

## **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. *Navy-Marine Corps Court of Criminal Appeals.* The Judge Advocate General of the Navy has set forth the name, mission, and function of the United States Navy-Marine Corps Court of Criminal Appeals in Judge Advocate General Instruction (hereinafter JAGINST) 5814.1 (series), pursuant to the authority of Article 66(a), Uniform Code of Military Justice (hereinafter UCMJ), 10 U.S.C. § 866(a).

Rule 1.2. *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 Court. The seal operates to authenticate documents as official documents of the United States Navy-Marine Corps Court of Criminal Appeals. The Clerk of Court is the custodian of the seal of the Court.

Rule 1.3. *Administrative Matters*

(a) *Court Hours.* The Court’s business hours are from 0800 to 1630 on weekdays, except Federal holidays, or when secured by direction of the Chief Judge. The Court’s chambers may be closed during *en banc* deliberations, or for other matters when the Chief Judge so directs.

(b) *Restricted Areas.* Sensitive material and conversations about pending cases are easily seen and heard while in the chambers of the Court. To preserve the confidentiality of Court communications, visitor access to the Court’s chambers is restricted to the reception area in Suite 320 except on invitation. Visitors, including counsel, desiring to see judges or law clerks about any matter

shall make this desire known to the Docket Clerk or, in his/her absence, to a panel secretary or the Clerk of Court.

(c) *Requests to Examine Records of Trial and Other Official Documents.* Requests by appellate counsel to examine unclassified original records of trial and other official documents (unprotected by judicial privilege) shall be made to the responsible panel secretary. Examination shall be done in the reception area in Suite 320 or space designated by the Court's staff. Removal of records of trial from the Court's chambers is discouraged. If removal is considered necessary, approval of the senior judge of the panel to which the case is assigned, or his/her designee, is required. Records of trial shall be logged out for no more than one workday.

(d) *Requests for Information.* All requests for information on the status of cases from a party or from within the Office of the Judge Advocate General (hereinafter OJAG) shall be referred to the Clerk of Court. Press inquiries and other inquiries from outside OJAG shall be directed to the Public Affairs Office or the Criminal Law Division (Code 20) of OJAG.

(e) *Cases Before the United States Court of Appeals for the Armed Forces or other Court.* Appellate counsel shall promptly inform the Clerk of Court if a case that is presently before the Court is also being heard by the United States Court of Appeals for the Armed Forces (hereinafter CAAF) or other Court.

Rule 1.4. *Docketing Cases.* The Navy-Marine Corps Appellate Review Activity (hereinafter NAMARA) is responsible for ensuring that records of trial (original and two copies) referred to the Court under Articles 66 or 69, UCMJ, 10 U.S.C. §§ 866 or 869, are complete records of the proceedings prepared in accordance with Article 54, UCMJ, and RULES FOR COURTS-MARTIAL 1103-1104, MANUAL FOR COURTS-MARTIAL, UNITED STATES (current ed.)(hereinafter R.C.M.). See Appendix A. NAMARA will not refer to the Court, and the Court will not docket, any case in which the record of trial is not a complete record of the proceedings in that case unless NAMARA first attaches a memorandum to the original and each copy of the record of trial identifying the missing document(s) or other deficiency and setting forth the actions taken to produce the missing documents or resolve any other deficiency.

IOP 1.4.1. Docketing and Random Assignment of Cases. Upon docketing, the Clerk of Court, under the direction of the Chief Judge, shall cause records of trial to be sorted into two categories of cases, as follows:

(a) either 500 pages or more of transcript, or three or more volumes; and

(b) all other cases of fewer pages of transcript and volumes.

The two categories of cases will then be assigned on a random basis, rotating equally among the standing panels, but excepting any designated national security case panel.

IOP 1.4.2. Docketing Cases In Which The Appellant Is Confined. Upon receipt for docketing of any case in which the appellant is confined, the Clerk of Court shall cause a green cover sheet to be affixed to that record.

Rule 1.5. *Cases Involving Classified Information, Controlled Materials, or Contraband*

(a) *Court Security Officer*. The Senior Law Clerk shall serve as the Court Security Officer for the purpose of providing for the protection of classified information, and may designate such assistants as are appropriate for such purpose.

(b) *Classified Documents and Controlled Materials*. Except when in use by the Court, classified and controlled documents or materials will be stored by the Security Officer in the National Security Litigation and Intelligence Law Division (Code 30) of OJAG.

(c) *Security Clearances*. The Court Security Officer shall facilitate the obtaining of clearances for personnel on the staff of the Court, as necessary, in accordance with DoD Regulation 5200.1-R.

(d) *Contraband*. Except when in use by the Court, records containing contraband will be stored in locked cabinets in the office of the Clerk of Court. Contraband contained on a CD will be reviewed by the Clerk of Court upon docketing to insure that the Court has the necessary software and passwords to review that portion of the record.

IOP 1.5. Security Clearances. The Court Security Officer will verify the security clearances of each appellate military judge upon that judge reporting to the Court, and report the clearance level of each judge to the Clerk of Court and the Chief Judge. The Chief Judge will ensure the court has a sufficient number of appellate military judges with the clearances required to dispose of a national security case and of any case involving classified information. Ordinarily, the Court will have at least three judges and one law clerk holding TOP SECRET clearances and background investigations that are current and complete such as will support access to TS/SCI material when properly read into an SCI program. The Chief Judge will designate three qualified judges as a panel of the Court for the disposition of cases involving classified information, and will also designate

one of those judges to serve as senior judge of the panel. OJAG Code 30 is the primary point of contact for security clearances.

Rule 1.6. *Appellate Military Judges*

(a) *Assignment to the Court.* The Judge Advocate General of the Navy certifies each judge as an appellate military judge of the United States Navy-Marine Corps Court of Criminal Appeals and also appoints one judge to serve as Chief Judge.

(b) *Panel Assignments.* The Chief Judge determines the number of Court panels and designates the fixed or rotating panels on which each appellate judge will serve.

(c) *Designation of Senior Judges.* The Chief Judge designates senior judges. A senior 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.

(d) *Oath or Affirmation.* Prior to performing duties as an appellate military judge, an oath or affirmation must be administered. The Judge Advocate General of the Navy, Chief Judge of the Department of the Navy, Chief Judge of the Navy-Marine Corps Court of Criminal Appeals, or another representative of the Judge Advocate General will administer the following oath or affirmation:

I, \_\_\_\_\_, having been appointed (the) an (Chief) appellate military judge, United States Navy-Marine Corps Court of Criminal Appeals, do solemnly (swear)(affirm) that I take this obligation freely, without any mental reservation or purpose of evasion; that I will faithfully and impartially administer justice and, to the best of my ability and understanding, I will well and faithfully perform all the duties incumbent upon me as an appellate military judge, in accordance with the Constitution of the United States and the Uniform Code of Military Justice, (so help me God).

(e) *Court Precedence.* The Chief Judge has the highest precedence on the Court. For all other judges, seniority shall be based first on status as a senior judge or judge and then on tenure, with the longest serving judge in each group having the highest seniority. In the case of interrupted service, total service on the Court will determine seniority.

IOP 1.6.1. Promulgation of Panel Assignments. The Chief Judge will, through the Clerk of Court, periodically publish panel assignments, as changes occur. The panel assignments publication will list all standing panels, the judges, law clerks, contract attorneys or paralegals, and secretaries assigned to those panels, a list of any judges serving in an ad hoc status while not assigned to a standing panel, a precedence list of all active duty judges for purposes of determining succession during the absence or disability of the Chief Judge, and a list of all reserve appellate judges. The panel assignments list will be provided to the Judge Advocate General, the Staff Judge Advocate to the Commandant of the Marine Corps, the Chief Judge of the Department of the Navy, the Assistant Judge Advocate General (Criminal Law), the Appellate Government and Defense Division Directors, and such other officials as are determined by the Chief Judge to require this information.

IOP 1.6.2. Duties of Appellate Military Judges. The duties of the Chief Judge, senior judges, and other appellate military judges are set forth in JAGINST 5813.1 (series). In discharging the duties set forth in the referenced instruction, senior judges shall meet with the Chief Judge not less than monthly to review the status of cases assigned to their respective panels. In the proper discharge of their duties, the following procedures will be utilized by the judges and senior judges of the Court:

(a) Triage and Assignment of Lead Judges. Upon placement of a case in panel, the senior judge of the panel will conduct an initial triage of the record of trial, and assign each case to a lead judge based on the length of the record, the complexity of the issues presented, and the workload of the panel's judges. Lead judges may be reassigned when the original lead judge is not among the majority of the panel judges rendering a decision, or the original lead judge's workload does not permit timely disposition of a case.

