

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

**RULES OF PRACTICE
AND PROCEDURE**



**Effective 01 September 2000
(As amended through 06 August 2008)**

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

(Together with Joint Courts of Criminal Appeals Rules of Practice and
Procedure (CCA) printed in Boldface Type)

**Effective 01 September 2000
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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. *The United States Air Force Court of Criminal Appeals.* The Judge Advocate General of the Air Force (TJAG) established the United States Air Force Court of Military Review in JAGO No. 44, ¶ 1 (1 August 1969). Effective 5 October 1994, this Court was renamed the United States Air Force Court of Criminal Appeals. Pub. L. 103-337, 108 Stat. 2663 (1994); Article 66(a), UCMJ, 10 U.S.C. § 866(a).

Rule 1.2. *Administrative Matters.*

(a) *Court Hours.* The Court's business hours are from 0730 to 1630 on weekdays, except 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.* To preserve the confidentiality of Court communications, visitor access to the Court's chambers is restricted. Visitors, including counsel, shall not venture beyond the reception area without the express consent of a judge, a clerk, or a member of the Court staff.

(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 Clerk of Court. Examination shall be accomplished in the deliberation room in the Court's chambers. Removal of records of trial from the Court's chambers is discouraged and will only be permitted with the approval of the Senior Judge, or designee, of the panel to which the case is assigned. Records of trial shall not be removed from the Court's chambers for more than one workday or from 112 Luke Avenue without the express permission of the Chief Judge.

(d) *Requests for Information.* All requests for information on the status of cases from a party or from within The Judge Advocate General's Department shall be referred

to the Clerk of Court or Chief Commissioner. Press inquiries and other inquiries from outside the Office of The Judge Advocate General of the Air Force shall be directed to the Air Force Legal Services Agency, Military Justice Division (AFLSA/JAJM).

(e) *Cases Pending Before Another Court.* Appellate counsel shall promptly inform the Court if the same case that is presently pending before this Court is also pending before any other court.

Rule 1.3. *Appellate Military Judges.*

(a) TJAG assigns to the Court and certifies each appellate military judge and designates who will serve as Chief Judge. In the absence of the Chief Judge, the senior presiding judge present for duty will perform the Chief Judge's duties. In the absence of all presiding judges, the senior judge present for duty will perform the Chief Judge's duties. For purposes of this rule, the term "absence" means the judge is not present for duty at Bolling Air Force Base, Washington, District of Columbia.

(b) The Chief Judge determines the number of court panels, assigns the judges to those panels, and designates the Senior Judges who preside over the panels.

(c) Prior to performing any official judicial duties, each appellate military judge shall take the following oath, administered by TJAG, the Chief Judge, or the Chief Judge's representative:

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

Rule 1.4. *The Chief Commissioner and the Clerk of Court.*

(a) The Chief Commissioner is the chief administrative officer of the Court, appointed by the Chief Judge, and responsible for all administrative procedures of the Court, including the supervision of the Clerk's Office.

(b) The Clerk of Court maintains the Court docket and is responsible for maintaining all court records. The Clerk is the point of contact for court decisions and all trial records while maintained in the Court.

(c) *The Docket.* The Clerk of Court shall maintain:

(1) a regular docket for cases referred to the Court by TJAG under Articles 66 and 69, UCMJ, and returned to the Court under Article 67(e);

(2) a miscellaneous docket for petitions for new trial under Article 73, UCMJ, petitions for extraordinary relief, Government appeals brought under Article 62, UCMJ, and other matters not covered in the regular docket.

(3) an oral argument docket.

(d) All pleadings or other papers filed, and any action by the Court relative to a case, will be entered in the appropriate docket. Entries in each docket will show the date, the nature of each pleading or other paper filed, and the substance of any action by the Court. From time to time, the Clerk shall, under the general direction of the Court, determine the appropriate manner for keeping and preserving the dockets.

(e) *Docket number.* The staff of the Appellate Records Branch of the Military Justice Division (AFLSA/JAJM) will assign docket numbers for the regular docket. The Clerk of Court will assign a miscellaneous docket number in all other cases upon receipt of the initial pleading. All pleadings or other papers subsequently filed in the case will bear the assigned docket number.

