

**UNITED STATES ARMY
COURT OF CRIMINAL APPEALS**

**INTERNAL RULES
OF PRACTICE AND PROCEDURE**



Effective 15 January 2015

**Together With
Joint Rules of Practice and Procedure
of the Courts of Criminal Appeals**

TABLE OF CONTENTS

UNITED STATES ARMY COURT OF CRIMINAL APPEALS
INTERNAL RULES OF PRACTICE AND PROCEDURE

Together with Joint C.C.A. Rules printed in **Boldface** Type

	Page
Rule 1. Name and Seal	1
Rule 1.1 Seal.....	1
Rule 2. Jurisdiction	1
Rule 2.1 Ancillary Jurisdiction.....	3
Rule 3. Scope of Review	3
Rule 4. Quorum	3
Rule 5. Place for Filing Papers	3
Rule 5.1 Place for Filing Papers.....	4
Rule 5.2 Facsimile Filing.....	4
Rule 5.3 Electronic Records of Trial.....	5
Rule 5.4 Electronic Filing of Briefs, Petitions, Motions and Other Party Filings.....	5
Rule 6. Signing of Papers	7
Rule 6.1 Signing Papers.....	7
Rule 6.2 Signing "FOR" Another Attorney.....	7
Rule 6.3 Singing Information.....	7
Rule 7. Computation of Time	8
Rule 8. Qualification of Counsel	8
Rule 8.1 Qualification of Counsel.....	8
Rule 8.2 Admission to the Bar of the Court.....	8
Rule 8.3 Attorneys Roll; Certificate of Admission.....	10
Rule 9. Conduct of Counsel	10
Rule 9.1 Conduct of Counsel.....	10
Rule 9.2 Reporting Requirement.....	10
Rule 10. Request for Appellate Defense Counsel	10
Rule 10.1 Notice Requirements.....	11
Rule 11. Assignment of Counsel	11
Rule 12. Retention of Civilian Counsel	12
Rule 12.1 Retention of Civilian Counsel.....	12
Rule 12.2 Service of Multiple Counsel.....	12
Rule 13. Notice of Appearance of Counsel	12
Rule 13.1 Notice of Appearance and Withdrawal of Counsel..	13
Rule 14. Waiver or Withdrawal of Appellate Review	13
Rule 14.1 Waiver or Withdrawal of Appellate Review.....	14
Rule 15. Assignments of Error and Briefs	14
Rule 15.1 Briefs, Petitions and Other Papers Filed with the Court.....	15
Rule 15.2 "Pro Forma" or "Merits" Pleadings.....	17
Rule 15.3 <i>Grostefon</i> Issues.....	17
Rule 15.4 Amicus Curiae Briefs	18

Rule 15.5 Attached Documents.....	18
Rule 16. Oral Arguments.....	18
Rule 16.1 Oral Argument, Motions and Joint Appendix.....	19
Rule 16.2 Argument by Amicus Curiae.....	21
Rule 17. En Banc Proceedings.....	21
Rule 17.1 En Banc Proceedings.....	22
Rule 18. Orders and Decisions of the Court.....	23
Rule 18.1 Opinions of the Court.....	23
Rule 18.2 Opinions that are not an Opinion of the Court...	24
Rule 19. Reconsideration.....	24
Rule 19.1 Motion for Reconsideration by a Panel, Including Reconsideration En Banc.....	25
Rule 20. Petitions for Extraordinary Relief, Answer, and Reply.	26
Rule 20.1 In General.....	27
Rule 20.2 Petitions and Briefs for Extraordinary Relief...	27
Rule 21. Appeals by the United States.....	28
Rule 21.1 Appeals by the United States.....	29
Rule 22. Petitions for New Trial.....	30
Rule 22.1 Petitions for New Trial.....	30
Rule 23. Motions.....	30
Rule 23.1 Expedited Rulings on Motions.....	31
Rule 23.2 Service on Other Parties; "Action Block;" "Comeback" Copies.....	31
Rule 23.3 Accompanying Documents.....	32
Rule 23.4 Motions for Supplemental Citations of Authority.....	32
Rule 24. Continuances and Interlocutory Matters.....	32
Rule 24.1 Extensions of Time to File Papers.....	32
Rule 24.2 Filing Out of Time.....	34
Rule 25. Suspension of Rules.....	34
Rule 25.1 Suspending the Internal Rules.....	34
Rule 26. Internal Rules.....	34
Rule 26.1 Suggested Changes to the Internal Rules.....	34
Rule 27. Recording, Photographing, Broadcasting, or Telecasting of Hearings.....	35
Rule 28. Amendments.....	35
 Additional Internal Rules	
Rule 29. Clerk of Court.....	35
Rule 30. Records of Trial.....	35
Rule 30.1 Custody of Records.....	35
Rule 30.2 Altering Records.....	35
Rule 30.3 Erroneous or Incomplete Records.....	36
Rule 30.4 Sealed Records.....	36
Rule 30.5 Classified Records.....	36

Appendix. Format for Brief on Behalf of (Appellant)(Appellee)

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

INTERNAL RULES OF PRACTICE AND PROCEDURE

(Together with **Joint C.C.A. Rules** printed in **Boldface Type**)

15 January 2015

Rule 1.

NAME AND SEAL

(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.

Rule 1.1 Seal. The official seal of the Court is as follows:

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

Rule 2.

JURISDICTION

(a) The jurisdiction of the Court is as follows:

(1) Review Under Article 66. All cases of trial by Court-martial in which the sentence as approved extends to:

(A) death; or

(B) dismissal of a commissioned officer, cadet or midshipman, dishonorable or bad-conduct discharge, or confinement for 1 year or longer; and in which the accused has not waived or with- drawn appellate review.

(2) Review upon Direction of the Judge Advocate General Under Article 69. All cases of trial by Court-martial in which there has been a finding of guilty and a sentence:

(A) for which Article 66 does not otherwise provide appellate review, and

(B) which the Judge Advocate General forwards to the Court for review, pursuant to Article 69(d), and

(C) in which the accused has not waived or withdrawn appellate review.

(3) Review Under Article 62. All cases of trial by Court-martial in which a punitive discharge may be adjudged and a military judge presides, and in which the Government appeals an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification or excludes evidence that is substantial proof of a fact material to the proceedings, or directs the disclosure of classified information, imposes sanctions for nondisclosure of classified information, or refuses to issue or enforce a protective order sought by the United States to prevent the disclosure of classified information.

(4) Review Under Article 73. All petitions for a new trial in cases of trial by Court-martial which are referred to the Court by the Judge Advocate General.

(b) Extraordinary Writs. The Court may, in its discretion, entertain petitions for extraordinary relief including, but not limited to, writs of mandamus, writs of prohibition, writs of habeas corpus, and writs of error coram nobis.