(b) Triage by Lead Judge. Within 10 days of assignment of a case, and prior to assignment to a law clerk for briefing, the lead judge will conduct a thorough review of the case, noting such matters as the need for recusal, need for a *DuBay* fact-finding hearing, post-trial processing errors that require corrective action, or a case that raises sufficiency of the evidence. These circumstances usually require prompt action, such as an order from the Court directing corrective or other action, the failure of which can result in unnecessary delay.

(c) Factors for Case Priorities. Ordinarily, judges will dispose of cases on a first-in-first-out basis using the date each case was placed in panel, with the exception of interlocutory appeals and extraordinary writs, which will have priority over all other cases, whenever practicable. Other deviations from the routine approach are within the sound discretion of the individual judge, who should prioritize cases considering the following factors:

- (1) The confinement status of the appellant;
- (2) The date of trial; and
- (3) The unique needs of a case discerned during initial triage, such as the need for prompt corrective or other action, to avoid unnecessary delay when adjudicating the case on a first-in-first-out basis.

IOP 1.6.3. Stand-Down and Assignment to Ad Hoc Status. Appellate military judges are routinely assigned to the Court for a three-year term of service. Due to the normal rotation of court personnel, each year approximately one-third of the active duty appellate military judges are pending transfer from the Court to other military assignments or to retirement. Whenever an active duty appellate military judge receives orders to detach from the Court, that judge shall submit a stand-down plan to the Chief Judge via his/her panel senior judge. That plan will provide a status of the departing judge's cases, an estimate of the time needed to dispose of those cases for which that judge has been designated lead, a recommendation for reassignment of cases, if necessary, and a recommendation for a date certain on which that judge should be reassigned from a standing panel to an ad hoc status, if needed, to complete disposition of assigned cases. Judges are generally assigned to ad hoc status to allow a new judge to replace them on the standing panel, and to allow them to complete cases in which they are the lead judge. While serving in an ad hoc status, judges report to the Chief Judge or his designee. They are ordinarily assigned only as lead judge to new cases that can be disposed of within their remaining term. Ad hoc status may be utilized under other circumstances, such as to facilitate the orientation of new judges, to maximize the short-term utilization of reserve judges, and as otherwise determined by the Chief Judge to be in the best interest of proper court administration and the interests of justice.

IOP 1.6.3. Recusal. In the event a judge is disqualified or recuses him/herself from participation in a case, other than during *en banc* consideration, the senior judge of the panel affected will notify the senior judge of the next panel in order, or in his/her absence the Chief Judge, who will appoint a substitute judge. When there are three standing panels, the following order will apply: Panel 2 will provide any needed substitute for Panel 1; Panel 3 will provide any needed substitute for Panel 2; and Panel 1 will provide any needed substitute for Panel 3. The same numeric pattern shall continue in the event there are more than 3 standing panels. In the alternative, a reserve judge may be appointed when reasonably available.

#### Rule 1.7. *Supporting Personnel*

(a) *Clerk of Court.* The Clerk of Court supervises the day-to-day operations of the Court, implements the policies and procedures of the Court, edits (proofread, cite-check, Shepardize) all orders and decisions, issues and authenticates all Court orders and decisions, and manages the Case Management

Tracking Information System (hereinafter CMTIS) on behalf of the Court. The Clerk of Court is the supervisor of the Court's civilian staff. The Clerk of Court is a point-of-contact for all inquiries regarding records of trial, Court orders, and decisions.

(b) *The Executive Assistant to the Chief Judge/Senior Law Clerk.* The Executive Assistant to the Chief Judge serves as the Chief Judge's action officer and the Court's point-of-contact for all military administrative duties as well as the Chief Judge's law clerk. The Senior Law Clerk shall administratively supervise and provide support for law clerks and contract personnel. Additionally, the Senior Law Clerk shall, at the direction of the Chief Judge, read and brief records, prepare draft decisions, and research, write, and edit memoranda of law and orders of the Court. The Senior Law Clerk shall coordinate oral arguments, serve as Crier of the Court during oral arguments, edit audio files of oral arguments to remove Personally Identifiable Information, and arrange for the posting of the audio files on the JAG web page. The Senior Law Clerk shall also assist the Clerk of Court as required and will serve as acting Clerk of Court in the absence of the Clerk of Court. In the absence of the Senior Law Clerk, the next senior law clerk by tenure will serve as acting Senior Law Clerk.

(c) *Law Clerks.* Read and brief records, prepare draft decisions as requested, research, write, and edit (proofread, cite-check, Shepardize) orders and decisions for the judges of one or more panels of the Court. Coordinate all oral arguments for assigned panels with the Senior Law Clerk; serve as alternate Crier of the Court during oral arguments. Hold various military collateral duties. Assist the Senior Law Clerk and Clerk of Court as required.

(d) *Contract Attorneys and Paralegals.* Read and brief records, perform research and prepare draft decisions as requested in cases assigned by the senior judge of the panel to which they are assigned, or the Clerk of Court.

(e) *Lead Legal Assistant.* When assigned, assists the Clerk of Court and performs panel secretarial duties (see Legal Assistants below) for two or more panels of the Court.

(f) *Legal Assistants.* Serve as panel secretaries classifying, prioritizing, monitoring, and administering all cases assigned to their respective panels. They retrieve records for attachment of filings submitted to the panel and ensure that all pleadings are filed in a timely manner. Additionally, the panel secretaries generate the drafts and final forms of the Court's decisions on all cases decided by their respective panel.

(g) *Docket Clerk.* Receives and accepts custody of records of trial forwarded to the Court by NAMARA. Dockets cases, entering pertinent data on the original records of trial and into the “CMTIS” computerized case tracking system. Assigns cases to one of the Court’s panels and delivers records of trial to the appellate defense and government divisions. Distributes hard copy and electronic versions of Court orders and decisions, as set forth on applicable distribution lists. Ensures that a copy of each decision of the Court is properly maintained in the Court’s central files. Serves as primary receptionist for visitors to the Court’s chambers and is responsible for answering the telephone. Distributes the Court’s incoming and outgoing mail and facsimile transmissions. Performs duties of legal assistant as directed.

IOP 1.7.1. Duties of the Clerk of Court. The duties of the Clerk of Court are set forth in JAGINST 5813.1 (series). In addition to those duties, and to facilitate the monthly case status review by senior judges with the Chief Judge, the Clerk of Court will provide the Chief Judge and senior judges a monthly statistical report in the format described by the Chief Judge, but including the number of cases disposed of by the court; the number of cases docketed; a list of the cases disposed of along with the date of decision or other disposition; a list of cases currently pending in panel along with the date of trial, the date of docketing, and the date the case was received by the assigned panel (“in panel” date); the relative productivity of the court as a whole, of each panel and judge; and such other information as may be directed by the Chief Judge.

IOP 1.7.2. Loss Prevention. Once each month, the panel secretaries shall sight check every case assigned in panel, verifying the location of the original record of trial in its entirety.

Rule 1.8. *Conduct of Court Personnel.* Personnel of the Court will maintain confidentiality of the Court’s proceedings and avoid *ex parte* communication with litigants and favoritism, or the appearance of favoritism, toward any party or counsel. The Chief Judge, senior judges, Clerk of Court, and Senior Law Clerk are responsible for informing Reservists and employees, including interns and temporary employees, of these obligations.

## **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 withdrawn 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. Continuing Jurisdiction.* The Court retains jurisdiction over cases initially reviewed under Article 66, UCMJ, which are remanded for further proceedings, notwithstanding any subsequent reduction of the sentence below the

level requiring the Judge Advocate General to refer the case to this Court pursuant to Article 66(b), UCMJ.

*Rule 2.2. Cases Under Continuing Jurisdiction*

(a) *Types.* Cases under the continuing jurisdiction of this Court include those cases remanded to the Court by CAAF and cases returned to the convening authority for corrective action, a fact-finding hearing, a rehearing, or other trial.

(b) *Procedure: Remanded by CAAF Directly to the Court.* When a case is remanded directly to the Court by CAAF, it will generally be referred to the same numbered panel that originally decided the case. When briefing by the parties is desired, the Clerk of Court will inform counsel that within 30 days after docketing of the record in the Court, appellate defense counsel will file a brief relating to any issue specifically referred to the Court for its further consideration. The Government will have 30 days thereafter in which to file its response.