(f) *Notice of docketing.* The Appellate Records Branch shall notify the Court and the appellate divisions of the receipt, docketing, and the docket number of all cases assigned to the regular docket. The Clerk of Court shall notify all parties of the receipt, docketing, and docket number of all cases assigned to the miscellaneous docket.

(g) *Entry of Judgment.* The Clerk, or other member of the Court staff as designated by the Chief Commissioner, shall prepare, sign, date, and enter the judgment immediately upon the filing of the opinion of the Court. If a judgment is rendered without an opinion, the Clerk shall prepare, sign, date, and enter such judgment in an order following instruction from the Court. The Clerk shall, on the date a judgment is entered, distribute to all parties and The Judge Advocate General (AFLSA/JAJM) a copy of the judgment and opinion, or of the order, if no opinion was written.

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

(a) *Court Security Officer.* The Chief Commissioner shall serve as the Court Security Officer for the purposes of providing for the protection of classified information, and may designate such assistants as are appropriate for such purposes.

(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 Appellate Records Branch (AFLSA/JAJM).

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

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. *Ancillary 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 TJAG to refer the case to this Court pursuant to Article 66(b), UCMJ.

Rule 2.2. *Cases upon Further Review.*

(a) *Types.* Cases upon further review include cases remanded to the Court by a superior court and cases returned to the convening authority for corrective action, a rehearing, or other trial that are again before the Court for review.

(b) *Procedure.* Cases upon further review will be referred to the same numbered panel that originally decided the case, without regard to the composition of the panel, unless the Chief Judge decides otherwise.

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.* Only active duty appellate military judges present for duty will be counted in determining the existence of a quorum.

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
Air Force Court of Criminal Appeals
112 Luke Ave. Ste 343
Bolling AFB, DC 20032-8000

Telephone: (202) 767-1550 DSN: 297-1550
Facsimile: (202) 404-6277 DSN: 754-6277

Rule 5.2. *Filing Times.* All filings must be submitted to the Clerk of Court no later than 1600 on the date the filing is due. Any filing received after 1600 will be dated as received on the following business day. All stated times are local times at Bolling Air Force Base, District of Columbia.

Rule 5.3. *Filing Procedure.* All filings, except those made electronically through the Court's web site, shall be submitted as an original plus 4 copies. For electronic filings,

made through the Court's web site [if available], counsel must file with the Clerk of Court paper originals plus 1 copy. All filings shall be accompanied by a certification that each real party in interest was served with a copy of that filing.

Rule 5.4. *Supplemental Filings.* Supplemental filings must be submitted by Motion for Leave to File. If the motion is granted, the other party has 30 days to file a response. When the other party has not previously filed a response to the initial filing, the period for responding is automatically extended to coincide with the time for filing a response to the supplemental filing.

Rule 5.5. *Amicus Curiae Briefs.*

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

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

Rule 5.6. *Lengthy Filings.* All filings exceeding 25 pages in length shall include a table of contents.

Rule 5.7. *Citations.*

(a) *Form.* Citation form for appellate filings shall conform to the most recent edition of the Harvard University Press' *A Uniform System of Citation* [The Bluebook].

(b) *Citation of Unpublished or Memorandum Opinions.* Unpublished and Memorandum decisions have limited precedential value. Counsel shall not normally cite such opinions to the Court. If counsel desire to cite an unpublished or memorandum opinion, they must attach a copy of the decision to the pleading along with a brief objective summary of the facts in the underlying case. If counsel intend to cite an unpublished or memorandum opinion during oral argument, the same information as above must be provided to the Court and opposing counsel at least three days prior to oral argument.

Rule 5.8. *Filings by Attorneys Not Admitted.* If the counsel signing a filing is not a member of the Bar of this Court, the filing shall nonetheless be received as if such counsel were a member. However, within 30 calendar days of submission of the filing, such counsel shall, 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*.

Rule 5.9. *Filings Out-of-Time.* Any filing that is submitted out-of-time shall so indicate in the caption. A filing is out-of-time when it is made beyond the court-ordered deadline for filing. Filings that are not filed in accordance with this provision shall be returned to the party without attachment to the record of trial.