(c) Effect of Rules on Jurisdiction. Nothing in these Rules shall be construed to extend or limit the jurisdiction of the Courts of Criminal Appeals as established by law.

Rule 2.1 Ancillary Jurisdiction. The Court retains ancillary jurisdiction over cases initially reviewed pursuant to Article 66 and remanded by it for further proceedings, notwithstanding any consequent reduction of the sentence below the level requiring review pursuant to Article 66(b), UCMJ.

Rule 3.
SCOPE OF REVIEW

In cases referred to it for review pursuant to Article 66, the Court may act only with respect to the findings and sentence as approved by the convening authority. In reviewing a case or action under Article 69(d) or in determining an appeal under Article 62, the Court may act only with respect to matters of law. The Court may, in addition, review such other matters and take such other action as it determines to be proper under substantive law.

Rule 4.
QUORUM

(a) In Panel. When sitting in panel, a majority of the judges assigned to that panel constitutes a quorum for the purpose of hearing or determining any matter referred to the panel. The determination of any matter referred to the panel shall be according to the opinion of a majority of the judges participating in the decision. However, any judge present for duty may issue all necessary orders concerning any proceedings pending on the panel. Any judge present for duty, or a clerk of Court or commissioner to whom the Court has delegated authority, may act on uncontested motions, provided such action does not finally dispose of a petition, appeal, or case before the Court.

(b) En Banc. When sitting as a whole, a majority of the judges of the Court constitutes a quorum for the purpose of hearing and determining any matter before the Court. The determination of any matter before the Court shall be according to the opinion of a majority of the judges participating in the decision. In the absence of a quorum, any judge present for duty may issue all necessary orders concerning any proceedings pending in the Court preparatory to hearing or decision thereof.

Rule 5.
PLACE FOR FILING PAPERS

When the filing of a notice of appearance, brief, or other paper in the office of a Judge Advocate General is required by these rules, such papers shall be filed in the Office of the Judge Advocate General of the appropriate armed force or in such other place as the Judge Advocate General or rule promulgated pursuant to Rule 26 hereof may designate. If transmitted by mail or other means, they are not filed until received in such office.

Rule 5.1 Place for Filing Papers. All hard copies of pleadings and other papers relative to a case, to include materials stored on electronic media such as CD-ROMs and DVDS, shall be submitted to:

Clerk of Court
U.S. Army Judiciary (JALS-CC)
9275 Gunston Road (Building 1450)
Fort Belvoir, VA 22060-5546

Rule 5.2 Facsimile Filing (See also Rule 20(c)).

Facsimile filing is generally disfavored. With written permission from the Clerk of Court, any paper not exceeding 25 pages in length in its entirety may be filed by facsimile transmission. The paper must comply with the typographical requirements of Rule 15.1(b) and must show the sender's facsimile, voice telephone numbers, and email address. Except as indicated below, if the facsimile shows the signature required by Rule 6.1 and the certificate of service on opposing counsel required by Rule 15.1(c), a signed original copy need not be sent unless so ordered by the Court. As exceptions, a signed original of the following documents, in addition to the facsimile copy, must be sent by the fastest available means: (1) a Petition for New Trial (Rule 22.1(b)); (2) any statement made under oath or penalty of perjury (Rule 23(b)); (3) a Petition for Extraordinary Relief (Rule 20.1); and (4) any document submitted to comply with the requirement for an original copy of that document in the original record of trial, such as a Charge Sheet or Action of the Convening Authority.

Current facsimile and voice telephone numbers:

Clerk of Court:

Facsimile: 703-806-0124 (DSN 223-0124)

Voice: 703-693-1301/1302/1328

(DSN 223-1301/1302/1328)

Government Appellate Division:

Facsimile: 703-696-8093 (DSN 426-8093)

Voice: 703-588-1909 (DSN 425-1909)

Defense Appellate Division:

Facsimile: 703-806-0676 (DSN 426-8100)

Voice: 703-588-6071 (DSN 425-6071)

Rule 5.3 Electronic record of trial (e-ROT) filing. See also Rule 20(c)).

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

Rule 5.4 Electronic filing of briefs, petitions, motions, and other party filings.

(a) With written permission from the Clerk of Court (or his or her designee), parties may electronically file briefs, petitions, motions, and other party filings with this Court. These filings shall be by electronic mail (e-mail) to the following address:

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

(b) No other method of electronic filing will be accepted absent permission from the Clerk of Court. Parties shall comply with all laws and regulations governing the electronic transmission of documents on government computer systems, to include the prohibition of transmitting classified information through unauthorized means.

(c) *Filing format.* Any filing submitted electronically to the Court shall be converted into PDF format. The filing party shall create the PDF format in a manner to minimize file size. All electronically submitted filings shall otherwise comply with the formatting required in these Internal Rules of Practice and Procedure and Joint Rules of Practice and Procedure

(d) *E-mail subject line.* All electronic filings shall contain the following information in the subject line: Case name; title of filed document; case number. Example 1: U.S. v. SGT John Doe - appellant's brief - ARMY 20141234; Example 2: U.S. v. SGT John Doe - Government motion to attach Appellate Exhibits - Army 20141234; Example 3: U.S. v. COL William Tudor (Military Judge) - Article 62 petition.

(e) *PDF document names.* The submitted PDF document itself shall be named in a manner that readily identifies the nature of the document, to include the submission date and case number. Example: "Brief for the Appellee - U.S. v. SGT John Doe - 15 December 2014 - Army 20141234."

(f) *Narrative language.* All electronic filings under this rule shall contain the following language in the body of the email:

"I hereby certify that the following documents were transmitted on the date/time of this message: list of filed PDF document(s) using the naming convention in Rule 5.4(e) above.

This email contains [number] attachment(s).

Each real party in interest was served with a copy of this filing."

(g) *Content of filings.* Classified material and material under seal **shall not be filed electronically under this rule**. If such material needs to be filed, it shall be submitted to this Court on paper, following applicable Army regulations and other legal guidelines, as a supplemental filing to the document in which the material would otherwise appear. In such cases, counsel will include in the text of the electronic mail message a notation that classified and/or sealed material is being filed separately.

(h) *Non-compliance with this rule.* Failure to comply with the provision of this rule may result in the Clerk of Court

rejecting the offered filing. Rejected filings will not be attached to the record of trial and will not serve to toll a filing deadline.

Rule 6.
SIGNING OF PAPERS

All formal papers shall be signed and shall show, typewritten or printed, the signer's name, address, military grade (if any), 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 persons signing the paper and that the paper is filed in good faith and not for purposes of unnecessary delay.