(c) *Procedure: Cases Remanded by CAAF to the Convening Authority.* When CAAF sets aside, in whole or part, this Court's decision in a case and returns the record to the Judge Advocate General for remand to the convening authority, with the provision that the record will ultimately be returned to the Court of Criminal Appeals for further review under Article 66, UCMJ, appellate defense counsel will, within 30 days after redocketing of the record in this Court, or within 60 days in the event an authorized rehearing as to both findings and sentence was conducted, file a brief and assignments of error as to any matters not decided by CAAF, or inform this Court that the appellant does not wish to file any additional pleadings. The Government will have 30 days thereafter in which to file its response.

(d) *Procedure: Cases Returned by the Court to the JAG for remand.* When a case returned by the Court to the Judge Advocate General for remand to the convening authority is again before the Court, appellate defense counsel will, within 30 days after redocketing of the record in this Court, or within 60 days in the event a rehearing as to both findings and sentence was conducted, file a brief and assignments of error, or submit the case on its merits, or inform the Court that the appellant does not wish to file any additional pleadings in a case in which a brief was filed prior to remand. The Government will have 30 days from the filing of the appellant's brief or notice of intent not to file any additional pleadings in the event the Government did not file an answer to an initial defense brief prior to remand, as appropriate, in which to file its response,

IOP 2.2. Case Re-Assignment. When the original lead or a participating judge on a case remanded to the Court has been reassigned to a different numeric

panel in the ordinary course of panel assignments, the Chief Judge will ordinarily reassign that judge to the original panel for the review of that case in order to expedite disposition of the case on remand. When any judge who participated in the decision is no longer on the Court, the Chief Judge will appoint a substitute.

IOP 2.3. Fact-Finding DuBay Hearings. Whenever the Court determines additional findings of fact are required to permit resolution of a post-trial allegation of error, such as ineffective assistance of counsel, the Court will return the case to the Judge Advocate General with an order authorizing an appropriate convening authority to order such a fact-finding hearing, or to take such other action as directed or permitted by the Court. In the event the convening authority orders a fact-finding hearing, the military judge conducting such a hearing shall proceed pursuant to R.C.M. 801 and 1102, and such other applicable provisions of law, including the order of this Court directing or permitting such fact-finding hearing. Such order of this Court will ordinarily include a complete and precise description of the parameters of the matter to be inquired into, specific questions of fact to be resolved by the military judge, or such other action as is required to dispose of the matter at issue. The order of this Court should likewise ordinarily include a date by which the record of proceedings will be returned to this Court, subject to the authority of the presiding military judge to grant additional time for good cause shown, or otherwise in the interest of justice, unless otherwise determined by the Court.

IOP 2.4. Tracking of Cases under Mandate. Whenever the Court returns a case to the Judge Advocate General for corrective or other action, or otherwise mandates action by a convening authority, the Government, or any party litigant, the order returning that case will ordinarily direct compliance and return of the record by a date certain. Such a case shall be actively tracked by the Clerk of Court as a matter under the continuing jurisdiction of the Court. The Clerk of Court will provide monthly reports of the status of all such matters under the continuing jurisdiction of this Court to the Chief Judge. In the event compliance is not completed by the required date, an order will ordinarily issue to the Government, the response to which will allow the Court to determine the status of the matter, and what action is thereafter required in the interests of justice. The Clerk of Court will provide a monthly report to the Chief Judge listing all of those cases pending return of a mandate, listed by the date on which the case was returned to the Judge Advocate General, including any case in which there has been a failure to comply with a mandate of the Court by the required compliance date. The Chief Judge of the Department of Navy will be provided a copy of this report.

### **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 panel and 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 4.1. *En Banc.* All appellate military judges then on active duty, and participating in a decision, will be counted in determining the existence of a quorum.

IOP 4.1. Reserve Appellate Military Judges. For purposes of participation in *en banc* proceedings and decisions of the Court, Reserve appellate military judges recalled to active duty, or otherwise serving on extended active duty, will ordinarily be counted in determining quorum and participation in an *en banc* decision. Reserve appellate military judges serving on active duty for training will ordinarily not be counted as participating in a decision due to the limited period of active duty, which generally varies from one or two days, to two weeks. When eligible to participate in *en banc* consideration of a case, Reserve judges must be cognizant of the time required for their participation and their time remaining on active duty, exercising sound judgment in recusing themselves under circumstances that they consider appropriate in the interests of justice.

## **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.* All pleadings and other papers relative to a case are not filed until received at the following address:

Clerk of Court  
Navy-Marine Corps Court of Criminal Appeals  
1254 Charles Morris Street SE, Suite 320  
Washington Navy Yard, DC 20374-5124  
Telephone: (202) 685-7700 DSN: 325-7700  
Facsimile: (202) 685-7690 DSN: 325-7690  
Email: NMCCAOJAGCODE07@navy.mil

Rule 5.2. *General Guidance for Filing.*

(a) *Hours of Filing.* Petitions for Extraordinary Relief and Government Appeals should ordinarily be filed during the Court's business hours (*see* Rule 1.3(a)), but may be filed by fax ((202) 685-7690) or electronic mail with signature to NMCCAOJAGCODE07@navy.mil outside business hours. All other filings shall be filed with the Clerk of Court during the Court's normal business hours. In the event the Court offices are closed prior to 1630 on a day when the Court is otherwise open for business, the pleading may be filed by 0900 of the next day that the Court is once again open for business.

(b) *Filing Procedure*

(1) **Briefs and Summary Assignments of Error** require filing of the original pleading with the Clerk of Court and an electronic copy of the pleading must be concurrently filed in CMTIS by military appellate counsel. Copies filed electronically will bear file names in the following format (NMCCA # followed by a "g" or "d" for "government" and "defendant" respectively):

200300123g  
200000048d

(2) **Merit Submissions** require the filing of only the original paper copy.

(3) **Petitions for Extraordinary Relief and Government Appeals** shall be filed in an original and one copy. The filing of an electronic copy of Petitions for Extraordinary Relief and Government Appeals in CMTIS is required.

(4) **Motions, including Motions for Leave to File and Motions to File Out of Time that are combined with other pleadings**, shall be filed in an original and three copies. The original and one of the copies of a Motion to Attach must have all attachments thereto. The other two copies need be of the Motion only.

(5) **Oppositions to Motions** require filing of only the original pleading.

(6) **All original filings** shall certify that each real party in interest was served with a copy of that filing, and for Briefs, Petitions for Extraordinary Relief, Government Appeals, and Summary Assignments of Error shall certify that an electronic copy has also been filed in CMTIS.

(c) *Form of Filing.* All filings shall be typed on plain, white, 8-1/2 x 11-inch paper with 1-inch margins. Each filing shall include the case caption (including the case number and assigned panel). *See, e.g.,* Appendices C and E. Case numbers will be in the following format:

201100123 200900048  
9902027 9900416

Aside from the caption in all cases and the text in the case of merit submissions, the text of all pleadings will be double-spaced. All pages except the first will be numbered. The font for computer-generated filings is either Courier-12 or Courier New-12. Filings shall be bound with a staple; binders or folders are not permitted unless the pleading is too large to staple, in which case the pleading will have two holes punched at the top of the pages and be bound by metal fasteners with compressors.

(d) *Electronic Filing.* This section is reserved.

(e) *Guidelines for Electronic Filing of Pleading.* This section is reserved.

(f) *Citation Form.* Citation form for appellate filings shall conform to the style required by the U.S. Court of Appeals for the Armed Forces (CAAF) and the most recent edition of the *The Bluebook, A Uniform System of Citation*.

(g) *Noncompliance with Court Rules.* Failure to comply with Court rules may result in the rejection and return of the offered filing by the Clerk of Court. Returned filings will not be attached to the record of trial, and do not serve to toll the filing deadline.

(h) *Filings by attorneys not admitted.* If the counsel signing a filing or paper presented to the Clerk of Court for filing is not a member of the Bar of this Court, the filing or paper shall nonetheless be received as if such counsel were a member, provided that such counsel shall, within 30 calendar days of submission of the filing, as a prerequisite to continuing in the case as counsel of record, apply for admission to the Bar of this Court or move to appear *pro hac vice*.

