

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

RULES OF PRACTICE AND PROCEDURE



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Published Together with the Joint Courts of Criminal Appeals
Rules of Practice and Procedure

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) (in **Bold Type**)

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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 Seal of the Court.

The official seal of the Court is used on decisions and orders of the Court and on other official documents and records that are executed and issued by the Clerk of the Court. The seal authenticates documents as official Court documents. The Clerk of the Court is the custodian of the seal and may delegate authority to employ the seal to other Court personnel.

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Rule 1.2 Scope and Application of Rules.

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

Rule 1.3 Chief Appellate Judge; Senior Appellate Judge; and Appellate Judges.

(a) *Assignment to the Court.* The Judge Advocate General of the Air Force ~~(hereinafter~~ TJAG) ~~appoints-certifies~~ each appellate judge of the Court and designates who shall serve as the Chief Appellate Judge or as the designated Chief Appellate Judge in a specific matter before the Court.

Commented [KJB1]: To comport w/ the new language of Art 66 under the Mil Jus Act.

(b) *Absence of the Chief Appellate Judge.* In the absence of the Chief Appellate Judge, a designated Senior Appellate Judge present for duty may perform the duties of the Chief Appellate Judge. In the absence of all designated Senior Appellate Judge, the senior appellate judge present for duty may perform the duties of the Chief Appellate Judge.

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

(d) *Panel Assignments.* The Chief Appellate Judge determines the number of Court panels and designates the panels on which each appellate judge will serve. The Chief Appellate Judge designates who will serve as a Senior Appellate Judge. A designated Senior Appellate Judge ordinarily presides over a designated panel of the Court.

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

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

Rule 1.4 ~~Court Staff~~Clerk's Office.

(a) ~~(a) Custodian of Records~~Clerk of the Court. The Clerk shall serve as custodian of the records of the Court and shall not permit any documents relative to a case to be taken from the Court's chambers except by order of the Court.

(b) Disposition of Procedural Matters. The Clerk or his or her designee, on behalf of the Court, may entertain and act on any motion for enlargement, motion to attach documents, motion to cite supplemental authorities, or motion to withdraw as counsel, provided such motion is not opposed and such action does not substantially affect the rights of the parties or the ultimate decision of the case. The order of the Clerk shall be deemed the order of the Court. The Clerk of the Court reports directly to the Chief Commissioner, under the supervision of the Chief Judge. The Clerk of the Court maintains the Court's docket, and is responsible for the custody of all court records. The Clerk of the Court is also the primary point of contact for the Court's web site and monitors the office's electronic workflow, distributing new filings to the respective panel paralegal with a copy to the panel's honors law clerk. During oral argument, the Clerk of the Court is responsible for the security of the courtroom and judges, as well as the logistical support for all proceedings. The Clerk of the Court is also the primary point of contact for requests to access or use the courtroom and its equipment.

(b) ~~Deputy Clerk of the Court.~~ The Deputy Clerk of the Court performs the duties of the Clerk of the Court in his or her absence. The Deputy Clerk of the Court shall be designated in writing by the Clerk of the Court.

(e) ~~Appellate Court Paralegal(s).~~ Paralegals' duties include, but are not limited to: performing general administrative and paralegal duties; processing of motions before the Court; processing records of trial that have been forwarded to the Court; recording pertinent case related data; utilizing appropriate forms, spreadsheets, and databases; securing supplies; and serving as the Court's law librarian.

(d) ~~Chief Commissioner.~~ Designated by and reporting directly to the Chief Appellate Judge, the Chief Commissioner serves as the Chief Appellate Judge's executive officer and first-line supervisor of the Clerk of the Court and all paralegal support staff. Additionally, the Chief Commissioner administratively supervises the honors law clerks, interns, and externs. As such, the Chief Commissioner has primary responsibility for all Court continuity materials and training materials for both judicial and support staff. The Chief Commissioner serves as the point of contact for all personnel matters. The Chief Commissioner will be provided access to all records and systems necessary to maintain Court operations.