Rule 6.1 Signing Papers. Unless permitted to be filed by an individual appellant, each pleading or other paper will be signed by an attorney of record. This applies to original or facsimile filings; electronic signatures are authorized for filings submitted under Rule 5.4. Requirements for admission to the Bar of the Court are set forth in Rules 8.1 and 8.2. Notice of appearance requirements are set forth in Rule 13.1(a). A paralegal or legal intern who assists in preparing a pleading or other paper may not sign the paper, but the assistance may be recognized in a footnote.

Rule 6.2 Signing "FOR" Another Attorney. One attorney of record may sign "FOR" another attorney of record whose signature block appears on the same pleading or other paper if authorized by that attorney to do so, in which event the Court will regard the latter as having personally signed the document.

Rule 6.3 Signing information. Non-federal civilian counsel and appellants proceeding pro se must include a mailing address, telephone number, and email address below the signature line of each filing.

Rule 7.
COMPUTATION OF TIME

In computing any period of time prescribed or allowed by these rules, by order of the Court, or by 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, when the act to be done is the filing of a paper in Court, a day on which the office of the Clerk of the Court is closed due to weather or other conditions or by order of the Chief Judge, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

Rule 8.

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, the highest Court of a State or another recognized bar.

(b) Military Counsel. Assigned appellate defense and appellate government counsel shall, in addition, be qualified in accordance with Articles 27(b)(1) and 70(a), Uniform Code of Military Justice.

(c) Admission. Each Court may license 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 8.1 Qualification of Counsel. No attorney may practice before this Court unless admitted to the Bar of the Court or appearing by leave of the Court pro hac vice (Rule 13.1(c)) or as an amicus curiae (Rule 15.4).

Rule 8.2 Admission to the Bar of the Court.

(a) The Court licenses counsel as permitted by Rule 8(c). To be eligible for admission to the Bar of the Court, an attorney must be a member in good standing of the bar of the highest Court of a state, territory, commonwealth, or possession of the United States, bar of the District of Columbia, or bar of a federal Court, and possess good personal and professional character. There is no admission fee.

(b) Each applicant must file with the Clerk an application for admission on the form prescribed by the Court, together with a certificate from the presiding judge, clerk, or other appropriate officer of a Court specified in Rule 8.2(a), showing that the applicant is a member of the bar in good standing. The certificate must be an original and dated within one year of the actual date of admission to the Bar of this Court. Applicants currently certified by a Judge Advocate General pursuant to Article 26(b) or 27(b)(1), UCMJ, may be admitted without a certificate of good standing; however, the Court may require evidence of certification. Applications are available on the Court's website at www.jagcnet.army.mil/acca.

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

MOTION

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

OATH

I, [full name], 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.]

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

Rule 8.3 Attorneys Roll; Certificate of Admission. Each attorney admitted must sign the Roll Book and will receive a Certificate of Admission.

Rule 9.
CONDUCT OF COUNSEL

The conduct of counsel appearing before the Court shall be in accordance with rules of conduct prescribed pursuant to Rule for Courts-Martial 109 by the Judge Advocate General of the service concerned. However, the Court may exercise its inherent power to regulate counsel appearing before it, including the power to remove counsel from a particular case for misconduct in relation to that case. 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 9.1 Conduct of Counsel. Attorneys appearing before this Court are subject to the Rules of Professional Conduct for Lawyers set forth in Army Regulation 27-26. Violation of the Rules of Professional Conduct for Lawyers may result in disciplinary action.

Rule 9.2 Reporting Requirement. 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, must promptly so notify the Clerk of Court at the address shown in Rule 5.1. Likewise, any member of the Bar who is suspended from practice in Courts-martial or the Court of Criminal Appeals of any military service, or whose certification pursuant to Article 26(b) or 27(b)(1), UCMJ, is withdrawn for cause, shall promptly so notify the Clerk of Court. This includes notification at the time of application (see Rule 8.2.(b)).

Rule 10.
REQUEST FOR APPELLATE DEFENSE COUNSEL

An accused may be represented before the Court by appellate counsel detailed pursuant to Article 70(a) or by civilian counsel provided by the accused, or both. An accused who does not waive appellate review pursuant to Rule for Courts-Martial 1110 shall, within 10 days after service of a copy of the convening

authority's action under Rule for Courts-Martial 1107(h), forward to the convening authority or the Judge Advocate General:

(a) A request for representation by military appellate defense counsel, or

(b) Notice that civilian counsel has been retained or that action has been taken to retain civilian counsel (must include name and address of civilian counsel), or

(c) Both a request for representation by military appellate defense counsel under Rule 10(a) and notice regarding civilian counsel under Rule 10(b), or

(d) A waiver of representation by counsel.

Rule 10.1 Notice Requirements. Notice of the retention of civilian counsel must be in writing, and include the following: (1) name and address of civilian counsel; (2) the phone number(s); (3) facsimile phone numbers and e-mail address. Civilian counsel with ongoing business before the Bar of this Court shall promptly notify the Clerk of Court of any changes in the above information.

**Rule 11.
ASSIGNMENT OF COUNSEL**

(a) When a record of trial is referred to the Court--

(1) if the accused has requested representation by appellate defense counsel, pursuant to Article 70(c)(1), counsel detailed pursuant to Article 70(a) will be assigned to represent the accused;

(2) if the accused gives notice that he or she has retained or has taken action to retain civilian counsel, appellate defense counsel shall be assigned to represent the interests of the accused pending appearance of civilian counsel. Assigned defense counsel will continue to assist after appearance by civilian counsel unless excused by the accused;

(3) if the accused has neither requested appellate counsel nor given notice of action to retain civilian counsel, but has not waived representation by counsel, appellate defense counsel will be assigned to represent the accused, subject to excusal by the accused or by direction of the Court.

(b) In any case--

(1) the Court may request counsel when counsel have not been assigned;

(2) Pursuant to Article 70(c)(2), and subject to Rule 11(a)(2), appellate defense counsel will represent the accused when the United States is represented by counsel before the Court.

Rule 12.

RETENTION OF CIVILIAN COUNSEL

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. Civilian counsel may reproduce, at no expense to the Government, appellate defense counsel's copy of the record.

Rule 12.1 Retention of Civilian Counsel. If an appellant has initially retained or indicated an intent to retain civilian counsel, the Chief, Defense Appellate Division, receives notice by virtue of the terms of appointment under Rule 11(a)(2). If, after the appointment of military appellate counsel, an appellant retains civilian counsel, the Chief, Defense Appellate Division, will ensure that the Clerk of Court is notified.

Rule 12.2 Service of Multiple Counsel. The Court and the government will provide both civilian counsel and detailed defense appellate counsel notice of pleadings, motions, and all correspondence. The Clerk is authorized to serve all papers on counsel of record electronically or by facsimile with the consent of counsel of record. Counsel of record who agrees to accept electronic notice or notice by facsimile must agree that such notice will be the only notice provided by the Court.

Rule 13.