(i) *Motion for Leave to File Out-of-Time.* Any filing that is submitted out-of-time shall be submitted to the Court with a motion to file out-of-time, exhibiting good cause for why the Court should accept the out-of-time filing. Except for motions for enlargement, a filing is out-of-time when it is made after the due date. (See Rule 23.2(a) concerning Motions for Enlargement of Time). The Clerk of Court may reject and return filings that are not filed in accordance with this provision to the party without attachment to the record of trial.

## **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. *Signatures.* Original filings will bear the signature of the counsel of record who is a member of this Court's Bar. The name and grade, if any, of the person signing, together with the capacity in which such counsel signs will be included. Counsel must also include their address, telephone number, email address, and facsimile number below the signature line of each filing. This signature will constitute certification that the statements made in the filing or paper are true and correct to the best of the counsel's knowledge, information, or belief, and that the filing or paper is filed in good faith and not for the purpose of unnecessary delay. Interns assigned to the Appellate Government or Defense divisions may sign original filings below the signature of the counsel of record, with their typed name and the capacity as "Counsel under supervision." The use of facsimile stamp signatures of counsel is not permitted on any filing or paper filed with the Court. One counsel may sign a filing or paper "for" another counsel provided the following format is followed:

J.P. Jones  
LT, JAGC, USN  
Appellate Defense Counsel  
Signing For  
C.W. Nimitz  
LCDR, JAGC, USN  
Appellate Defense Counsel  
Address  
Telephone #  
Email Address  
Facsimile #

## **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 7.1. *Computation of Time.* The term “day” refers to a calendar day, unless otherwise noted. When the last day of a period falls on a day other than a day when the Court’s offices are open for business, the period runs until the end of the next day when the Court is once again open for business. *But see* Rule 23.2(a) for application of this Rule to Motions for Enlargement of Time.

## **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. *Administrative Requirements*

(a) *Admission to the Court's Bar*

(1) Active duty Navy and Marine Corps judge advocates, and Reserve Navy and Marine Corps judge advocates assigned to a Reserve unit supporting either the Appellate Defense Division or Appellate Government Division of NAMARA, will be admitted to the Court's Bar by the Clerk of Court upon request, after confirmation of qualifications and the taking of an oath or affirmation (*see* Rules 8.2 (a) and (c) below).

(2) All other counsel must complete and file an application (Appendix B) for admission with the Clerk of Court. Along with the completed application, applicants must submit an original proof of good standing certification in a qualifying bar dated within one year of the application, and take an oath or affirmation (*see* Rules 8.2 (a) and (c) below) prior to admission to the Court's bar.

(b) *Application.* An electronic copy of the application for admission (Appendix B) appears, along with these rules, on the Court's website ([www.jag.navy.mil](http://www.jag.navy.mil); click on "Courts"; click on "NMCCA"; click on NMCCA Rules of Practice and Procedure). Upon request, the Clerk of Court will send civilian counsel a copy of the application with appropriate instructions, and a copy of the Court's rules.

Rule 8.2. *Admission Procedures*

(a) *Requests for Admission to the Bar*

(1) Active duty Navy and Marine Corps judge advocates and Reserve Navy and Marine Corps judge advocates assigned to a Reserve unit supporting either the Appellate Defense Division or Appellate Government Division of NAMARA may submit their request verbally or in written form to the Clerk of Court.

(2) All other qualified counsel must submit a written application to:

Clerk of Court  
Navy-Marine Corps Court of Criminal Appeals  
1254 Charles Morris Street SE, Suite 320  
Washington Navy Yard, D.C. 20374-5124

(b) *Fee.* There is no fee for admission to the Bar.

(c) *Oath or Affirmation.* The Chief Judge, a senior judge, the Senior Law Clerk, or the Clerk of Court will administer the below oath or affirmation to active duty and Reserve Component Navy and Marine Corps appellate counsel detailed in accordance with Article 70(a), UCMJ. In the case of all other active duty Navy and Marine Corps judge advocates, in addition to the above officials, the applicant may subscribe and take the oath or affirmation before his/her commanding officer or staff judge advocate. All other counsel will subscribe and take the below oath or affirmation upon request of the Clerk of Court.

I, \_\_\_\_\_, 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.

(d) *Register.* The Clerk of Court will maintain a Roll of Attorneys listing those admitted to practice before the Court.

(e) *Certificate of Admission.* Upon admission, the Clerk of Court shall issue 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.* Counsel appearing before the Court shall conduct himself or herself in accordance with JAGINST 5803.1 (Series), Professional Conduct of Attorneys Practicing Under the Supervision of the Judge Advocate

General. In addition to exercising its inherent power to regulate counsel appearing before it, the Court may refer allegations of professional misconduct to the Judge Advocate General for investigation and appropriate action. 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 Federal Court, State court, or another bar recognized by this Court, must promptly notify the Clerk of Court at the address shown in Rule 8.2(a)(2) above. No counsel may appear before the Court while suspended from practice by the Judge Advocate General.

Rule 9.2. *Contempt.* Counsel may be punished for contempt for use of menacing words, signs, or gestures in the presence of the court; for disturbing any court proceedings by riot or disorder; or for willful disobedience of lawful writs, process, orders, rules, decrees, or command of the same by the court, in accordance with 10 U.S.C. § 848. Punishment may not exceed confinement for 30 days or a fine of \$1,000, or both.

## **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 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 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. *Entry of Appearance of Counsel*

(a) *Detailed Appellate Military Counsel.* Entry of a military appellate counsel's name into the CMTIS database as counsel in a case constitutes a Notice of Appearance.

(b) *All Other Counsel.* All other counsel representing a party in interest must file a written notice of appearance with the Clerk of Court that contains counsel's name, mailing address, voice and facsimile phone number, business email address, and a statement whether counsel is a member of this Court's Bar or desires to appear *pro hac vice*, in which case counsel must declare his/her professional qualifications in the Notice of Appearance.

(c) *Signed Pleadings.* Additionally, any filing relative to a case that contains the signature of counsel constitutes an appearance but does not relieve counsel of their obligation to submit a Notice of Appearance in compliance with this Rule.

Rule 13.2. *Withdrawal of Appellate Defense Counsel.* Any appellate defense counsel who has entered an appearance in a case must request leave to withdraw by motion to the Court. Such motion must 1) indicate the reasons for withdrawal; 2) identify by name the successor appellate defense counsel; 3) affirm that a thorough turnover of the record between counsel has been completed; 4) affirm that the appellant has been informed of the proposed change in representation; and, 5) state whether the appellant concurs with or opposes the motion to withdraw. Replacement counsel shall file an entry of appearance as required by Rule 13.1.

Rule 13.3. *Counsel appearing pro hac vice.* All attorneys appearing *pro hac vice* shall file a certificate of good standing from a qualified bar, as well as an 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 prior to making oral argument to the Court.

**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 and Withdrawal from Appellate Review.* Waivers of appellate review must be filed within the prescribed time frame with the convening authority. The appellant may file a withdrawal from appellate review at any time before the Court completes its review. The Court will review waiver/withdrawal requests to ensure compliance with R.C.M. 1110. A purported waiver/withdrawal that substantially complies with Article 61, UCMJ, and R.C.M. 1110 bars review under Article 66, UCMJ. If the appeal is properly waived/withdrawn, the record will be returned to the Judge Advocate General to ensure compliance with R.C.M. 1112.

## **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. A motion must be filed under Rule 23, *infra*, to attach any other matter.

Rule 15.1. *Briefs and Assignments of Error, Answers, Replies, Supplemental Briefs, and Amicus Curiae Briefs*

(a) *Time Requirements.* An appellant's initial Brief and Assignments of Error is due no later than 60 days after the case is docketed with the Court and a copy of the record of trial is delivered to the Director, Appellate Defense Division. Except as indicated below, the appellee's Answer must be filed within 30 days after the appellant's Brief and Assignments of Error is filed. If the Court grants the appellant leave to file a Supplemental Brief and Assignments of Error, the appellee's Answer to the Supplemental Assignments of Error must be filed within 30 days after the Supplemental Assignments of Error is filed or by the current due date of the appellee's Answer to the initial Brief, whichever is later. If the appellee's Answer to the initial Brief and Assignments of Error was not previously filed, consolidation of the Answers is encouraged and the due date for the consolidated Answer will be set to allow at least 30 days after the Supplemental Assignments of Error was filed.