Rule 5.10. *Noncompliance with Court Rules.* Failure to comply with Court rules may result in the 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.

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.* All filings must be signed by the attorney of record, or by the appellant if he is proceeding *pro se*. Civilian counsel must include their address, phone number, and facsimile number, if available, below the signature line of each filing. One attorney of record may sign "for" another attorney whose name appears on the filing, if authorized by that attorney to do so. The name and grade, if any, of the person signing, together with the capacity in which such counsel signs will be included. The Court will regard such a filing as personally signed by the attorney granting such authority.

Rule 7. COMPUTATION OF TIME

In computing any period of time prescribed or allowed by these rules, by order of the Court, or by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, or, when the act to be done is the filing of a paper in court, a day on which the office of the Clerk of the Court is closed due to weather or other conditions or by order of the Chief Judge, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

Rule 8. QUALIFICATION OF COUNSEL

(a) All Counsel. Counsel in any case before the Court shall be a member in good standing of the bar of a Federal Court, the highest court of a State or another recognized bar.

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

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

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

Rule 8.1. *Qualification of Counsel.* No person, other than an appellant upon leave of the Court, shall practice before this Court unless admitted to the Bar of this Court or appearing *pro hac vice* or as *amicus curiae* by leave of the Court.

Rule 8.2. *Admission to the Bar of the Court.*

(a) Each applicant shall file with the Clerk of Court an application for admission together with a certificate from the Clerk or other appropriate officer of a court specified in Rule 8(a) that the applicant is a member of the Bar in good standing. The certificate of good standing must be an original and must be dated within one year of the date of the application. Applications may be obtained from the Clerk of Court or downloaded from the Court's web site (<http://afcca.law.af.mil>). Upon leave of the Court, attorneys currently certified by a Judge Advocate General pursuant to Articles 26(b) or 27(b), UCMJ, may be admitted without application.

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

(c) A person shall move for admission of an applicant by stating:

May it please the Court, I am (Name), a member in good standing of the bar of this Court. I move the admission of (name(s) of applicant(s)), a

member of the bar of (the highest court of the State of _____), (the United States District Court of _____). I have examined (his) (her) (their) credentials on file in the office of the Clerk, and I am satisfied that (he/she has) (they have) the qualifications for membership in the bar of this Court.

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

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

Rule 8.3. *Honorary Membership.* Honorary membership in the Bar of the Court may be granted to distinguished members of the legal profession of other nations. No oath is required. Honorary membership does not entitle the member to practice before the Court.

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.* In addition to rules applicable in their respective jurisdictions, the professional conduct of counsel appearing before the Court is governed by the current *Manual for Courts-Martial*, CCA Rule 9, the American Bar Association's Code of Professional Responsibility, and the Air Force Rules of Professional Responsibility.

Rule 9.2. *Reporting Requirements.* Any member of the Bar of this Court who is subjected to discipline that results in disbarment, suspension, or other loss of good standing in the bar of any court of the United States or the District of Columbia, or by a court of any State, Territory, Commonwealth, or Possession of the United States, must promptly so notify the Clerk of Court at the address shown in Rule 5.1. Likewise, any

member of the Bar who is suspended from practice in courts-martial or the Court of Criminal Appeals of any military service, or whose certification pursuant to Article 26(b) or 27(b), UCMJ, is withdrawn for cause, shall promptly so notify the Clerk of Court.

Rule 9.3. *Allegations of Professional Misconduct.* In addition to such action as may be taken by the Court in its inherent power as an appellate tribunal, allegations of professional misconduct may be referred to The Judge Advocate General or to such other agency as The Judge Advocate General may direct, for investigation and appropriate action.

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 11.1. *Designation of Appellate Counsel.*

(a) The Documents Examiner reviews each record to determine if the appellant requests representation for appellate defense counsel. If the Documents Examiner is unable to discern the wishes from the record, the Court will return the record to the staff of the Military Justice Division, who will obtain the AF Form 304, *Request For Appellate Defense Counsel*. In any case that has been remanded to a convening or supervisory authority for further proceedings, an appellant's prior request for appellate defense counsel remains effective in subsequent appellate proceedings before this Court, unless the appellant affirmatively withdraws the request in writing.