NOTICE OF APPEARANCE OF COUNSEL

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 constitutes notice of appearance of such counsel.

Rule 13.1 Notice of Appearance and Withdrawal of Counsel.

(a) Notices of Appearance are to be filed with the Clerk of Court. Signing a motion, as distinguished from a pleading, does not constitute notice of appearance. Civilian counsel shall file a written notice of appearance as soon as he/she is retained.

(b) Counsel may withdraw only by leave of the Court.

(1) In capital cases, counsel must formally move to withdraw in writing. A Motion to Withdraw should state the reason for withdrawal and, if by an accused's counsel, must indicate whether the accused has been informed and what provisions have been made for continued representation.

(2) In noncapital cases and cases not scheduled for hearing, assigned military counsel need not move to withdraw when the withdrawal is due to counsel's reassignment from the appellate division and the representation will be continued by other assigned military counsel.

(c) If an attorney named on a pleading has not been admitted to the Bar of this Court, the pleading shall be accompanied by an application for admission to the Bar (Rule 8.2) or a Motion for Leave of Court to Appear Pro Hac Vice in the case in question. The motion must identify the Courts to which the movant is admitted to practice and must indicate whether any disciplinary proceedings are pending against the movant.

(d) Notice of the retention of civilian counsel must be in writing, and include the following: (1) name and address of civilian counsel; (2) the phone number(s); (3) facsimile phone numbers and e-mail address. Civilian counsel with ongoing business before the Bar of this Court shall promptly notify the Clerk of Court of any changes in the above information.

Rule 14.

WAIVER OR WITHDRAWAL OF APPELLATE REVIEW

Withdrawals from appellate review, and waivers of appellate review filed after expiration of the period prescribed by Rule for Courts-Martial 1110(f) (1), will be referred to the Court for

consideration. At its discretion, the Court may require the filing of a motion for withdrawal, issue a show cause order, or grant the withdrawal without further action, as may be appropriate. The Court will return the record of trial, in a case withdrawn from appellate review, to the Judge Advocate General for action pursuant to Rule for Courts-Martial 1112.

Rule 14.1 Waiver or Withdrawal of Appellate Review.

(a) When a waiver of appellate review, which appears to have been timely filed with the convening authority and in substantial compliance with R.C.M. 1110, is received after a record of trial has been referred to the Court, but before the case is at issue, the Clerk of Court may revoke the referral and return the record to the trial jurisdiction for review pursuant to R.C.M. 1112. Otherwise, the waiver will be referred to the accused's appellate counsel or to the Court, as circumstances may require.

(b) Except as provided in Rule 14.1(a), a case may be with-drawn from appellate review only by order of the Court granting a Motion to Withdraw Appeal. The motion must be accompanied by a document executed by both appellant and a detailed trial defense counsel, civilian counsel, or appellate defense counsel. The document must be dated and signed both by counsel and appellant. The Court will not accept a withdrawal until accused/appellant is fully informed of his/her appellate rights and of the consequences of waiving or withdrawing appellate review and the request for withdrawal must be in substantial compliance with R.C.M. 1110.

(c) Government appeals pursuant to Article 62, UCMJ, are withdrawn as indicated in Rule 21.1. Other pending matters may be withdrawn by Motion to Withdraw naming the matter to be withdrawn.

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

Rule 15.

ASSIGNMENTS OF ERROR AND BRIEFS

(a) **General Provisions.** Appellate counsel for the accused may file an assignment of error if any are to be alleged, setting forth separately each error asserted. The assignment of errors should be included in a brief for the accused in the format set forth in Attachment 2. An original of all assignments of error and briefs, and as many additional copies as shall be prescribed by the Court, shall be submitted. Briefs and assignments of errors shall be typed or printed, double-spaced on white paper, and securely fastened at the top. All references to matters contained in the record shall show record page numbers and any exhibit designations. A brief on behalf of the government shall be of like character as that prescribed for the accused.

(b) **Time for Filing and Number of Briefs.** Any brief for an accused shall be filed within 60 days after appellate counsel has been notified of the receipt of the record in the Office of the Judge Advocate General. 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 government within 30 days after any brief and assignment of errors has been filed on behalf of an 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 government. If no brief is filed on behalf of an accused, a brief on behalf of the government may be filed within 30 days after expiration of the time allowed for the filing of a brief on behalf of the accused.

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

Rule 15.1 Briefs, Petitions, and Other Papers Filed with the Court.

(a) As an exception to Rule 15(b), the Court will issue a scheduling order in cases remanded directly by the U.S. Court of Appeals for the Armed Forces or in cases returned to the Court following further proceedings below.

(b) Any pleading or other paper filed with the Court must be submitted in original, signed copy, except those filed by facsimile as permitted by Rule 5.2. The original copy must be

typed double-spaced in Courier New, 12 point, so as to produce a clear black image on a single side of white 8.5-inch by 11-inch, 20-pound paper. All papers shall be prepunched for a two-and-three-fourths-inch-wide prong fastener at the top center for insertion into a record of trial. Additional copies required by the Court may be reproduced by any means producing a clear black image on white paper.

(c) Copies of pleadings and other papers filed with the Court must be served on the counsel of record for the opposing party, including any civilian counsel. If no counsel has been designated or entered an appearance for the opposing party, copies shall be served upon the person named as opposing party or upon the officer who will be designated pursuant to Rule 11. Proof of service shall be by Certificate of Service in the following form:

Certificate of Service

I certify that a copy of the foregoing was (mailed)
(delivered) (sent via _____) to
_____ at _____
_____ on the ____ day of _____ 20____.

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

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

(e) The Brief on Behalf of Appellant, Brief on Behalf of Appellee, and Reply Brief on Behalf of Appellant must conform to the format and requirements set forth in the Appendix to these rules.

(f) Any Supplemental Brief on Behalf of Appellant must be submitted by Motion for Leave to File showing good cause for the delayed filing. If the motion is granted, the appellee must file a response within thirty days. But, when appellee's

initial Brief on Behalf of Appellee has not previously been filed, the period for filing that brief is automatically extended to coincide with the time for filing a response to the Supplemental Brief on Behalf of Appellant.

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

Rule 15.2 "Pro Forma" or "Merits" Pleadings. In cases referred to the Court for review pursuant to Article 66, UCMJ, the appellant, without conceding the legal or factual correctness of the findings of guilty or the sentence, may file a pleading which does not assign error, does not raise error asserted personally by the appellant, and does not request specific relief. In such cases, the Clerk will deliver the original record of trial to the Court without delay. The Court may proceed with its review and may issue a decision unless notified within seven days that the appellee intends to file a brief pursuant to the last sentence of Rule 15(b).

Rule 15.3 *Grostefon* Issues.