(b) *Format.* An Assignment of Error on behalf of an appellant shall be filed as indicated in CCA Rule 15. Any Assignments of Error shall be included in a Brief on behalf of the appellant substantially as illustrated in Attachment 2 to the CCA RULES. Note two changes in the title section: (1) Instead of "ASSIGNMENT OF ERRORS AND BRIEF ON BEHALF OF ACCUSED" use "BRIEF AND ASSIGNMENTS OF ERROR"; and (2) instead of "appointed by" use the words "convened by." The Brief shall include:

(1) An Index of Brief. This is a subject index of the matter contained therein, with page references and a table of cases (alphabetically arranged with citations), textbooks, and statutes cited, with references to the pages where cited. This requirement is waived for briefs of less than 25 pages in length.

(2) Issue(s) Presented. Set forth each alleged error in bold, upper case letters. If asserting more than one error, number each alleged error with consecutive Roman Numerals. *See* Rule 15.1(h) re issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

(3) Statement of Statutory Jurisdiction. Set forth the statutory basis for this Court's jurisdiction.

(4) Statement of the Case. This is a concise chronology, including all relevant dates, to include the results of trial, the action of the convening authority, and any other pertinent information regarding the proceedings.

(5) Statement of Facts. Concisely stating the facts of the case material to the errors assigned or specified, including specific page references to each relevant portion of the record of trial. A statement of facts shall not contain argument, nor shall it mislead the court through misstatement or omission of facts material to the errors assigned or specified. Individual facts shall not be stated out-of-context in a manner that may mislead the court.

(6) Summary of Argument. This should be suitably paragraphed to correspond to each issue presented. The summary should be a succinct but accurate and clear condensation of the arguments made in the body of the brief.

(7) Argument. The argument should briefly discuss the point of law presented, citing and quoting such authorities as are deemed pertinent. The argument must also include for each issue presented a statement of the applicable standard of review, and a direct and concise argument as to each issue of fact or law presented, and demonstrating with particularity why the error assigned is materially prejudicial to the substantial rights of the appellant or why relief is otherwise warranted. The tone and tenor of argument shall be professional and founded in law and fact.

(8) Conclusion. Stating with specificity the relief sought as to each issue presented. No particular form of language is required so long as the brief concludes with a clear prayer for specific Court action.

(9) The Certificate of Service on counsel for each opposing party, or appellant or petitioner not represented by counsel, and on counsel *amicus curiae*, if any. When civilian and military counsel are associated in a case, the civilian counsel will be served separately and as soon as practicable, in addition to the required service on military counsel, which is accomplished by service on the Appellate Government or Appellate Defense Division Director or designee. Such certificate of service shall be in the form illustrated in Appendix E and will include a statement that the brief was filed electronically if required by Rule 5.2(b).

(10) Appendix. Either party may file an appendix, per CCA Rule 15(c), as necessary. Appendices may not be used to submit extra-record factual matters, which must instead be submitted to the Court by separate motion.

(c) *Summary Assignments of Error; Format (when brief contains only Summary Assignments of Error)*. A brief containing only Summary Assignments of Error on behalf of an appellant shall be filed as indicated in CCA Rule 15. The brief shall include:

- (1) List of the Summary Assigned Errors in upper case.



(2) Statement of statutory jurisdiction of this Court.

(3) Statement of the Case, to include a concise chronology, including all relevant dates, to include the results of trial, the action of the convening authority, and any other pertinent information regarding the proceedings.

(4) Statement of Facts, concisely stating the facts of the case material to the summary errors assigned, including specific page references to each relevant portion of the record of trial. A statement of facts shall not contain argument, nor shall it mislead the court through misstatement or omission of facts material to the errors assigned or specified. Individual facts shall not be stated out-of-context in a manner that may mislead the court.

(5) Citation to authority providing a legal basis for the Summary Assignment of Error, including argument, if pertinent, discussing briefly and succinctly the point of law presented. Additionally, citing and quoting such authorities as are deemed pertinent including authorities that are contrary to the argument in the Summary Assignment of Error. The tone and tenor of argument shall be professional and founded in law and fact.

(6) Conclusion stating with specificity the relief sought as to each issue presented. No particular form of language is required so long as the brief concludes with a clear prayer for specific Court action.

(7) The Certificate of Service on counsel for each opposing party, or appellant or petitioner not represented by counsel, and on counsel *amicus curiae*, if any. When civilian and military counsel are associated in a case, the civilian counsel will be served separately and as soon as practicable, in addition to the required service on military counsel, which is accomplished by service on the Appellate Government or Appellate Defense Division Director of designee. Such certificate of service shall be in the form illustrated in Appendix E and will include a statement that the brief was filed electronically if required by Rule 5.2(b).

(d) *Summary Assignments of Error; Format (when brief contains Summary Assignments of Error along with other Assignments of Error)*. A brief containing Summary Assignments of Error along with other Assignments of Error on behalf of an appellant shall be filed as indicated in CCA Rule 15. The format shall be in compliance with rule 15.1(b) and for the section of the brief addressing the Summary Assignments of Error, the brief shall include:

(1) List of the Summary Assigned Errors in upper case.

(2) Citation to authority providing a legal basis for the Summary Assignment of Error, including argument, if pertinent, discussing briefly and succinctly the point of law presented. Additionally, citing and quoting such authorities as are deemed pertinent including authorities that are contrary to the argument in the Summary Assignment of Error. The tone and tenor of argument shall be professional and founded in law and fact.

(3) Conclusion stating with specificity the relief sought as to each issue presented. No particular form of language is required so long as the brief concludes with a clear prayer for specific Court action

(e) *Supplemental Assignments of Error.* Supplemental Assignments of Error may be filed only upon leave of the Court. Motions to file Supplemental Assignments of Error shall be filed in accordance with Rule 23.10.

(f) *Answers.* Answer briefs will follow the same format as an appellant's filing, responding separately to each assigned error. Answers may adopt the appellant's or petitioner's summary of proceedings and statement of facts, and may state additional facts.

(g) *Reply.* Appellant's counsel may file a reply brief within 7 calendar days after the filing of an answer brief on behalf of the Government. Otherwise, any replies must be accompanied by a motion for leave to file.

(h) *Length.* Except by permission of the Court, principal briefs shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of indexes and appendices. Requests to file briefs in excess of specified limits will be granted only in the most extraordinary cases.

(i) *Amicus Curiae Briefs.* A brief of an *amicus curiae* may be filed only by leave of the Court granted on motion. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of *amicus curiae* is desirable. Unless otherwise ordered by the Court, a brief of an *amicus curiae* in support of a party shall be filed no later than 10 days after that party has filed its brief. If neither party is supported, the brief of an *amicus curiae* shall be filed no later than 10 days after the filing of the Government's Answer (Article 66, UCMJ, reviews), the accused's Brief (Article 62, UCMJ, appeals), or the respondent's Response to Court Order to Show Cause (Extraordinary Writs). A motion of *amicus curiae* to participate in oral argument will be granted only for extraordinary reasons. Briefs of *amicus curiae* must be filed in accordance with Court rules and in the format

discussed above. Such briefs must indicate service on both the appellant and the Government.

(j) *Grostefon Issues*

(1) Counsel shall notify the Court citing *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982) of any errors raised personally by the appellant.

(2) *Grostefon* issues are not *pro se* pleadings, since the appellant is represented by appellate defense counsel. All pleadings must be prepared and signed by the counsel representing the appellant. Counsel is responsible for formulating issues raised personally by an appellant into appropriate assignments of error and submitting the assignments of error to the Court in the proper format. Counsel shall note the evidence that supports the appellant's *Grostefon* complaint and the applicable law.

(3) The Court may require that any issue personally asserted by the appellant be further briefed or argued.

(k) *Personally Identifiable Information*. Counsel filing any pleading with the Court will refrain from including personal data and identifiers to include:

(1) Any part of a child victim's name; (2) The full names of victims; (3) Social security numbers; (4) Financial account information; (5) Addresses and telephone numbers; (6) Dates of Birth.

(l) *Service of Pleadings*

(1) *In General*. At or before the filing of any pleading or other paper relative to a case in the Clerk of Court's office, a copy thereof shall be served on all counsel of record, including amicus curiae counsel, in person, by mail, by third-party commercial carrier, or by electronic means, if the party being served consents. When a party is not represented by counsel, service shall be made on such party in person, by mail, or by third-party commercial carrier. When reasonable, considering such factors as the immediacy of the relief sought, distance, and cost, service must be at least as expeditious as the manner used to file the pleading or other paper with the Court.

(2) *Personal service*. If service is made in person, it shall consist of delivery at the office of the counsel of record, either to counsel or, in the case of military counsel, when served upon the Appellate Government or Appellate Defense Division Director or designee. If the party is not represented, service shall consist of delivery to such party.