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

Rule 12. RETENTION OF CIVILIAN COUNSEL

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

Rule 12.1. *Retention of Civilian Counsel.* In any case where the appellant has specifically requested named civilian counsel, the Appellate Defense Division will communicate with civilian counsel to coordinate representation of the appellant and ensure civilian counsel's proper appearance before the Court. All counsel must be familiar with the Rules of the Court which, along with the application for admission to the bar of the Court, are available from the Court's web site (<http://afcca.law.af.mil>).

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. *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 13.2. *Withdrawal of Counsel.* No counsel who entered an appearance may withdraw from a case without leave of the Court. Judge advocates need only provide notice of substitution of military appellate counsel if they are withdrawing because of reassignment or departure from either Appellate Government or Appellate Defense Divisions.

Rule 14. WAIVER OR WITHDRAWAL OF APPELLATE REVIEW

Withdrawals from appellate review, and waivers of appellate review filed after expiration of the period prescribed by Rule for Courts-Martial 1110(f)(1), will be referred to the Court for consideration. At its discretion, the Court may require the filing of a motion for withdrawal, issue a show cause order, or grant the withdrawal without further action, as may be appropriate. The Court will return the record of trial, in a case withdrawn from appellate review, to the Judge Advocate General for action pursuant to Rule for Courts-Martial 1112.

Rule 14.1. *Waiver or Withdrawal of Appellate Review.*

(a) When the Clerk of Court receives a waiver of appellate review, after a record of trial has been referred to the Court but before issues are joined, that appears to have been

timely filed with the convening authority and is in substantial compliance with R.C.M. 1110, the Clerk of Court may revoke the referral and return the record to the Appellate Records Branch (AFLSA/JAJM) for return to the appropriate trial jurisdiction for review pursuant to R.C.M. 1112. Otherwise, the waiver will be referred to the accused's appellate counsel or to the Court, as circumstances may require.

(b) A case may be withdrawn from appellate review at any time before the Court completes its review, but only by leave of the Court. The request to withdraw a case from appellate review must be dated and signed both by counsel and the appellant. The Court will remand all cases in which withdrawal has been granted to the Military Justice Division (AFLSA/JAJM) for compliance with R.C.M. 1112.

(c) Government appeals pursuant to Article 62, UCMJ, are withdrawn as indicated in Rule 21.1(c).

(d) Other pending matters may be withdrawn by Motion to Withdraw naming the matter to be withdrawn.

Rule 15. ASSIGNMENTS OF ERROR AND BRIEFS

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

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

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

Rule 15.1. *Assignments of Error.* Prior to the Summary of Proceedings, appellate counsel shall insert a Statement of Issues and state seriatim all errors assigned in the case.

Rule 15.2. *Answer.* Government appellate counsel may answer each error assigned by counsel for the appellant or enter a general opposition.

Rule 15.3. *Time.* For cases before the Court for initial review, every appellant is automatically granted, without motion, a 30-day continuance such that the assignment of errors need not be filed until 90 days after receipt of notification that the record of trial was received in the Appellate Records Branch of the Military Justice Division (AFLSA/JAJM). This automatic 30-day continuance does not apply to cases before the Court on further review.

Rule 15.4. *“Merits” Cases.* Cases in which appellate defense counsel do not assign and the Court does not specify any issues, will be designated “merits” cases. Appellate government counsel need not respond to a case submitted on its merits.

Rule 15.5. *Grostefon Issues.*

(a) Counsel shall notify the Court, by footnote citing *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), of any errors raised personally by the appellant. The government must respond pursuant to Rule 15.2.

(b) Counsel is responsible for formulating issues raised personally by an appellant into an appropriate assignment of error. Without argument, counsel shall note the evidence that supports the appellant’s *Grostefon* complaint and the applicable law. To support the appellant’s contentions, counsel may submit by motion written communications from the appellant. Appellate defense counsel is responsible for providing the Court a typed transcript of any hand-written submissions.

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

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 Arguments.

(a) The Court's hearing calendar is established by Notice of Hearing issued by the panel hearing the case.