(a) In any case reviewed by the Court pursuant to Article 66, UCMJ, counsel shall notify the Court of any issues raised personally by the appellant. Counsel shall cite to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

(b) Unless otherwise briefed or argued by appellate defense counsel, *Grostefon* issues shall be brought to the Court's attention by footnote or in an Appendix to the Brief on Behalf of Appellant.

(1) To support the appellant's contentions, counsel may submit, by motion, written communications from the appellant. Unless submissions are clearly legible, appellate defense counsel is responsible for providing a typed transcript of any handwritten submissions.

(2) When requested by the appellant, the Court will consider matters submitted to the convening authority pursuant to Rules for Courts-Martial 1105 and 1106, without transcription.

(c) Government appellate counsel must examine all *Grostefon* issues and may either address each issue or enter a general opposition

(d) The Court as a general rule, will decide *Grostefon* issues without requesting further submissions from either party. The Court may specify an issue raised in *Grostefon* and order that it be briefed or argued pursuant to ACCA Rule 15.6.

Rule 15.4 Amicus Curiae Briefs.

(a) A brief of an amicus curiae may be filed by invitation of the Court or by motion for leave to file granted by the Court. Unless otherwise ordered by the Court, the brief of an amicus curiae shall be filed no later than seven days after the filing of the answer by the appellee or respondent.

(b) Ordinarily, 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 an amicus curiae to participate in a hearing.

Rule 15.5 Attached 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.

Rule 15.6 Specified Issues.

The Court may specify any issue and order submission of briefs and/or oral argument.

Rule 16. 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 16.1 Oral Argument Motions and Joint Appendix.

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

(b) In all cases where this Court hears oral argument, within seven days of the notice of hearing, the parties shall file before this Court four copies of a Joint Appendix. Should this Court hear oral argument En Banc, the parties shall file sufficient additional copies of the Joint Appendix for each judge and commissioner assigned to the Court (including the Chief Judge's commissioner).

(1) Contents. The Joint Appendix shall contain:

- (A) The notice of hearing
- (B) All briefs and required attachments filed in this case, including reply briefs.
- (C) The promulgating order and the charge sheet(s).
- (D) The index to the record of trial.
- (E) Relevant portions of the pleadings, charges, and findings from the proceeding below to assist the judges in resolving the issues addressed at oral argument.
- (F) Other parts of the record of trial to which the parties wish to direct the Court's attention to assist the judges in resolving the issues addressed at oral argument.
- (G) Relevant extracts of UCMJ articles, rules, and regulations.

(2) Format. The Joint Appendix will be produced on 8½ by 11 inch white paper, be bound in a manner that is secure and does not obscure the text, and will permit the contents to lie reasonably flat when open. The Joint Appendix shall contain a table of contents. Pages in the Joint Appendix shall be sequentially numbered in a manner that does not obscure any page numbers reflected in the record of trial. If the Joint Appendix consists of less than 100 pages, it may be reproduced by single-sided or double-sided copying. If it consists of 100 pages or more, the Joint Appendix shall use double-sided copying. Classified material or matters under seal that are to be included in a Joint Appendix shall be submitted in a separate volume, clearly designated as containing classified or sealed material. Classified material will be handled in accordance with Rule 30.5.

(3) Agreement and Designation. The parties are encouraged to agree on the contents of the Joint Appendix. In the absence of agreement, the parties must, within 3 days of the notice of hearing, serve on each other a designation of the parts of the record to be included in the Joint Appendix. The parties must then assemble the Joint Appendix by designating each parties' respective portions of the Joint Appendix.

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

(d) Only one counsel may present oral argument for each party. Any party wishing to deviate from this rule must obtain leave of the Court by motion. Any counsel who has entered an appearance in the case may be seated at the counsel table. Absent leave of Court, only members of the Bar or counsel appearing pro hac vice or as amicus curiae may be seated at the counsel table. Military counsel shall appear in the Army Service Uniform. Civilian counsel shall wear similarly dignified business attire. Tobacco use, eating, and chewing gum are not permitted in the Courtroom. Counsel may provide drinking water for their own convenience, but shall remove it when the hearing is adjourned. Cellular telephones, pagers, watch alarms, and similar devices, will be turned off.

(e) Supplemental citations of authority may be submitted by Motion for Leave to File no later than two days prior to oral argument unless otherwise authorized by the Court. In addition to the copies required by Rule 15.1(c), moving counsel shall file a number of copies sufficient for each judge and commissioner. Within seven days following oral argument, counsel may submit a Motion for Leave to File a Memorandum of Argument or for a Motion for Leave to File a Supplemental Citation of Authority for any argument or citation made during the hearing that was not set forth in the brief filed prior to argument. Moving counsel citing unpublished opinions shall file paper copies sufficient for each judge and commissioner and opposing counsel. Moving counsel are not required to provide paper copies of previously published supplemental citations of authority. If moving counsel provides paper copies to the Court, paper copies shall be provided equally to opposing counsel.

Rule 16.2 Argument by Amicus Curiae. Argument by counsel for an amicus curiae may be allowed on motion filed under Rule 23.

Rule 17.
EN BANC PROCEEDINGS

(a) A party may suggest the appropriateness of consideration or reconsideration by the Court as a whole. Such consideration or reconsideration ordinarily will not be ordered except (1) when consideration by the full Court is necessary to secure or maintain uniformity of decision, or (2) when the proceedings involve a question of exceptional importance, or (3) when a sentence being reviewed pursuant to Article 66 extends to death. In cases being reviewed pursuant to Article 66, a party's suggestion that a matter be considered initially by the Court as a whole must be filed with the Court within 7 days after the government files its answer to the assignment of errors, or the appellant files a reply under Rule 15(b). In other proceedings, the suggestion must be filed with the party's initial petition or other initial pleading, or within 7 days after the response thereto is filed. A suggestion for reconsideration by the Court as a whole must be made within the time prescribed by Rule 19 for filing a motion for reconsideration. No response to a suggestion for consideration or reconsideration by the Court as a whole may be filed unless the Court shall so order.

(b) The suggestion of a party for consideration or reconsideration by the Court as a whole shall be transmitted to each judge of the Court who is present for duty, but a vote need not

be taken to determine whether the cause shall be considered or reconsidered by the Court as a whole on such a suggestion made by a party unless a judge requests a vote.

(c) A majority of the judges present for duty may order that any appeal or other proceeding be considered or reconsidered by the Court sitting as a whole. However, en banc reconsideration of an en banc decision will not be held unless at least one member of the original majority concurs in a vote for reconsideration.

(d) This rule does not affect the power of the Court *sua sponte* to consider or reconsider any case sitting as a whole.

Rule 17.1 En Banc Proceedings.

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

(1) A party's Suggestion for Consideration by the Court En Banc will be filed in conformance with the requirements of Rule 15.1 including the requirements for service. The Court may direct submission of additional copies of any pleading by either party. The suggestion shall state the basis upon which the consideration or reconsideration en banc is requested.