(3) *Service by mail.* If service is made by mail, it shall consist of depositing the pleading or other paper with the United States Postal Service, with no less than first-class postage prepaid, addressed to the counsel of record or, if the party is not represented, to such party, at the proper post office address.

(4) *Service by third-party commercial carrier.* If service is made by a third-party commercial carrier it shall be for delivery within 3 calendar days.

(5) *Time of Service.* Personal service is complete on delivery. Service by mail or third-party commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete upon transmission.

(6) *Certificate for review.* In cases referred to the Court pursuant to Article 69(d), UCMJ, the Clerk of Court shall cause a copy of the record and certificate for review to be served upon the Appellate Government and Appellate Defense Divisions Directors or designees.

(7) *Form of certificate of filing and service.* A certificate indicating the specific manner of filing and the specific manner of service under Rules 5.2 and 15.1(i) shall be included in any pleading or other paper substantially in the following form:

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and required number of copies of the foregoing were [delivered] (or) [mailed-specify class] (or) [delivered to-specify the name of the third party commercial carrier-for delivery-specify within how many days delivery will be effected] to the Court on \_\_\_\_\_ and that a copy of the foregoing was (date)[delivered] (or) [mailed-specify class] (or) [delivered to-specify the name of the third-party commercial carrier-for delivery-specify within how many days delivery will be effected] (or) [transmitted by electronic means with the consent of the counsel being served-specify the electronic mail address or facsimile number used] to (enter specific name of each counsel of record or party, if not represented) on \_\_\_\_\_.

(date)

\_\_\_\_\_  
(Typed name and signature of certifying person)  
(Address and telephone no.)

**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*

(a) *Oral Argument.* Oral arguments before a panel of the Court or *en banc* will ordinarily be held in the Courtroom in Building 58 at the Washington Navy Yard, Washington, D.C.

(b) *Oral Argument Outreach.* Oral arguments may be heard elsewhere, including outside the Washington Metropolitan area, and when so scheduled, the Court will notify counsel of the time, date, uniform, and travel schedule.

Rule 16.2. *Conduct of Oral Argument*

(a) *Argument Procedure.* The Chief Judge or a senior judge presides at all formal sessions of the Court. Motions for admission and outstanding motions regarding the case set for argument are the first order of business. Argument on the case to be heard for the day will follow. To assist counsel during argument, the Crier of the Court will signal to the counsel making argument when 5 minutes remain by illuminating a yellow signal light. When time has expired, the red light will be illuminated. The red light is the signal for counsel to stop argument. Counsel who believe further argument is critical to their presentation, may seek leave of the Court to continue.

(b) *Length and Order of Oral Argument*

(1) Argument times are set at 30 minutes per party. Leave of the Court for argument exceeding 30 minutes must be sought by written motion.

(2) The appellant, petitioner in the case of argument on extraordinary writs, or movant in the case of argument on motions, commences the argument.

(3) Counsel for the appellant, petitioner, or movant may request a portion of the allotted time for rebuttal.

(c) *Counsel.* If a party desires that more than one counsel argue on behalf of that party, permission must be obtained from the Court. Counsel for *amicus curiae* may move for permission to argue at a scheduled oral argument, which motion will be resolved in the discretion of the Court. The Court may permit counsel in the case to rebut the arguments of *amici curiae*.

(d) *Decorum*. Judge advocates appearing before the Court on behalf of litigants shall wear the Service Dress Blue (Navy) or Service “A” (Marine Corps) uniform, or the service equivalent. Civilian attorneys shall wear conservative professional attire.

IOP 16.2. Oral Argument Proceedings. The senior judge presiding over an oral argument will proceed substantially as set forth in Appendix D.

## **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. *Motion for En Banc Consideration.* For Article 66, UCMJ, cases, a motion by a party for *en banc* consideration must be filed within 7 days after the Government files its Answer or the appellant files a Reply Brief. In all other cases, the motion must be filed within 7 days after the initial pleading and response thereto have been filed. A response to a motion for consideration *en banc* may be filed.

IOP 17.1. Action on Motion. Within 10 days of filing, a request for *en banc* consideration will be decided by the judges present for duty. An appropriate order will be published when one-third of the Court votes to grant *en banc* consideration. The record will be withdrawn from the panel to which it was originally assigned and reassigned by the Chief Judge to the Court sitting as a whole.

## **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. *Publication of Opinions*

(a) *Published Opinions.* The Court causes an opinion to be reported (published) in WEST'S MILITARY JUSTICE REPORTER at its discretion. Published opinions are those that call attention to a rule of law or procedure that appears to be currently overlooked, misinterpreted, or which constitutes a significant contribution to Navy-Marine Corps 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) *Requests for Publication.* Upon the written request of the Director, Appellate Defense or Government Division, another Court of Criminal Appeals, or any other source to the Clerk of Court for publication, the Court may authorize publication of a previously unpublished opinion.

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

Rule 18.2. *Unpublished Opinions--Declaration of No Precedential Value.* An unpublished opinion, below its introductory data, will include the following declaration: “THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.” Citations to published cases are favored; however, citations to unpublished cases are permissible as persuasive authority not binding on the Court.

IOP 18.1. Circulation of Draft Unpublished Decisions. When a panel of the court has completed a draft decision not intended for release as a published decision, the decision has been routed to the Clerk of Court for formatting and editing, and all changes have been approved by the lead judge, such a decision will ordinarily be circulated electronically to all judges then on active duty who will have seven days to review the draft decision. This seven-day “pre-release” review period is intended to ensure the highest level of technical and grammatical quality is achieved and maintained in every case. The judges of the Court may review and make recommendations for technical or grammatical changes to the lead judge during the pre-release review period. Additionally, pre-release review provides the judges of the Court an opportunity to recommend or request an unpublished draft decision be considered for release as a published decision of the Court. Under circumstances in which all judges of the court have completed pre-release review, the Chief Judge may limit the pre-release period.

IOP 18.2. Circulation of Draft Decisions Proposed for Publication. When a draft decision is proposed for publication by the lead judge, that decision will ordinarily be circulated during a 10-day pre-release period to all members of the Court then on active duty, either electronically or by printed copy, or both. The printed copy will be circulated beneath a cover sheet to be used to record the initials and comments of each participating judge. Each judge of the Court will review the draft decision and indicate on the cover sheet his or her concurrence or non-concurrence with submitting the decision for publication, and other comments. In the alternative, a judge may provide his or her concurrence, non-concurrence, and any comments, via email to the lead judge and the Clerk of Court. In order to be submitted for publication, a draft decision must receive the concurrence of a majority of the reviewing judges. In the event a draft decision receives a majority concurrence for publication, any judge not so concurring may request the matter be considered *en banc*. The Chief Judge may limit the pre-release period when all judges have completed pre-release review.

IOP 18.3. Publication Factors. Any case may be proposed for publication in the discretion of the proponent of publication, however, among the non-exclusive factors to be considered in determining whether a case should be published, the following constitute primary guidance. A case should be considered for publication when such case:

- (a) Establishes, alters, modifies, or clarifies a rule of law;



- (b) Criticizes and recommends changes to governing appellate case law;
- (c) Adopts or rejects an analysis or application of a rule of law by another Service Court of Criminal Appeals;
- (d) Resolves an apparent conflict between panels of the Court;
- (e) Applies an established rule of law to facts significantly different from those involved in previously published decisions;
- (f) Calls attention to a rule of law or procedure that appears to be currently overlooked or misinterpreted; or
- (g) Involves an issue of continuing public, professional, or military interest.

IOP 18.4 Posting of Decisions and Opinions. All decisions and opinions, whether or not formally published, will be available to CMTIS and or the Court's web site.

### **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, 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) 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:**

**(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. *Motion to Reconsider Interlocutory Orders.* Upon motion by a party or on its own motion, the Court may reconsider an interlocutory order previously rendered by it, provided that jurisdiction of the case has not been obtained by CAAF. Jurisdiction vests with 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 to reconsider an order to conduct oral argument, an order to compel production of documents, or an order to conduct a *DuBay* hearing. Such a motion must provide a compelling showing of good cause before the Court will reconsider a court order.

IOP 19.1 Action on Motion. A motion to reconsider an interlocutory order shall ordinarily be acted upon within seven days of the filing becoming ripe for decision.