Commented [KJB2]: Revised to remove internal organization and to look more like CAAF's Rule 9.

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~~(e) Honors Law Clerk(s). Reporting directly to the Chief Commissioner, honors law clerks are judge advocates selected to serve based on their knowledge of, and experience in, military law, as well as their legal scholarship, research, and writing skills. The clerks draft and edit opinions and other Court documents, perform various collateral duties and assist the Chief Commissioner and the Clerk of the Court as necessary.~~

Rule 1.5 Conduct of Court Personnel.

Personnel of the Court shall maintain the confidentiality of the Court's proceedings and avoid improper *ex parte* communication with litigants. Court personnel shall be fair and impartial, avoiding favoritism or the appearance of favoritism toward any interested party concerning a matter before the Court. Court personnel are expected to maintain a professional appearance and demeanor at all times. ~~The Chief Appellate Judge, Clerk of the Court, and Chief Commissioner are responsible for informing the Court staff (including interns, externs, reservists, and temporary employees) of these obligations.~~

Commented [KJB3]: More appropriate for an internal SOP.

Rule 1.6 Administrative Matters.

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

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

(c) *Requests to Examine Records of Trial and Other Official Documents*. Requests by appellate counsel to examine unclassified original records of trial and other official documents that are not protected by judicial privilege shall be made by contacting the Clerk of the Court. Examination shall be done in a designated area within the Court's chambers. Removal of an original record of trial from the Court's chambers will only be permitted upon motion with the approval of the Chief Appellate Judge or his or her designee. If an original record of trial is removed from the Court's chambers, the Military Justice Division of the Air Force Legal Operations Agency (AFLOA/JAJM) will be notified of the date, office, and individual removing the record and when the record is returned to the Court.

(1) Counsel representing a victim, as defined in 10 U.S.C. ~~See~~ § 806b(b), in a matter within the jurisdiction of the Court, may petition the Court to examine unclassified original records of trial and other official documents that are not protected by judicial privilege. Such petitions must identify the person represented by counsel and include a concise statement regarding the counsel's need for the record of trial or other documents to perform his or her official duties. Counsel filing a petition on behalf of a victim must comply with Rule 8.1 concerning qualification of counsel and Rule 13 regarding notice of appearance by non-Federal civilian attorneys and must provide the Appellate Defense Division (AFLOA/JAJA), and the Government Trial and Appellate Counsel Division (AFLOA/JAJG) ~~AFLOA/JAJG and AFLOA/JAJA~~ with a courtesy copy of the petition.

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

(d) *Requests for Information.* All requests for information from a party or a member of the Air Force Judge Advocate General's Corps shall be referred to the Clerk of the Court. Media inquiries or other inquiries from outside the Judge Advocate General's Corps shall be forwarded at the discretion of the Clerk of the Court to ~~the Military Justice Division of the Air Force Legal Operations Agency (hereinafter AFLOA/JAJM)~~ for further action.

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

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Rule 1.7 The Docket.

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

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

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

(d) *Notice of Docketing.* AFLOA/JAJM shall notify the Court, ~~the Appellate Defense Division (hereinafter AFLOA/JAJA), and the Government Trial and Appellate Counsel Division (hereinafter AFLOA/JAJG)~~ of the receipt and docketing of a case as well as the ACM number of all cases assigned to the regular case docket. The Clerk of the Court shall notify AFLOA/JAJA, AFLOA/JAJG, and the Trial Defense Division (~~hereinafter AFLOA/JAJD~~) of the receipt and docketing of all cases assigned to the miscellaneous case docket.