(2) When the suggestion is filed with a party's initial pleading, the Court need not act upon the suggestion until the opposing party's response to that pleading is filed.

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

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

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

(b) A party may suggest that the Court sit En Banc in reconsidering a decision issued by a panel of the Court. Rule 19.1(a). A party suggesting the Court sit En Banc to reconsider a decision by a panel must demonstrate both that:

(1) En Banc reconsideration is appropriate because (1) consideration by the full Court is necessary to secure or maintain uniformity of decision, or (2) when the proceedings involve a question of exceptional importance, or (3) when a sentence being reviewed pursuant to Article 66 extends to death; and

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

Rule 18.

ORDERS AND DECISIONS OF THE COURT

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

Rule 18.1. Opinions of the Court.

(a) Published opinions of this Court constitute the law of this jurisdiction and binding precedent.

(b) Any panel of the Court may propose an opinion be published as an Opinion of the Court. The opinion shall be circulated among the active members of the Court present for duty. Any judge may suggest consideration of a proposed Opinion of the Court En Banc (See Rule 17).

Rule 18.2. Opinions that are not an Opinion of the Court. This Court issues decisions in the form of Summary Affirmances, Summary Dispositions, and Memorandum Opinions that may be cited and considered by the Court as persuasive authority.

**Rule 19.
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. No briefs or arguments shall be received unless the order so directs.

(b) Provided the United States Court of Appeals for the Armed Forces has not taken jurisdiction of the case, the Court may in its discretion, reconsider its decision or order in any case upon motion filed either:

(1) By appellate defense 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, or

(2) By appellate government counsel within 30 days after the decision is received by counsel.

(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 25 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 19.1 Motions for Reconsideration by a Panel Including Reconsideration En Banc.

(a) Procedure. A party may seek reconsideration of a decision or order by filing a Motion for Reconsideration. A motion that a panel of the Court reconsider its decision or order must be filed in an original and four copies. A Motion for Reconsideration of a decision of the Court sitting as a whole or a Motion for Reconsideration of a panel decision accompanied by a Suggestion for Reconsideration by the Court sitting as a whole must be filed in an original with a number of copies equal to the number of judges and commissioners then assigned to the Court, and each copy must include a copy of the decision or order as to which reconsideration is sought. Any motion for reconsideration must be delivered, with the required number of copies, to the Office of the Clerk of Court.

(b) Grounds for 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; or

(3) The decision conflicts with a decision of the Supreme Court of the United States, the United States Court of Appeals for the Armed Forces, another service Court of Criminal Appeals, or this Court either sitting En Banc or as a panel.

(c) Unless otherwise announced in an order granting reconsideration, the order vacates the decision being reconsidered.

(d) Reconsideration En Banc. A Motion for Reconsideration of a panel decision may be accompanied by a Suggestion for Reconsideration by the Court sitting as a whole (En Banc) in accordance with ACCA Rule 17. In addition to specifying all grounds for reconsideration per rule 19.1(b), the Suggestion for En Banc Reconsideration must establish that En Banc consideration is appropriate because (i) consideration by the full Court is necessary to secure or maintain uniformity of decision, or (ii) the proceedings involve a question of exceptional importance, or (iii) the sentence being reviewed pursuant to Article 66 extends to death.

Rule 20.
PETITIONS FOR EXTRAORDINARY RELIEF,
ANSWER, AND REPLY

(a) Petition for Extraordinary Relief. A petition for extraordinary relief in the number of copies required by the Court shall be accompanied by proof of service on each party respondent and will contain:

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

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

(3) A copy of any pertinent parts of the record and all exhibits related to the petition if reasonably available and transmittable at or near the time the petition is filed;

(4) A statement of the issue;

(5) The specific relief sought;

(6) Reasons for granting the writ;

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

(8) If desired, a request for appointment of appellate counsel.

(b) Format. The title of the petition shall include the name, military grade and service number of each named party and, where appropriate, the official military or civilian title of any named party acting in an official capacity as an officer or agent of the United States. When an accused has not been named as a party, the accused shall be identified by name, military grade, and service number by the petitioner and shall be designated as the real party in interest.

(c) Electronic Petitions. The Court will docket petitions for extraordinary relief submitted by electronic means. A

petition submitted by electronic means will conclude with the full name and address of petitioner's counsel, if any, and will state when the written petition and brief, when required, were forwarded to the Court and to all named respondents and by what means they were forwarded.

(d) Notice to the Judge Advocate General. Immediately upon receipt of any petition, the Clerk shall forward a copy of the petition to the appropriate Judge Advocate General or designee.

(e) Briefs. Each petition for extraordinary relief must be accompanied by a brief in support of the petition unless it is filed in *propria persona*. The Court may issue a show cause order in which event the respondent shall file an answer within 10 days of the receipt of the show cause order. The petitioner may file a reply to the answer within 7 days of receipt of the answer.

(f) Initial Action by the Court. The Court may dismiss or deny the petition, order the respondent to show cause and file an answer within the time specified, or take whatever other action it deems appropriate.

(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 may require. This includes referring the matter to a special master, who need not be a military judge, to further investigate; to take evidence; and to make such recommendations as the Court deems appropriate.

Rule 20.1 In General.

Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. Section 1651(a) is not a matter of right, but of discretion sparingly exercised. The petitioner must justify the granting of any such writ by showing that the writ will aid the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other Court.

Rule 20.2 Petitions and Briefs for Extraordinary Relief.

(a) A Petition for Extraordinary Relief and supporting briefs must be filed in an original and two copies. When filed by facsimile as permitted by Rule 20(c) and Rule 5.2, or if filed electronically under Rule 5.4, the two hard copies plus

the number of copies required for service on each respondent must be sent to the Clerk of Court by the most expeditious means available. The petition must be captioned so as to specify the type of writ sought (for example, Petition for Extraordinary Relief in the Nature of a Writ of Mandamus). If a stay of ongoing or impending proceedings is sought, the caption must so indicate (for example, Petition for Extraordinary Relief in the Nature of a Writ of Mandamus and Application for Stay of Proceedings).

(b) The party or parties filing the petition will be named the petitioner or petitioners. The adverse parties named in the petition will be named respondents.

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

(d) Petitions for extraordinary relief and supporting briefs must comply with the standards set forth in Rule 15 and Rule 15.1.

(e) Service of a copy of the petition on the Chief, Government Appellate Division, is deemed the notice to The Judge Advocate General required by Rule 20(d).

Rule 21.

APPEALS BY THE UNITED STATES

(a) **Restricted Filing.** Only a representative of the government designated by the Judge Advocate General of the respective service may file an appeal by the United States under Article 62.