Rule 19.2. *Motion to Reconsider Decisions or Orders Terminating Cases.*

(a) *General.* Upon its own motion and within 30 days of its decision or order, or upon motion by the Government or the appellant 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 jurisdiction of the case has not been obtained by CAAF. Jurisdiction vests with 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 place of business 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 Deputy Assistant Judge Advocate General (Military Justice) (NAMARA Code 40).

(b) *Motion to Reconsider En Banc.* *En banc* reconsideration of a panel or *en banc* decision or order terminating a case may be granted following a motion by a party or at the request of a judge on the Court. The Clerk will notify appellate counsel concerning briefs or oral argument.

IOP 19.2. Panel Reconsideration. A motion for reconsideration of a panel decision shall be referred to the same numerically designated panel that originally decided the case. When any judge who participated in the decision is unavailable due to reassignment or lengthy absence, the Chief Judge will appoint a substitute. When the original lead or participating judge has been reassigned to a different numeric panel, the Chief Judge will ordinarily assign that judge to the original panel to expedite disposition of the reconsideration motion.

IOP 19.3. En Banc Reconsideration. A request for *en banc* reconsideration shall be decided by the judges present for duty. Any suggestion for *en banc* reconsideration will be deemed to include a motion for reconsideration by the panel responsible for the opinion or order terminating the case. One-third of the judges present for duty may order that any case, including a petition for extraordinary relief or an appeal pursuant to Article 62, UCMJ, be reconsidered by the Court sitting *en banc*. An appropriate order will be published when a majority of the Court votes to grant *en banc* reconsideration. The record will be withdrawn from the panel to which it was originally assigned and reassigned by the Chief Judge to the Court sitting as a whole.

## **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. *Petitions for Extraordinary Relief*

(a) *Filing the Petition.* Original hard copy Petitions for Extraordinary Relief, including supporting briefs, must be filed with the Clerk of Court, except when the filing is accomplished through electronic means. See Rule 5.2(b)(3). 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 Director of the opposing appellate division.

(b) *Format and Content.* Petitions and accompanying briefs shall be captioned [name of petitioners] and must conform with Rule 5.2 and shall include:

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

(2) The specific relief sought;

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

(4) A statement of the issue;

(5) A concise statement of the facts of the case material to the issue presented and of any pertinent opinion, order or ruling;

(6) Reasons for granting the writ;

(7) 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, attached as appendices; and

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

(c) *Action on the Petition*

(1) All writ petitions filed in the course of an on-going proceeding will be given priority consideration by the Court. The respondent(s) may not file a response to a writ petition unless ordered by the Court. The petitioner may file a reply to the response to the show cause order within 7 days of its receipt.

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

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

(4) In view of the time limit for filing a writ appeal with CAAF (*see* CAAF RULE 19(e)), the Clerk of Court will serve counsel and expedite delivery to NAMARA of copies of any order terminating a stay or finally disposing of a petition for extraordinary relief for immediate dissemination and distribution, including service on the parties.

## **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. *Government Appeals*

*(a) Processing*

(1) Upon filing the Article 62, UCMJ, appeal, the representative designated by the Judge Advocate General shall promptly deliver the original record to the Clerk of Court who will docket the case. One copy of the appeal shall be forwarded by the Government to the Appellate Defense Division. Except upon motion granted for good cause, the appellate Government counsel shall have 20 days from the date the original record is deposited with the Court to file an appeal with supporting brief. The appeal shall be docketed under the same title given to the action in the court-martial with the accused and the United States denominated as the sole parties therein.

(b) *Matters to be Included in 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 such authorities as are deemed pertinent;

(D) a statement showing good cause why the appeal was not filed within the time prescribed by CCA Rule 21, if applicable;

(E) proof of service on the Director, Appellate Defense Division, and civilian appellate counsel, 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 (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.

(c) *Answer.* Appellate defense counsel shall prepare an answer in the manner prescribed by CCA Rule 15 and shall file such answer within 20 days after the Government's appeal and brief are filed with the Court. A signed original of the Answer must be filed. Enlargements of time are not favored.

(d) *Applicability of Other Rules.* Except as indicated above, all other CCA Rules and provisions of these NMCCA Rules such as those pertaining to reply briefs, oral argument, *en banc* consideration, and reconsideration, apply.



(e) *Action Following Decision.* After the Court has issued a decision, that decision along with the original record and any accompanying documents will be released to NAMARA (Promulgation), which will forward the decision to the Judge Advocate General in accordance with CCA Rule 18 and for compliance with R.C.M. 908(c)(3).

(f) *Withdrawal of Appeal.* If the Government elects to withdraw an appeal before the Court has issued a decision, appellate Government counsel shall file a motion to withdraw the appeal. If the motion is granted, the original record shall be released to Director, Appellate Government Division for proper disposition.

## **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*

(a) *New Trial Petition for Case Before the Court.* If a Petition for New Trial pursuant to Article 73, UCMJ, is received from the Judge Advocate General and the case is pending before the Court, the Clerk will forward the petition to the panel to which the case is assigned. The Clerk will ensure that appellate counsel are notified of such receipt. Counsel will file their answers, brief in support of petition, and reply brief within the limits set forth in CCA Rule 22.

(b) *New Trial Petition for Case not Before the Court.* If a Petition for New Trial is received on a case not pending before the Court of Criminal Appeals, the petition will be referred directly to the Judge Advocate General (Code 20).

## **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. § 1746. All documents containing language other than English shall have, attached, a certified English translation.

**(c) Opposition.** Any opposition to a motion other than a motion for enlargement of time shall be filed within 7 calendar 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. Motions*

**(a) Filing of Motions.** Each motion will state with particularity the relief sought, the grounds therefor, and the specific CCA Rule or NMCCA Rule that authorizes such relief.

**(b) Duty to Consult.** Counsel have a duty to consult counsel for the other parties to the appeal and inform them of the intended filing of the motion. In the case of a defense motion, if appellate Government counsel has not yet been assigned to the case, defense counsel will consult with the Director or Deputy Director of the Appellate Government Division. If the other parties consent to the relief requested by the motion, the title of the motion shall begin with the word “Consent.” Consent motions will be immediately forwarded to the appropriate judge for action without awaiting a response.

(c) *Response to Motions.* Opposition to Motions for Enlargement of Time must be filed within 5 days after receipt by the opposing party. Opposition to all other motions must be filed within 7 days after receipt by the opposing party. The responding party may, for good cause, move for up to 30 days enlargement of time to file a response. Such a request must state good cause with particularity. The Court may, in its discretion, rule on motions before the opposing filing is received.

IOP 23.1. Action on Motions. Action by the Court on motions will be set forth in Internal Operating Procedures pertaining to a specific motion. Any motion not acted upon within the time designated for that motion will be forwarded by the Clerk of Court to the Chief Judge for action deemed appropriate. Generally, the Court will act on motions by issuing an order stating simply "DENIED" or "GRANTED" by means of a stamp on the filings. When a more substantial response is deemed necessary, the Court action will take the form of an order.

#### Rule 23.2. *Motions for Enlargement of Time*

(a) *General.* Counsel must move for enlargement of time to file if they desire to request time beyond the initial filing requirements for briefs, answers, and replies. Cf. Rule 15.1. The time prescribed is not tolled simply by the filing of a motion for enlargement or for any other relief; the time for filing continues to run until the motion is granted. The Court may, upon motion and for good cause shown, enlarge the time prescribed by CCA Rules 15(b), 19(b), 20(e), 21(d), and 22(c). All motions for enlargement of time will specify in the caption whether the enlargement sought is the first, second, third, etc., enlargement and where appropriate, the word "Consent."; and will specify in the first paragraph of text the current due date; the number of days requested, and the requested due date.

##### (b) *Form and Content*

(1) Consent motions for first enlargement that do not exceed 10 days do not require a showing of good cause and may be filed up to the due date of the pleading.

(2) Consent motions for a first enlargement of up to 30 days involving records of trial in excess of 500 pages of transcription do not require a showing of good cause and may be filed up to the due date of the pleading.

(3) All other motions for enlargement of time will be granted only when good cause therefore is shown *with particularity*, and may be granted only for periods not to exceed 30 calendar days. The motion for enlargement must articulate specific reasons why the enlargement of time should be granted by the Court. See Appendix C-1. All such motions must be filed at least 5 calendar days

before the filing is due to permit the opposing party to register opposition and the Court to give timely consideration. If this 5-day period would commence on a day other than a day when the Court's offices are open for business (*e.g.*, Saturday, Sunday, Holiday), the period will commence on the preceding day when the Court was open for business. The following information is required in every motion for enlargement where a showing of good cause is required:

- (A) when the record of trial was docketed;
- (B) the status of review of the record of trial;
- (C) the number of pages in the record of trial;
- (D) a statement as to the complexity of the case; and
- (E) whether the appellant is confined and, if so, the appellant's normal release date.