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

(f) *Entry of Judgment.* The Clerk of the Court or his or her designee shall prepare, certify, date, and enter the judgment immediately upon the filing of a decision of the Court. If a judgment is rendered without an opinion, the Clerk of the Court or designee shall prepare, certify, date, and enter such judgment in an order following instruction from the Court. On the date a judgment is entered, the Clerk of the Court or designee shall distribute to TJAG and interested parties an electronic copy of the judgment, opinion, or order as applicable.

Rule 1.8 Cases Involving Classified Information, Controlled Materials, or Contraband.

(a) *Court Security Manager.* The Clerk of the Court shall serve as the Court's security manager to ~~provide protection of~~ classified information. The Clerk of the Court may designate assistants for such purposes.

(b) *Classified Documents and Controlled Materials.* Except when in use by the Court, classified documents or materials will be stored by the security manager in designated secured areas within AFLOA/JAJM.

(c) *Security Clearances.* The security manager shall facilitate the —obtaining of clearances for personnel on the Court staff, as necessary.

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 of specification or excludes the 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 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, that are remanded for further proceedings, notwithstanding any subsequent reduction of the sentence below the level requiring ~~TJAG to refer the case to this Court~~ review pursuant to Article 66(b), UCMJ.

Rule 2.2. Cases Under Further Review.

~~(a) Types. Cases under the jurisdiction of this Court for further review include those cases remanded to the Court by a superior court and cases that are again before the Court for review after having been returned to the convening authority for corrective action, a fact-finding hearing, a rehearing, or other proceedings.~~

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~~(b) Procedure for Cases Remanded Directly to the Court by the United States Court of Appeals for the Armed Forces. When a case is remanded directly to the Court by the United States Court of Appeals for the Armed Forces (hereinafter CAAF), it shall, when practical, be referred to the same numbered panel/military judges that last decided the case. Within 30 calendar days after docketing of the case with the Court, appellant's counsel shall file a brief relating to any issue specifically referred to the Court for further consideration. Appellee's counsel shall have 30 calendar days thereafter to file a response.~~

Commented [KJB4]: Deleted b/c guidance on filing should come under Rule 15 and some of these timelines appear to conflict with the joint rule.

~~(c) Procedure for Cases Remanded to the Convening Authority by CAAF. When CAAF sets aside, in whole or in part, this Court's decision in a case and returns the record of trial to TJAG for remand to the convening authority with the provision that the record will ultimately be returned to this Court for further review under Article 66, UCMJ, appellate defense counsel shall file a brief and assignment of errors as to any matters not decided by CAAF or inform this Court that the appellant does not wish to file any additional pleadings within 30 calendar days after re-docketing of the record of trial with this Court within the time for filing provided by Rule 15(b) of the Joint Rules. Appellate counsel for the United States will have 30 calendar days thereafter in which to file a response.~~

~~(d) Procedure for Cases Returned by the Court to TJAG for Remand. When a case returned by the Court to TJAG for remand to the convening authority is again before the Court, appellate counsel shall file an initial brief and assignment of errors, if not previously filed, or submit the case on its merits within 30 calendar days after re-docketing of the record of trial with this Court the time for filing provided by Rule 15(b) of the Joint Rules. If previously filed, appellate defense counsel shall within 10 calendar days of re-docketing either request leave to file a supplemental pleading under Rule 23.10 or inform this Court that the appellant does not wish to file additional pleadings. Appellate counsel for the United States will have 30 calendar days from the filing of the appellant's initial brief or supplemental brief, as applicable, in which to file a response.~~

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 10.1~~ *Rule 4.1 En Banc.*

The Court as a whole shall include all appellate military judges who are present for duty as defined in Rule 17.1 and are not recused or disqualified at the time that the matter is before the Court.