(b) **Counsel.** Counsel must be qualified and appointed, and give notice of appearance in accordance with these rules and those of the Judge Advocate General concerned.

(c) **Form of Appeal.** The appeal must include those documents specified by Rule for Courts-Martial 908 and by applicable regulations of the Secretary concerned. A certificate of the Notice of Appeal described in Rule for Courts-Martial 908(b)(3) must be included. The certificate of service must reflect the date and time of the military judge's ruling or

order from which the appeal is taken, and the time and date of service upon the military judge.

(d) Time for filing. All procedural Rules of the Court shall apply except as noted herein:

(1) The representative of the government designated by The Judge Advocate General shall decide whether to file the appeal with the Court. The trial counsel shall have 20 days from the date written notice to appeal is filed with the trial Court to forward the appeal, including an original and two copies of the record of trial, to the representative of the Government designated by The Judge Advocate General. The person designated by The Judge Advocate General shall promptly file the original record with the Clerk of the Court and forward one copy to opposing counsel. Appellate government counsel shall have 20 days (or more upon a showing of good cause made by motion for enlargement within the 20 days) from the date the record is filed with the Court to file the appeal with supporting brief with the Court. Should the Government decide to withdraw the appeal after the record is received by the Court, appellate government counsel shall notify the Court in writing. Appellate brief(s) shall be prepared in the manner prescribed by Rule 15.

(2) Appellee shall prepare an answer in the manner prescribed by Rule 15 and shall file such answer within 20 days after any filing of the government brief.

(e) The government shall diligently prosecute all appeals by the United States and the Court will give such appeals priority over all other proceedings where practicable.

Rule 21.1 Appeals by the United States.

(a) The Chief, Government Appellate Division, must file an Appeal and Brief on Behalf of the United States within the time limits of Rule 21(d)(1). Failure to file the appeal and brief timely will be cause for dismissal. The accused shall be named the Appellee. A copy of the Notice of Appeal must be appended to the Appeal and Brief on Behalf of the United States. The summary of proceedings must include the date of the military judge's ruling, the date notice of appeal was filed, and the date the record of proceedings was filed with the Clerk of Court.

(b) The appellee's answer must be filed with the time prescribed by Rule 21(d)(2), unless the period is extended by the Court. No reply may be filed except by leave of Court.

Rule 22.
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 petition for new trial submitted while the accused's case is undergoing review by a Court of Criminal Appeals shall be filed with an original and two copies and shall comply with the requirements of Rule for Courts-Martial 1210(c).

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

(c) A brief in support of a petition for new trial, unless expressly incorporated in or filed with the petition, will be filed substantially in the format specified by Rule 15 no later than 30 days after the filing of the petition or receipt of the notice required by subsection (b) of this Rule, whichever is later. An appellee's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed no later than 10 days after the filing of the appellee's answer.

Rule 22.1 Petitions for New Trial.

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

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. Motions, pleadings, and other papers desired to be filed with the Court may be combined in the same document, with the heading indicating, for example "MOTION TO FILE (SUPPLEMENTAL ASSIGNMENT OF ERRORS) (CERTIFICATE OF CORRECTION) (SUPPLEMENTAL PLEADING)", or "ASSIGNMENT OF ERRORS AND MOTION TO FILE ATTACHED REPORT OF MEDICAL BOARD".

(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. Section 1746. All documents containing language other than English shall have, attached, a certified English translation.

(c) **Opposition.** Any opposition to a motion shall be filed within 7 days after receipt by the opposing party of service of the motion.

(d) **Leave to File.** Any pleading not required by these rules shall be accompanied by a motion for leave to file such pleading.

(e) **Oral Argument.** Oral argument shall not normally be permitted on motions.

Rule 23.1 Expedited Rulings on Motions. In appropriate cases, the Court may act immediately on any motion without awaiting an answer from the other party. Any party adversely affected by the Court's action may request reconsideration, vacation, or modification of such action.

Rule 23.2 Service on Other Parties; "Action Block;" "Comeback" Copies.

(a) Each motion must include the certificate of service prescribed by Rule 15.1(c). Motions that DO NOT SEEK AN ORDER THAT WOULD REMAND OR OTHERWISE DISPOSE OF A CASE BEFORE THE COURT should include the action block shown below. Examples of motions that seek a dispositive order, include a Motion to Withdraw Appeal, Motion to Abate Proceedings Due to Death of Appellant, and Motion for Psychiatric Evaluation.

(b) The action block, when used, will appear at the left margin on the last page of the motion text:

PANEL No. _____

GRANTED (signature) _____

DENIED (signature) _____

DATE _____

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

Rule 23.3 Accompanying Documents. Motions to file or judicially notice documents, except documents on file in the Office of the Clerk of Court, must be accompanied by a legible copy of the document, including a certified translation of any foreign language material and a typed copy of any handwritten material in English, if required for legibility. See Rules 15(c), 23(b), and 15.3(b).

Rule 23.4 Motions for Supplemental Citations of Authority. Moving counsel shall provide the number of copies required by Rule 15.1(c). When citing unpublished opinions, moving counsel shall file a paper copy attached in the appendix of the motion. Moving counsel are not required to provide paper copies of previously published supplemental citations of authority. If moving counsel provides paper copies to the Court, paper copies shall be provided equally to opposing counsel.

Rule 24.

CONTINUANCES AND INTERLOCUTORY MATTERS

Except as otherwise provided in Rule 19(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. See Rule 4.

Rule 24.1 Extensions of Time to File Papers.

(a) The Court may, upon motion and for cause shown, grant counsel an extension of time. The filing of a motion for an enlargement does not toll the prescribed time period. Counsel must file motions for enlargement of time at least one (1) day prior to the deadline to allow timely consideration by the Court.

(b) Except for those motions for extension of time permitted by Rule 24.1(c) to be consolidated, all such motions require a particularized showing of necessity for the extension, which shall not exceed thirty (30) days. When citing engagement in other litigation as a cause for delay, a party must provide

specific information concerning the number and type of cases and the Courts involved. When citing the complexity of issues on appeal as a cause for delay, the party shall explain the number and nature of those issues. Counsel must fully and adequately explain hardship to counsel as a cause for delay. In each case, the motion must include information on whether the trial was contested, the number of transcript pages, the approved sentence and date of sentencing, and the accused's current status as to confinement. Motions for extension of time should comply with Rule 12.2 Service of Multiple Counsel.

(c) (1) The Chiefs of the Defense and Government Appellate Divisions may consolidate cases in First and Second Motions, respectively, for extension of time to file initial briefs in cases arising under Article 66(b), UCMJ. But this does not apply to--

(A) Cases in which appellate defense counsel designated pursuant to Article 70(c), UCMJ, have been excused by the appellant or by appellant's civilian counsel;

(B) Cases remanded to this Court by a higher Court;

(C) Cases returned to this Court following proceedings at the trial or convening authority level ordered by this or a higher Court;

(D) Response to an issue specified by the Court or to a supplemental assignment of error permitted by the Court to be filed; or

(E) Cases referred to the Court pursuant to Article 69(d), UCMJ.