(b) Within 7 days after receiving the Notice of Hearing, counsel for each party shall provide to the Court panel four copies of its pleadings in the case. If the hearing is to be by the Court en banc and copies of the pleadings have not been provided previously, counsel shall provide a number of copies sufficient for each judge and each commissioner then assigned to the Court.

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

(d) Only one counsel may present oral argument for each party. Any party wishing to deviate from this rule must obtain leave of the Court by motion. Any counsel who has entered an appearance in the case may be seated at the counsel table. Absent leave of court, only members of the Bar or counsel appearing *pro hac vice* or as *amicus curiae* may be seated inside the bar of the Court. Military counsel shall appear in the "service dress" uniform. Civilian counsel shall wear similarly dignified business attire. Smoking, eating, and chewing gum or tobacco are prohibited in the courtroom. Cell phones, pagers, and watch alarms shall be turned off in the courtroom.

(e) Supplemental citations of authority may be submitted by Motion for Leave to File no later than 2 days prior to oral argument with sufficient copies for each judge and commissioner involved in the oral argument. Within 7 days following oral argument, counsel may submit a Motion for Leave to File a Memorandum of Argument or for Leave to File a Supplemental Citation of Authority for any argument or citation made during the hearing that was not set forth in the brief filed prior to argument.

Rule 16.2. *Argument by Amicus Curiae or Appellant Pro Se.* The Court may grant a motion by *amicus curiae* counsel or by appellant *pro se* for leave to participate in oral argument.

Rule 16.3. *Failure to Appear.* The Court may regard the failure of appellate counsel to appear at the time and place set for oral argument as a waiver of argument. The Court may proceed without argument or continue the case until a later date. The Court may require counsel to provide a written explanation for the failure to appear.

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. *Requests for En Banc Consideration.* A copy of the pleadings and briefs in the case must be appended to the request. Within the meaning of CCA Rule 17(a), uniformity of decision refers to panels of this Court and of the other service courts of criminal appeals. Questions of exceptional importance include a novel question of law not previously considered by a military appellate court, and argument that existing case law should be overruled or modified.

Rule 17.2. *Oral Arguments.* At the discretion of the Court, oral arguments may be heard on the merits of a case designated for en banc consideration, upon order of the Court or motion by a party.

Rule 17.3. *Present for Duty.* For purposes of this rule, present for duty means being physically present in a duty status at the location at which the court will sit 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. *Orders.*

(a) *Interlocutory or Final.* An order of the Court is a command or directive issued by the Court and may be either interlocutory or final in nature. An interlocutory order may grant or deny a motion submitted by one of the parties or decide some intervening or ancillary matter relating to the case. A final order may be issued when the Court disposes of an action without deciding the substantive merits of the case. Final orders are usually issued to abate the proceedings because of the death of the accused or when denying or dismissing a petition for extraordinary relief. After review pursuant to Article 66, UCMJ, an order should not be issued in place of an opinion of the Court.

(b) *Signatures.* An order may be signed by a judge or it may be authenticated by use of the authority line, the Court seal and signature of the Chief Commissioner, Honors Law Clerk, Chief Court Administrator, Clerk of Court, or Documents Examiner.

(c) *Types of Orders.*

(1) *Specifying an Issue.* If the Court desires additional briefs on an issue, whether or not raised by counsel, it may issue an order specifying the issue(s) to be

briefed and the time frame within which the responses will be filed with the Court. The time allowed for filing the brief and answer to a specified issue is usually 15 days, but the Court in its discretion may modify the time. The Court may also direct additional oral arguments on the specified issues or allow counsel the opportunity to present such argument.

(2) *Insanity Matters.* If, in the opinion of the Court, good cause has been shown to order the convening of a board of medical officers to inquire into the mental competence or responsibility of the appellant, the Court will issue an order directing that such proceedings be instituted. The order may be issued by the Court on its own motion after a review of the record or upon motion by counsel accompanied by sufficient documentation to justify the order. Requests by appellate counsel for psychiatric evaluation of an appellant in a case pending before the Court are made directly to the Court. The request is made as a Petition for Psychiatric Evaluation supported by a concise statement justifying the need for a current psychiatric evaluation. A copy of the Petition is served on appellate government counsel at the same time it is filed with the Court. The Petition includes a Motion to Stay Proceedings for the period of time required to accomplish the evaluation. Government counsel have 7 days to file a reply. If the Court grants the Petition, the case is sent to The Judge Advocate General through the Director, USAF Judiciary, who arranges for the evaluation. The Petition described in these rules is not a prerequisite to and does not limit an appellant's right to petition for a new trial under Article 73, UCMJ.

