations. Answers may adopt the appellant’s statement 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]
[Business Address (if civilian counsel)]
[Business Phone Number (if civilian counsel)]
[Business Email Address (if civilian counsel)]
[State Bar No. (if civilian counsel)]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were [mailed][delivered][sent via

] to the Court and served on [name and title of recipient] on [date].

[Signature of
certifier] [Name, etc.,
Organization]

Appendix B – Format for Brief Submitted on its Merits

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MERITS BRIEF
<i>Appellee</i>)	
)	
v.	)	Before Panel No. X
)	
[Rank of Appellant]	)	No. ACM XXXXX
[NAME OF APPELLANT])	
United States Air Force	)	[Date Filed]
<i>Appellant</i>)	

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Submission of Case Without Specific Assignments of Error

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.

[Signature of Counsel]
[Name, rank and branch of military counsel, or name of civilian counsel] [Title]
[Organization]
[Business Address (if civilian counsel)]
[Business Phone Number (if civilian counsel)]
[Business Email Address (if civilian counsel)]
[State Bar No. (if civilian counsel)]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were [mailed][delivered][sent via _____]
] to the Court and served on [name and title of recipient] on [date].

[Signature of certifier]
[Name, etc., Organization]

Appendix C – Format for Motion/Opposition

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	[APPELLANT’S / APPELLEE’S]
<i>Appellee</i>	)	[MOTION / OPPOSITION TO MOTION]
)	_____
)	
v.	)	Before Panel No. X
)	
[Rank of Appellant]	)	No. ACM XXXXX
[NAME OF APPELLANT])	
United States Air Force	)	[Date Filed]
<i>Appellant</i>)	

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE 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]
 [Business Address (if civilian counsel)]
 [Business Phone Number (if civilian counsel)]
 [Business Email Address (if civilian counsel)]
 [State Bar No. (if civilian counsel)]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were [mailed][delivered][sent via

] to the Court and served on [name and title of recipient] on [date].

[Signature of certifier]
 [Name, etc.,
 Organization]

Appendix D – Summary of Filing Time Standards

1	Assignment(s) of Error (Rule 18(d))	60 Days following Docketing
2	Answer to Assignment(s) of Error (Rule 18(d))	30 Days following Assignment(s) of Error
3	Reply to Government’s Answer to Assignment(s) of Error (Rule 18(d))	7 Days following Answer
4	Brief on behalf of the Government where the Appellant does not submit a Brief (Rule 18(d))	30 Days following Expiration of time allowed for filing of Appellant’s Brief
5	Amicus Curiae Brief (Rule 22.1)	If supporting a party, 10 Calendar Days following filing of that party’s brief. If not supporting a party, 10 Calendar Days after the Government’s answer (Article 66 reviews), or the Appellee’s Reply Brief (Article 62 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.
6	Brief following CAAF remand to AFCCA (Rule 18(d))	60 Days following Docketing
7	Response to Brief following CAAF remand to AFCCA (Rule 18(d))	60 Days following Initial Brief
8	Brief following CAAF remand to Convening Authority (Rule 18(d))	60 Days following Re-Docketing
9	Response to Brief following CAAF remand to Convening Authority (Rule 18(d))	30 Days following Initial Brief
10	Supplemental Filings (Rule 18.4)	No specified time, but must be submitted by Motion for Leave to File
11	Response to Supplemental Filings (Rule 18.4)	If the motion above is granted, the opposing party may respond within 30 days from the date the motion above is Granted.
12	Motion for Oral Argument (Rule 25)	7 Days following Answer to Appellant’s Brief
13	Supplemental Citation(s) of Authority (Rule 25.2(e))	No later than 2 Business Days before Oral Argument, or within 7 Days following Oral Argument

14	Memorandum of Argument (Rule 25.2(f))	7 Calendar Days following Oral Argument
15	Suggestion for Consideration or Reconsideration of a Proceeding <i>en banc</i> in cases reviewed pursuant to Article 66 UCMJ (Rule 27(b))	7 Days following Government's answer to the Assignment(s) of Error or if Appellant filed a Reply Brief under Rule 18(d)
16	Suggestion for Consideration or Reconsideration of other Proceedings <i>en banc</i> (Rule 27(b))	Must be filed with Party's Initial petition or pleading, or within 7 Days following the Response thereto is filed
17	Appellant's Suggestion for <i>en banc</i> Consideration of Motion for Reconsideration (Rules 27(b) and 31(b)).	30 Days following Receipt by Appellate Defense Counsel or Civilian Defense Counsel, or 30 Days following service of a Decision or Order to Appellant, if not represented
18	Government's Suggestion for <i>en banc</i> Consideration of Motion for Reconsideration (Rules 27(b) and 31(b)).	30 Days following Receipt by Appellate Government Counsel
19	Response to Suggestion for Consideration or Reconsideration <i>en banc</i> (Rule 31(c))	7 Days following <i>en banc</i> suggestion
20	Appellant's motion for reconsideration (Rule 31(b))	30 Days following Receipt by Appellate Defense Counsel or Civilian Defense Counsel, or 30 Days following service of a Decision or Order to Appellant, if not represented, provided a petition for grant of review or certificate for review has not been filed with CAAF, or writ appeal has not been received by CAAF.
21	Government's motion for reconsideration (Rule 31(b))	30 Days following Receipt by Appellate Government Counsel, provided a petition for grant of review or certificate for review has not been filed with CAAF, or writ appeal has not been received by CAAF.