~~Rule 11.~~ *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 11.1~~ *Rule 5.1 Method of Filing.*

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

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

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

~~Rule 11.2~~ *Rule 5.2 Filing Format.*

(a) ~~All~~ Any filing submitted electronically to the Court shall be converted into pdf format (without scanning if practical to reduce overall file size), typed, and double spaced. ~~Citation format for~~ appellate ~~filings~~ pleadings shall appear in proportional type—e.g. Times New

Roman or Century Schoolbook—12-point, typed and double-spaced so as to produce a clear black image on a single side of white 8.5-inch by 11-inch paper. Margins must be at least one inch on all four sides. Pleadings shall conform to the most recent edition of the Harvard University Press's *A Uniform System of Citation* (The Bluebook). ~~The filing will utilize a font of either Times New Roman 12 or Courier New 12 so as to produce a clear black image on a single side of white 8.5 inch by 11 inch paper.~~

Commented [KJB5]: Consistent w/ CAAF's rule except they require 14-point.

(b) Any filing submitted electronically to the Court shall be converted into .pdf format (without scanning if practicable to reduce overall file size), typed, and double spaced. All electronic filings shall contain the following language in the e-mail subject line: Certificate of Service – YYMMDDDD MMM YY – ACM or Misc. Dkt. No. (Example: Certificate of Service – 1 Mar 14670301 – S111111).

Commented [KJB6]: For consistency w/ below convention for dates.

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

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

1. [Appellant's Name] – [Case No.] (DD MMM YY)

[X] attachment(s) were served.

Please acknowledge receipt of this message.

(d) All .pdf files shall utilize the following naming convention: Name – ACM – Brief Title of Filing (DD MMM YY) (Example: Doe – 12345 – Motion for EOT (01 ~~Jan 14~~Mar 17)). If there is personally identifiable or sensitive information included in the filing, as set forth in Rule 5.3(b), ~~append~~ “SENSITIVE” to the file name. ~~In such cases, the redacted version of the filing will include “REDACTED” in the file name.~~ If an attachment includes sensitive information, it should be submitted as a separate electronic document from the pleading and shall include the “SENSITIVE” designation in the file name.

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

Rule 11.3 Rule 5.3 Content of Filings.

(a) *Classified material and material under seal.* Classified material and material under seal or information derived from such material will not be filed electronically. If such material needs to be filed, it will be submitted to the Court on paper as a supplemental filing to the document in which the material would otherwise appear. In such cases, counsel will include in the text of the electronic mail message a notation that classified or sealed material is being filed separately. ~~If it is necessary in a particular case to include personal or sensitive information in a pleading, the document may be filed with a motion to file it under seal along with a redacted version that can be filed and made available to the public.~~ Persons wishing to file classified material or material under seal with the Court on paper will contact the Clerk's ~~office of the Court~~ during normal duty hours for instructions and permission.

Commented [KJB7]: The intent through these rules is to avoid, to the extent possible, the cumbersome practice of filing different versions of a single pleading and of redacting attachments. Instead, as a general rule, counsel must avoid placing sensitive or sealed materials in their pleadings. Eventually, the court will move toward placing all unsealed pleadings on its website, so it will be incumbent on counsel to ensure they do so. If they cannot, they can file those portions of their pleadings containing such matters under seal with no need to also file a redacted version.

(b) Personally Identifiable and Sensitive Information.

(1) All pleadings (as distinguished from all filings, which includes attachments as well as pleadings) must be filed with an awareness that they are, generally, publicly releasable without further screening or redaction. Accordingly, except as provided in Rule

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5.3(b)(2) below, all pleadings shall not include personal or sensitive information, to include the following:

(A)

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

(3) (B) *Social security numbers.* If an individual's social security number is relevant, use only the last four digits;

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

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

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

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

(8) (G) *Dates of birth.* If an individual's date of birth is relevant, use only the year;

(H) *Sealed Records.* Pleadings shall not include any information derived solely from sealed portions of the record of trial unless it is submitted in compliance with Rule 5.3(a).

(2) If it is necessary in a particular case to include personal or sensitive information in a pleading, that portion of the pleading containing such information shall be submitted separately with a motion to file it under seal. The remainder shall be filed using normal procedures, indicating which portions of the pleading have been filed under seal.