(3) *Extraordinary Writs.* The Court shall act expeditiously on all requests for extraordinary relief. The Judge Advocate General will appoint counsel to represent the petitioner, if such a request is included in the petition. If no request for appointment of counsel has been included in the petition, the record will be forwarded directly to the Court. The Court will review the merits of the petition and may dismiss, grant, or deny the writ. A written opinion may be prepared when the Court determines that a discussion of the issues is warranted.

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

Rule 18.2. *Effective Date of Decision.* Decisions of this Court are not self-executing. Normally, decisions of this Court shall become final when the time period for requesting reconsideration has expired and neither of the parties has timely filed to have the issue heard by the United States Court of Appeals for the Armed Forces.

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. *Reconsideration.*

(a) A party may seek reconsideration of a decision or order by filing a Motion for Reconsideration. A motion that a panel of the Court reconsider its decision or order must be filed in an original and 4 copies. A Motion for Reconsideration of a decision of the

Court sitting as a whole or a Motion for Reconsideration of a panel decision by the Court sitting en banc must be filed in an original with a number of copies equal to the number of judges and commissioners then assigned to the Court, and must include a copy of the decision or order as to which reconsideration is sought.

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

(1) A material legal or factual matter was overlooked or misapplied in the decision;

(2) A change in the law occurred after the case was submitted and was overlooked or misapplied by the Court; or

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

(4) New information is received which raises a substantial issue as to the mental responsibility of the accused at the time of the offense or the accused's mental capacity to stand trial.

(c) The filing of a Motion for Reconsideration stays the promulgation of the decision to the convening authority required by Article 66(e), UCMJ. Accordingly, a party making such a motion must file a copy of the motion with the Chief, Appellate Records Branch at the same time the motion is filed with the Court.

(d) Unless otherwise announced, an order granting reconsideration vacates the decision to be reconsidered.

(e) *Panel Reconsideration.* A motion for reconsideration of a panel decision shall be referred to the same numerically designated panel that originally decided the case. If the composition of the panel has changed since issuance of the decision, the Chief Judge shall create a temporary panel consisting of those members of the initial panel still available to serve. Reconsideration shall be granted upon concurrence of a majority of the panel.

(f) *En Banc Reconsideration and Reconsideration of En Banc Decision.* Reconsideration shall be granted with the concurrence of a majority of the judges present for duty and available to sit on the case. Reconsideration of an en banc decision will not be held unless at least one member of the original majority concurs in the vote.

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 Period.* A petition for extraordinary relief, except a petition for a writ of habeas corpus (which may be filed at any time), shall be filed as soon as possible; but, in any event, no later than 20 days after the petitioner learns of the action for which relief is sought.

(b) *Filing.* At the time the petition is filed, petitioner shall serve on opposing counsel a copy of the petition and a copy of the record of trial or the pertinent parts of the record and all exhibits related to the petition. When the petitioner is the accused, service of the petition shall be on the respondent, United States, and delivered or mailed to the Air Force Legal Services Agency, Government Trial and Appellate Counsel Division (AFLSA/JAJG).

(c) *The Petition.*

(1) The petition must be captioned so as to specify the type of writ sought. If a stay of ongoing or impending proceedings is sought, the caption must so indicate.

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

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

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

(d) When personally submitted by a person not represented by counsel, the Clerk of Court may accept for filing and refer to the Court a petition or correspondence in the nature of a Petition for Extraordinary Relief that does not meet the requirements of this rule.