(4) Any motion for enlargement of time to file an appellant's pleading that requests a filing date more than ninety days from the date of docketing with the Court, in addition to a showing of good cause, will require an affirmation that the appellant has been consulted and concurs with the enlargement request. Where the appellant opposes such enlargement request or cannot be contacted for consultation, the requested enlargement for a filing date beyond ninety days from docketing will only be granted upon a showing of extraordinary circumstances. Additionally, in any motion for enlargement requesting a filing date beyond ninety days from docketing, if counsel cites caseload as a reason for the delay, a detailed explanation of the number and complexity of counsel's pending cases, weekly working hours, and the number and prioritization of other duties, specifically time spent assisting other counsel with their cases, preparing for oral argument, and executing collateral duties is required.

IOP 23.2. Action on Motion. Motions for enlargement of time will ordinarily be acted upon within 1 business day of becoming ripe for decision.

### Rule 23.3. *Motion for Oral Argument*

(a) *General*. Oral arguments may be heard in the discretion of the Court upon motion by either party. Counsel for either party may move for oral argument no later than 7 days after the filing of an answer to the appellant's brief. Such motion shall propose a date and time for the oral argument and identify the issue(s) upon which counsel seek argument. The other party to the action may file a response stating whether it opposes or supports the motion and whether it has

any conflict with the proposed date and time. Any judge of a panel desiring oral argument before that panel may grant a motion for oral argument.

(b) *Court Ordered Argument*. Any judge assigned to a panel may direct oral argument in any case pending before that panel or pending *en banc*, identifying the issue(s) upon which he or she wishes to hear argument.

(c) *Standards*. A motion for oral argument should normally be granted, unless, in its discretion, the Court concludes that the appellate process will in no way be aided by oral argument, and:

(1) the stated issue is frivolous; or

(2) the stated issue has been recently authoritatively decided and no rationale for deviating from precedent has been presented.

IOP 23.3. Action on Motion. A motion for oral argument will ordinarily be acted upon within 3 business days of becoming ripe for decision. Any motion for oral argument on which action cannot be taken within 3 business days of filing, due to the need for additional action, information, or otherwise, will be placed on a 10-day tickler for continuing review and decision once the case is sent to panel.

#### Rule 23.4. *Motion to Attach Documents*

(a) 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 the relevance to the case.

(b) Affidavits must be dated and notarized by notary public or an officer in the Armed Forces, or submitted as an unsworn declaration under penalty of perjury pursuant to 28 U.S.C § 1746. No other statements, including those of an appellant, will be accepted by the Court.

IOP 23.4. Action on Motion. A motion to attach will ordinarily be acted upon within 1 business day of becoming ripe for decision.

Rule 23.5. *Motion for Relief from Post-Trial Processing Error*. Any party may move for relief from a post-trial processing error by apprising the Court of an obvious error in the post-trial processing phase and requesting immediate remand to correct it.

IOP 23.5. Action on Motion. A motion for relief from post-trial processing error will ordinarily be acted upon within 7 days of becoming ripe for decision.

Rule 23.6. *Motion Pursuant to R.C.M. 706*

(a) A motion to conduct a mental health evaluation under R.C.M. 706 may be made to the Court if, in the opinion of either party, good cause has been shown to order the convening of a medical board to inquire into appellant's mental responsibility at the time of the offense, or mental capacity to stand trial, or to participate in the review of the case at the appellate level.

(b) Requests by appellate counsel for a mental health evaluation of an appellant in a case pending before the Court are made directly to the Court. The motion must be supported by a concise statement of facts supported by the record or upon affidavits appended to the record by a motion to attach, pertinent to the question of sanity and must contain a justification of the need for a current evaluation. The motion will include a motion to stay proceedings for the period of time required to accomplish the evaluation.

IOP 23.6. Action on Motion. A motion to conduct a mental health evaluation pursuant to R.C.M. 706 will ordinarily be acted upon within 3 business days of becoming ripe for decision.

Rule 23.7. *Motion to Stay Proceedings*. A motion to stay proceedings shall be made in conjunction with any filing which requires a stay. Such filings may include, but are not limited to, petitions for extraordinary relief and motions pursuant to R.C.M. 706.

IOP 23.7. Action on Motion. A motion for a stay of proceedings will ordinarily be acted upon within 3 business days of becoming ripe for decision. Any motion for a stay of proceedings on which action cannot be taken within 3 business days, due to the need for additional action, information, or otherwise, will be placed on a 10-day tickler for continuing review and decision.

Rule 23.8. *Motion to Cite Supplemental Authorities*. In the event that relevant new law has been issued or discovered by counsel subsequent to the submission of their brief, answer, or reply, counsel shall supplement their filings by bringing the citation of a relevant authority to the attention of the Court in a motion to cite supplemental authorities. Such motions will briefly explain the relevance of each newly cited authority to the issues before the Court.

IOP 23.8. Action on Motion. A motion to cite supplemental authorities will ordinarily be acted upon within 1 business day of becoming ripe for decision.

Rule 23.9. *Motion to Compel*. Whenever it is clear that the original record of trial is missing an item necessary for the Court's consideration, counsel may move the Court to compel the Government to produce the item. Such a motion should

identify with particularity the item that is missing, and how it is relevant to the Court's review.

IOP 23.9. Action on Motion. A motion to compel will ordinarily be acted upon within 3 business days of becoming ripe for decision.

Rule 23.10. *Motion for Leave to File*. Any filing not authorized or required by these rules or the CCA rules shall be accompanied by a motion for leave to file such filing, setting forth the basis upon which the filing should be permitted.

IOP 23.10. Action on Motion. A motion for leave to file will ordinarily be acted upon within 3 business days of becoming ripe for decision.

## **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 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. *Application and Scope*. In the Chief Judge's discretion the application of these rules may be waived. During the review of a specific case pursuant to the Court's statutory responsibilities, a panel may, in its discretion, waive the application of a particular rule. The Court will notify the parties in the event of a waiver.

## **Rule 26. INTERNAL RULES**

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

Rule 26.1. *Implementation of Rules*. These Rules of Practice and Procedure [hereinafter Rules], and the accompanying Internal Operating Procedures, implement and supplement the COURTS OF CRIMINAL APPEALS RULES OF PRACTICE AND PROCEDURE set forth in 44 M.J. LXIII-LXXX, and those

provisions of the MANUAL FOR COURTS-MARTIAL, UNITED STATES (current ed.), that apply to the operations of the Court.

Rule 26.2. *Scope and Application of Rules.* The procedures contained within these Rules apply to all appellate military judges, the Court staff, and all members of the Bar admitted to practice before the Court. The Rules are promulgated by the Chief Judge of the Court.

IOP 26.2. Internal Operating Procedures. The internal operating procedures (IOPs) are promulgated by the Chief Judge pursuant to this Rule and his authority under JAG Instruction 5813.1 (series), to facilitate the orderly, efficient and effective discharge of the Court's statutory responsibilities. The IOPs apply to all appellate military judges and the Court staff, but they provide no right to the United States or to any other party petitioning the 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 27.1. *Photographing, Televising, Recording, or Broadcasting of Oral Argument*

(a) An audio recording of all oral arguments before the Court shall ordinarily be produced by Court staff or other personnel working on behalf of the Court. 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 review by this Court.

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

Rule 27.2. *Dissemination of Recorded Hearings.*

(a) As soon as practical, the recording of oral argument hearings will be made available to the public on the Court's web site, and digitally imprinted on a "writable" compact disc (CD), which shall be filed with the original record of trial.



(b) Prior to posting any recorded hearing, the Court's Senior Law Clerk shall review the recording and redact any personally identifying information, including, but not limited to:

- (1) Any part of a child victim's name
- (2) The full names of victims
- (3) Social security numbers
- (4) Financial account information
- (5) Addresses and telephone numbers
- (6) Dates of Birth

(c) Audio recordings of oral arguments shall remain posted on the Court's website for three years from the date of posting.

#### **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.**

Rule 28.1. *Questions, General Waiver Requests, and Suggested Changes.* Questions regarding the Rules should be addressed to the Clerk of Court. Requests for a general waiver of any provision and suggested changes to these Rules will be forwarded to the Chief Judge through the Clerk of Court.