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

(d) Motions to Strike a Brief or to request other relief for violation of this rule must be filed within 7 calendar days.

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Rule 5.4 Service of Pleadings.

Service of pleadings shall be served on all counsel of record, including amicus curiae counsel, and counsel for a victim filing an interlocutory appeal of a trial ruling, and will be evidenced in the document by use of the certificate format noted below. Service to the approved organizational electronic workflow inbox constitutes sufficient service for counsel assigned to AFLOA/JAJA or AFLOA/JAJG, and when appropriate, the Special Victims' Counsel Division (AFLOA/CLSV). Once the electronically filed document has been received by the interested parties, the electronic certificate of service shall be executed and returned electronically to the sender. Should a filing be in paper form, the applicable AFCCA Form 011, Certificate of Service, shall be executed and returned to the sender.

CERTIFICATE OF FILING AND SERVICE

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

(Typed Name of Certifying Person)

(Organization or Firm)

(Address)

(Telephone No.)

(Email Address - Non AF/JA Only)

~~Rule 11.5~~ Rule 5.5 Length of Filings.

~~Unless otherwise authorized by the Court, briefs and answers shall not exceed either 50 pages in length or 20,000 words, excluding tables, attachments, and appendices. Headings, footnotes, and quotations count toward the word limit. Counsel may, under Rule 23.3(o), submit a motion for leave to file a brief or answer in excess of these limits for good cause shown. Any pleadings in excess of these limits shall include a table of contents. See AFCCA Rule 15.1 for additional guidance.~~

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~~Rule 11.6~~ Rule 5.6 Non-Compliance with Rules.

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

~~Rule 12.~~ 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 12.1~~ Rule 6.1 Signatures.

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

~~Rule 13.~~ 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 14.~~ 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 14.1~~ Rule 8.1 Qualification of Counsel.

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

~~Rule 14.2~~ Rule 8.2 Admission to Practice Before the Court.

(a) *Application Procedure.* Each applicant shall file with the Clerk of the Court an AFCCA Form 014, *Application for Admission to Practice*, together with a certificate from the Clerk of the Court or other appropriate officer of a court specified in Rule 8(a) that states that the applicant is a member of an approved Bar in good standing. The certificate of good standing must be an original and must be dated within one year of the date of the application. Applications may be obtained from the Clerk of the Court or downloaded from the Court's website. Upon leave of the Court, attorneys qualified and certified by TJAG pursuant to Article 26(b) and 27(b), UCMJ, may be admitted without application.

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

(c) *Motion for Admission.* 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 of Applicant), a member of the Bar of (the highest court of the State/Commonwealth of (Name), (the United States District Court of _____). I have examined (his/her/their) credentials on file in the office of the Clerk, and I am satisfied that (he/she has) (they have) the qualifications for membership in the Bar of this Court.”

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

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

(e) *Judge Advocate Staff Officer Course (JASOC).* Where the applicant is a current JASOC student at the United States Air Force Judge Advocate General’s School (AFJAGS), an AFJAGS representative will verify that the applicant possesses an original certificate of good standing from an approved Bar. The certificate of good standing must be dated within one year of the date of application. The AFJAGS representative shall provide a statement of verification on AFCCA Form 011, *Certificate of Service*, as well as a copy of the original certificate of good standing, and AFCCA Form 014, *Application for Admission to Practice*. Failure to do so shall result in the application being denied.

~~Rule 14.3~~Rule 8.3 *Honorary Membership.*

At the discretion of the Court, honorary membership in the Bar of this Court may be granted to distinguished members of the legal profession who may not normally be admitted to or have the opportunity to practice before the Bar of this Court. No oath is required. Honorary membership does not entitle the member to practice before the Court.