Rule 21. APPEALS BY THE UNITED STATES

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

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

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

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

(1) The representative of the government designated by The Judge Advocate General shall decide whether to file the appeal with the Court. The trial counsel shall have 20 days from the date written notice to appeal is filed with the trial court to forward the appeal, including an original and two copies of the record of trial, to the representative of the Government designated by The Judge Advocate General. The person designated by The Judge Advocate General shall promptly file the original record with the Clerk of the Court and forward one copy to opposing counsel. Appellate government counsel shall have 20 days (or more upon a showing of good cause made by motion for enlargement within the 20 days) from the date the

record is filed with the Court to file the appeal with supporting brief with the Court. Should the Government decide to withdraw the appeal after the record is received by the Court, appellate government counsel shall notify the Court in writing. Appellate brief(s) shall be prepared in the manner prescribed by Rule 15.

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

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

Rule 21.1. Appeals by the United States.

(a) Processing Appeals.

(1) *Style of Case.* An appeal taken by the United States under Article 62, UCMJ, 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.

(2) The representative designated by The Judge Advocate General shall promptly deliver the original record to the Clerk of Court and forward one copy to opposing counsel. Upon receipt by the Clerk of Court, a miscellaneous docket number is assigned and the appeal is referred to a panel on a rotating basis.

(3) Once the government's appeal and brief are filed with the Court, the Clerk of Court will suspense the case for priority consideration. The Clerk will also notify the Military Justice Division of the appeal.

(4) After the Court has rendered a decision, the original record with any accompanying documents plus the Court's decision will be released to the Military Justice Division for compliance with CCA Rule 18 and R.C.M. 908(c)(3).

(b) *Decision to Not Appeal.* If the government elects to not file an appeal after the original record is deposited with the Court, appellate government counsel shall notify the Court in writing. Then, the original record shall be returned directly to the appellate government counsel.

(c) *Decision to Withdraw Appeal.* If the government elects to withdraw an appeal after a brief is filed, but before the Court renders a decision, it shall file a motion to withdraw the appeal. If the motion is granted, the original record shall be released to the Military Justice Division.

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) *Pending Review.* If a petition for new trial pursuant to Article 73, UCMJ, is received while the case is pending before the Court, the Clerk of Court 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.

(b) *Other Cases.* If a petition for new trial is received on a case not pending before this Court, the petition will be referred directly to the Military Justice Division for action on behalf of The Judge Advocate General.

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. sec. 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. Any opposition to a motion for enlargement of time shall be filed within 2 business days.

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

Rule 23.2. *Specified Motions.*

(a) *Motion to Unseal Records.* The Court maintains sealed documents from records of trial. Counsel must submit a motion requesting the Court to unseal the record. Counsel must “show cause” for such a request. The individual unsealing the record is responsible for resealing and annotating it accordingly.

(b) *Motion for Oral Argument.*

(1) Motions for oral argument shall be made within 7 days after the filing of an answer to an appellant’s brief. CCA Rule 16. Such motions must specify which issues the movant wishes to argue. Without leave of the Court, no more than 3 issues will be argued. Unless the appellant has assigned 3 or fewer errors, petitions for oral argument that do not specify the issues to be argued shall be denied.

(2) Normally, each side will be permitted 30 minutes for oral argument. A party may request more than 30 minutes per party, but shall justify to the Court the need for the additional time.

(3) No motion may be filed within 2 days of the date on which argument is scheduled, except by leave of the Court and for good cause shown.

Rule 24. CONTINUANCES AND INTERLOCUTORY MATTERS

Except as otherwise provided in Rule 19(d), the Court, in its discretion, may extend any time limits prescribed and may dispose of any interlocutory or other appropriate matter not specifically covered by these rules, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case. See Rule 4.

Rule 24.1. Motion for Enlargement of Time.

(a) *When Submitted.* The Court may, upon motion and for good cause shown, grant counsel an enlargement of the time prescribed by the CCA Rules. The filing of a motion for enlargement does not toll the prescribed time period. Counsel's time continues to run until the motion is granted. Counsel must file motions for enlargement of time at least 5 business days prior to the deadline to allow timely consideration by the Court. Each motion for enlargement will note whether it is the first, second, third, etc., in that case, and state good cause for the enlargement.

(b) Assignments of Errors and Answer.

(1) Motions for the first enlargement will be filed within 90 days of receipt of the record of trial. The Clerk of Court may grant first enlargements not to exceed 60 days, and second enlargements, not to exceed 30 days, if unopposed and properly filed. Subsequent motions for enlargement will not normally be granted for periods longer than 30 days and will be granted only upon a showing of good cause.