22	Reply to motion for reconsideration (Rule 31(c))	7 Days following Motion for Reconsideration
23	Petition for Extraordinary Relief (Rule 19(b)(1))	As soon as possible; however, no later than 20 Days after Petitioner learns of the action complained of. This does not apply to Petitions for writs of <i>habeas corpus</i> or error <i>coram nobis</i> , which may be filed at any time.
24	Answer to Petition for Extraordinary Relief (Rule 19(f))	20 Days following Show Cause Order or Order Granting Leave to File a Response.
25	Reply to Answer to Petition for Extraordinary Relief (Rule 19(f))	7 Days following Answer
26	Article 62 Appeal by the United States (Rule 20(c)(1)(A))	20 Days following written notice to appeal filed with the trial court to reach the representative designated by TJAG. The person designated by TJAG has 5 days following receipt to file the original record with the Court with a copy to opposing counsel.
27	Brief in Support of Article 62 Appeal by the United States (Rule 20(c)(1)(A))	20 Days following Filing of Record with the Court
28	Answer to Brief in Support of Article 62 Appeal by the United States (Rule 20(c)(1)(B))	20 Days following Government Brief
29	Reply to Answer to Article 62 Appeal by the United States (Rule 20(c)(1)(C))	7 Days following Answer
30	Petition for New Trial (Article 73) (Rule 21(c))	No specified time frame. If petition indicates an intent to file a separate brief in support of petition, must be filed within 30 days following filing of the petition.
	Response to Petition for New Trial (Article 73) (Rule 21(c))	30 Days following Petition or 30 Days following separate brief in support of petition.
	Reply to Petition for New Trial (Article 73) (Rule 21(c))	7 Days following Respondent's Answer
31	Brief in Response to Specified Issue (Rule 30.2(a))	As directed by the Court
32	Petition to Order Convening of Board to inquire into Mental Competence or Responsibility of Appellant (Rule 30.2(b))	No specified Time Frame
33	Government's Response to Petition to Order Convening of	7 Days following Petition

	Board to inquire into Mental Competence or Responsibility of Appellant (Rule 30.2(b))	
34	Motion to Publish a previously-Unpublished Decision (Rule 30.4(b))	14 Days following issuance of Unpublished Decision
35	Response to Motion to Publish a previously-Unpublished Decision (Rule 30.4(b))	7 Days following Motion to Publish
36	Motions (Generally) (Rule 23)	No specified Time Frame
37	Opposition to Motion (other than Motion for Enlargement of Time) (Rule 23(c))	7 Days following Receipt of Motion
38	Motion for Enlargement of Time (Rule 23.3(m))	7 Calendar Days before Filing is Due or must be Filed Out of Time
39	Response to Motion for Enlargement of Time (Rule 23.2)	2 Business Days following Receipt of Motion
40	Notice of Victim Representation (Rule 12.1)	15 Business Days following Retention
41	Certificate of Good Standing by Counsel appearing <i>pro hac vice</i> (Rule 12.2)	Prior to Oral Argument
42	Notice of Appearance by Successor Appellate Defense Counsel following Withdrawal of Appellate Defense Counsel (Rule 12.3)	10 Days following Retention
43	Notification of discipline that results in disbarment, suspension, or other loss of good standing in the Bar of any United States federal or state/territory/commonwealth/possession court. (Rule 10.2)	10 Business Days
44	Notification of suspension from practice in courts-martial or another service court of criminal appeals, or that Article 27(b), UCMJ, certification is withdrawn for cause. (Rule 10.2)	10 Business days

Appendix E – Application for Admission to Practice



United States Air Force Court of Criminal Appeals
1500 West Perimeter Road, Suite 1900
Joint Base Andrews – Naval Air Facility Washington, MD 20762

1. Full Name: _____
2. Correspondence should be addressed to you as Mr./Ms./Mrs./Miss/Rank: _____
3. Name to be printed on Certificate of Admission: _____
4. Residence Address: _____
5. Office Name/Address: _____

6. Other names by which you may be or have been known: _____

7. Telephone: (____) _____ Fax: (____) _____
8. E-mail Address: _____
9. Law School Name, Location, and Degree with Year granted:

10. Federal and State Courts to which you are admitted to practice law:

11. Place applicant is presently engaged in the practice of law: _____

 - (a) Have you ever been disbarred or suspended from practice before any court, department, bureau, or commission of any state or the United States, or received any reprimand from any such agency pertaining to your fitness as a member of the bar?
_____ If so, attach a complete explanation.
 - (b) Are you currently under any type of criminal or other investigation?
_____ If so, attach a complete explanation.
12. I plan to be admitted by oral motion in open court: (Yes) (No).

Note: The applicant must submit this completed form together with an original signed certificate from an officer of a court listed in #10 above indicating that the applicant is an attorney and is currently a member of the Bar in Good Standing. The certificate must be dated within one year of the date of this application.

Certification

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date

Signature of Applicant

Oath

If the applicant does not seek admission in open court, the following oath must be subscribed to before a person authorized to administer oaths.

I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and that I will conduct myself as an attorney and counselor of this Court, uprightly and according to law.

Applicant's signature

Sworn to and subscribed before me this ____ day of _____, _____

Notary Public

The mailing address for the submission of application is:

Clerk of the Court
U.S. Air Force Court of Criminal Appeals
1500 West Perimeter Street, Suite 1900
Joint Base Andrews, MD 20762