~~Rule 15~~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 15.1~~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, Rule 9 of this Court’s rules, the United States Air Force Rules of Professional Conduct

(AFRPC), the Air Force Standards for Civility in Professional Conduct, and to extent they are consistent with the aforementioned Air Force Rules, the Model Rules of Professional Conduct of the American Bar Association.

~~Rule 15.2~~ **Rule 9.2 Contempt.**

Per 10 U.S.C. § 848, counsel may be punished for contempt for using menacing words, signs, or gestures in the presence of the Court during its proceedings; disturbing the proceedings of the Court by riot or disorder; or willfully disobeying the lawful writ, process, order, rule, decree, or command of the Court.

~~Rule 15.3~~ **Rule 9.3 Reporting Requirements.**

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

~~Rule 15.4~~ **Rule 9.4 Allegations of Professional Misconduct.**

In addition to ~~such other~~ actions ~~that as~~ may be taken by the Court ~~pursuant to its inherent power as an appellate tribunal~~, allegations of professional misconduct, as defined by Rule 8.4 of the ~~AFRPC~~ Air Force Rules of Professional Conduct, shall be referred to appropriate professional authority in accordance with ~~Rule~~ AFRPC 8.3 ~~of the AFRPC~~. For military attorneys assigned to either AFLOA/JAJG or AFLOA/JAJA, the appropriate professional authority is the AFLOA Commander.

~~Rule 15.5~~ **Rule 9.5 Disciplinary Action.**

If it appears that an attorney admitted to practice before this Court has engaged in conduct unbecoming a member of the Bar, has persistently or deliberately failed to comply with these rules or any other rule or order of the Court, or has engaged in misconduct as defined by Rule 8.4 of the AFRPC, the Court may enter an order affording the attorney an opportunity to show cause why the matter should not be referred to the appropriate professional authority. Pursuant to TJAG Policy Memorandum: TJAGC Standards – 5, *TJAGC Professional Responsibility Program*, for military attorneys assigned to either AFLOA/JAJG or AFLOA/JAJA, the appropriate professional authority is the AFLOA Commander.

~~Rule 16.~~ **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 17.~~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 17.1~~Rule 11.1 Designation of Appellate Counsel.

- (a) *Determination of Counsel Representation.* Upon docketing of a case before this Court, a Court paralegal shall review each record of trial to determine if the appellant has requested representation by appellate counsel. If the paralegal is unable to discern this from the record of trial, the Court shall return the record to the Appellate Records Branch of AFLOA/JAJM to obtain the AF Form 304, *Request for Appellate Defense Counsel*. In any case that has been remanded to a convening or supervisory authority for further proceedings, an appellant's prior request for appellate defense counsel remains effective in subsequent appellate proceedings before this Court unless the appellant affirmatively withdraws the request in writing.
- (b) *Waiver of Appellate Counsel.* If the appellant has specifically waived the right to be represented by counsel before the Court, the appellant may proceed *pro se*. In such a case, the record of trial will be forwarded directly to the Court. The Court may thereafter notify TJAG that a request for counsel has been submitted by the appellant.

~~Rule 18.~~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 18.1~~Rule 12.1 *Retention of Civilian Counsel.*

In any case where the appellant has specifically requested named civilian counsel, AFLOA/JAJA will communicate with civilian counsel to coordinate representation of the appellant and ensure civilian counsel's proper appearance before the Court. All counsel must be familiar with these rules which, along with AFCCA Form 014, *Application for Admission to Practice Before the Bar of the Court*, are available on the Court's website.

~~Rule 19.~~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 19.1~~Rule 13.1 *Representation by Non-Federal Civilian Counsel.*

Within 15 business days of retention by the appellant, non-federal civilian counsel shall submit to this Court AFCCA Form 013, *Notice of Appearance (Civilian Counsel)*. This requirement remains in place despite the general rule that the filing of any pleading relative to a case which contains the signature of counsel constitutes notice of appearance of such counsel.