(2) Beginning with the third motion, all motions for enlargement of time will be granted only upon a showing of good cause. When engagement in other litigation is a cause, specific information is required as to the number and type of cases and the courts involved. If the complexity of issues is a cause, the number and nature of those issues should be explained. Hardship to counsel, if a cause, must be explained. Counsel for the moving party should be prepared to present oral argument on the motion if so directed by the Court.

(3) Motions for enlargement described in Rule 24.1(b)(2) shall indicate the number of days that have elapsed since the case was first docketed with the Court; the number of days that will have elapsed since docketing, on the date requested; the number of litigated specifications, if any, and the findings and sentence approved by the convening authority; a brief description of any motions raised at trial and preserved for appeal; the length of the transcript of the appellant's trial and the number of trial and

appellate exhibits; whether the appellant is confined and, if so, the appellant's minimum release date; and any other information counsel deems relevant to the request. Counsel for appellant will state whether appellant has concurred in the requested delay in any case that has been, or will become during the requested time frame, docketed with this Court for 365 days or longer. The Court may, by Court Order, shorten the time frame for requiring this information.

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 26. INTERNAL RULES

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

Rule 26.1. *Rules of Practice and Procedure.* The Air Force Court of Criminal Appeals Rules of Practice and Procedure are promulgated by the Chief Judge and apply to all appellate military judges, the Court staff, Appellate Government and Appellate Defense Divisions (AFLSA/JAJG and JAJA), the Appellate Records Branch of the Military Justice Division (AFLSA/JAJM), all members of the Bar of the Court, and all persons practicing before the Court *pro hac vice* or appearing as *amicus curiae*.

Rule 26.2. *Amending Air Force Court of Criminal Appeals' Rules.* Questions or suggested changes to the Rules should be addressed to the Chief Judge through the Chief Commissioner or Clerk of Court.

Rule 27. RECORDING, PHOTOGRAPHING, BROADCASTING, OR TELECASTING OF HEARINGS

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

Rule 28. AMENDMENTS

Proposed amendments to these rules may be submitted to the Chief Judge of any Court named in Rule 1 or to a Judge Advocate General. Before acting on any proposed amendments not received from the Chief Judges, the Judge Advocates General shall refer such proposed amendments 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.

//Signed//

JAMES R. WISE, Colonel, USAF
Chief Appellate Military Judge

FOR THE COURT

OFFICIAL



//Signed//

STEVEN LUCAS, YA-02, DAF
Clerk of the Court

APPENDIX A

FORMAT FOR BRIEF ON BEHALF OF APPELLANT

(Replaces Attachment 2 to Joint CCA Rules as referenced in Rule 15)

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES)	ASSIGNMENT OF ERRORS
<i>Appellee,</i>)	
)	Before Panel No. ____
v.)	
)	ACM _____
[Rank of Appellant])	
[NAME OF APPELLANT])	Tried at [location] on [date] before
USAF, [Do not include SSAN])	[type of court-martial] convened by
<i>Appellant.</i>)	[convening authority] [(MAJCOM)]

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

Issues 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 15.5 re issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).]

Summary of Proceedings

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

Statement of Facts

[Set forth accurately all facts pertinent to the issues raised, including specific page references and exhibit designations (per Rule 15(a)). Answers may adopt appellant's statement of facts if there is no dispute, may state additional facts, or, if there is a dispute, may restate the facts as they appear from appellee's viewpoint. The repetition of

uncontroverted matters is not desired. Assertions of fact should be supported by specific citations to the record of trial, exhibits, or allied papers, as appropriate.]

Argument

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

Appendix

[An appendix may set forth matters for the convenience of the Court, such as extracts from the record of trial, statutes, rules, or regulations, copies of decisions of other courts, and unpublished decisions. See Rule 15(c). Appendices may not be used to submit extra-record factual matters, which must instead be submitted to the Court by separate motion.]

[Signature of Counsel]_____
[Name, rank and branch of military
counsel, or name of civilian counsel]
[Title]
[Organization]
[Telephone Number (if civilian counsel,
include fax number)]

CERTIFICATE OF FILING AND SERVICE

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

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