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

(3) A consolidated motion for extension of time to file must indicate that the division chief or acting division chief has determined that the extensions requested are necessary in the interests of justice due to the volume of appellate workload then pending in the division. Each case listed must show the case number, surname of the appellant, identity of the principal attorney, number of the panel to which the case is assigned, number of transcript pages, whether the trial was contested, date of sentencing, and period of confinement approved.

(4) The Clerk of Court may grant consolidated motions for extension of time to file, subject to reconsideration pursuant to Rule 19.1. When a consolidated motion is granted, the moving party must distribute one signed copy to the opposing appellate division, and return the original to the Clerk for the Court's central files.

Rule 24.2 Filings Out of Time. Any filing that is submitted out of time shall so indicate in the caption, shall indicate good cause for the out-of-time filing, and shall be signed by the Chief or Deputy Chief when filed by an appellate division. A filing is out of time when it is submitted beyond the Court-ordered deadline for filing. Filings that do not comply with this provision shall be returned to the party without attachment to the record of trial.

Rule 25.
SUSPENSION OF RULES

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

Rule 25.1 Suspending the Internal Rules. For good cause shown, the Court acting as a whole or in panel may suspend the requirements or provisions of any of these internal rules on petition of a party or on its own motion and may order proceedings in accordance with its direction.

Rule 26.
INTERNAL RULES

The Chief Judge of the Court has the authority to prescribe internal rules for the Court.

Rule 26.1 Suggested Changes to the Internal Rules. Suggested changes in these rules should be addressed to the Chief Judge, ATTN: Clerk of Court.

Rule 27.
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 28.
AMENDMENTS

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

ADDITIONAL INTERNAL RULES

Rule 29.
CLERK OF COURT

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

Rule 30.
RECORDS OF TRIAL

Rule 30.1 Custody of Records. Original copies of records of trial will not be removed from the Office of the Clerk of Court unless permission is granted by the Clerk or Deputy Clerk.

Rule 30.2 Altering Records. No notes or marks of any kind will be made on the pages of an original record of trial, including the accompanying papers and exhibits, nor shall any

page be removed, rearranged, or inserted except in the Clerk of Court's Office by an employee of that office. Copies of records issued for use of appellate counsel remain subject to recall for further proceedings and for other necessary purposes; accordingly, the making of notes and other marks therein is discouraged, and such notes are not confidential or privileged.

Rule 30.3 Erroneous or Incomplete Records. Errors and irregularities found in records of trial, if not made the subject of an order of the Court, should be brought to the attention of the Clerk of Court for administrative action with a view to correction.

Rule 30.4 Sealed Records. Attorneys of record in appellate cases may access the sealed records of an original record of trial. Attorneys will request permission of the Clerk and coordinate review of sealed records with the Office of the Clerk of Court. Attorneys of record are responsible to return the sealed record matters, completely and without alteration, to the Clerk of Court's possession. Photocopies of sealed records are prohibited.

Rule 30.5 Classified Records. Attorneys of record in appellate cases which deal with classified information must provide proof of an appropriate security clearance to review the classified information. Classified information will remain secured throughout the proceedings. Attorneys will coordinate review of classified records with the Clerk of Court during duty hours in a secure place. Attorneys of record are responsible to return classified information to the Clerk of Court's possession. Written products encompassing use of classified information must be created solely on a properly classified portable laptop computer with a removable hard-drive. Both the hard-drive and the computers must be secured when not in use. Briefs and Courts-Martial orders from the Court, consistent with Rule for Courts-Martial 1114(d), will be assigned the appropriate security classification. Asterisks will be substituted for classified information in all copies of the order except for the original record of trial copy.



CHARLES N. PEDE
Brigadier General, USA
Chief Judge

OFFICIAL:

A handwritten signature in black ink, reading "Malcolm H. Squires, Jr." in a cursive style. The signature is written over the printed name below it.

MALCOLM H. SQUIRES, JR.
Clerk of Court

APPENDIX FORMAT FOR BRIEF ON BEHALF OF (APPELLANT) (APPELLEE)
(RULE 15.1) (Replaces Attachment 2 to Joint C.C.A. Rules)

Assignments of Error

[Set forth each alleged assignment of error in bold type. If asserting more than one error, number each alleged error with consecutive Roman Numerals.]

Table of Cases, Statutes, and Other Authorities

[For each brief exceeding ten pages in length, prepare a table setting forth each case, statute, or other authority that is cited in the brief and the page number(s) where the case, statute, or other authority is cited.]

Statement of the Case

[Set forth a concise summary of the chronology of the case, including the general nature of the charges, the pleas of the accused, the findings and sentence at trial, the action by the convening authority, and any other pertinent information regarding the proceedings.]

Statement of Facts

[Set forth accurately all facts pertinent to the issues raised, including specific page references and exhibit designations. Assertions of fact must be supported by specific citations to the record of trial, exhibits, or, when appropriate, papers accompanying the record of trial (allied or related papers). Any inference a party wishes the Court to draw from the facts of record should be clearly identified and the facts supporting that inference set out. If counsel elect not to make a separate statement of facts, but to include them within the particular assignment of error, the pertinent facts should be set forth in one or more paragraphs distinct from the statement of law and argument thereon. Answers may adopt appellant's or petitioner's statement of facts if there is no dispute, or, if there is a dispute, may restate the facts as they appear from appellee's or respondent's viewpoint. The repetition of uncontroverted matters is not desired.]

Errors and Argument

[Set forth each assignment of error in upper case letters, followed by separate argument for each error unless two or more assignments of error are consolidated for purposes of argument. Arguments must discuss briefly the question presented, citing and quoting such

authorities as are deemed pertinent. Each argument must include a statement of the applicable standard of review, and must be followed by a prayer for the specific relief requested. See Rule 15.3 regarding issues raised pursuant to *U.S. v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).]

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; copies of decisions of other Courts; and unpublished decisions. See Joint C.C.A . Rules 15(c), 23(b), and A.C.C.A. Rules 15.3(b), 23.3. Appendices must not be used to submit extra-record factual matter, which must instead be submitted to the Court by 'Motion to Admit (Defense) (Government) Appellate Exhibit (Letter or Numerical Designation), Motion to Judicially Notice (Description), or other appropriate motion.]

(Signature of counsel)
(Name, grade, branch, and title of military
counsel, or name, address, and telephone,
including fax number, of civilian counsel)

Certificate of Service

I certify that a copy of the foregoing was (mailed) (delivered) (sent via) to _____ on the _____ day of _____