~~Rule 19.2~~Rule 13.2 *Counsel Appearing Pro Hac Vice.*

All attorneys appearing *pro hac vice* shall file a certificate of good standing from a qualified Bar and 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 to the Bar of this Court prior to making an oral argument to the Court.

~~Rule 19.3~~Rule 13.3 *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; and (3) state whether the appellant concurs with or opposes the motion to withdraw. Additionally, the successor appellate defense counsel must submit to this Court a notice of appearance in accordance with this rule within 10 days of retention by the appellant.

~~Rule 20.~~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 21.~~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 21.1~~Rule 15.1 Assignments of Error.

Assignments of error on behalf of an appellant shall be filed in compliance with Appendix A. ~~Counsel shall provide the Court with notice of any errors personally raised by the appellant by citing *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). Counsel shall identify *Grostefon* errors with particularity, listing the issues and argument by the appellant, if any, for each issue for which the appellant seeks consideration on appeal. Appellate defense counsel is responsible for providing the Court a typed transcript of any handwritten submissions.~~ Briefs submitted on the merits of a case shall conform to the format set forth in Appendix B. Additionally, all briefs shall comply with the limits contained in Rule 5.5. Any briefs in excess of 50 pages must include a subject index of the matters contained

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therein, along with a table of cases (alphabetically arranged), statutes and other authorities cited, and references to the pages of the brief where cited.

Rule 15.2 ~~Rule 15.2~~ *Grostepon* Briefs.

- (a) Issues raised pursuant to *United States v. Grostepon*, 12 M.J. 431 (C.M.A. 1982), shall be presented in a separate Appendix to the brief. Except upon leave for good cause shown, this appendix shall be type-written and conform to Rule 5.2(a) and shall not exceed 30 pages.
- (b) Counsel shall identify *Grostepon* errors with particularity substantially in the following form:

APPENDIX

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

[List issues and any argument for each issue.]

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~~Rule 21.3~~ *Rule 15.3* Subsequent Briefs.

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

~~Rule 21.5~~ *Rule 15.4* Amicus Curiae Briefs.

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

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

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

~~Rule 21.6~~Rule 15.5 *Supplemental Filings.*

Supplemental filings must be submitted by motion for leave to file. If the motion is granted, ~~the Court's order granting the motion shall specify a deadline to file any response to the supplemental filing~~the opposing party may file a response within 30 days.

~~When a case returned by the Court to TJAG for remand to the convening authority for anything other than a rehearing is again before the Court and appellate counsel previously filed an initial brief and assignment(s) of error, appellate defense counsel shall within 10 calendar days of re-docketing either request leave to file a supplemental pleading under Rule 23 or inform this Court that the appellant does not wish to file additional pleadings. When a rehearing was conducted, the time for filing briefs and answers will be per Rule 15(b).~~

~~Rule 21.7~~Rule 15.6 *Filings Out of Time.*

Any filing that is submitted out of time shall so indicate in the caption, and shall indicate good cause for the out-of-time filing. A filing is out of time when it is submitted beyond the court-ordered deadline for filing. Filings that do not comply with this provision shall be returned to the party without attachment to the record of trial.

~~Rule 22.~~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 22.1~~Rule 16.1 *Oral Argument Notice.*

A matter before the Court will be docketed on the oral argument docket by a notice of hearing. The order will notify all parties of the location, date, time, panel hearing oral argument, and any limitations of said argument.

~~Rule 22.2~~Rule 16.2 *Administration of Oral Argument.*

(a) *Argument Procedure.* The Chief Appellate Judge or designee presides at all formal sessions of the Court. Motions for admission are the first order of business. Argument on the case to be heard for the day will follow.

(b) *Length and Order of Oral Argument.* Unless the Court specifies otherwise, each side will be allotted 30 minutes to present oral argument. Counsel desiring additional time shall show good cause by a motion for leave to exceed time limit for oral argument. The appellant, petitioner in the case of argument on extraordinary writs, or movant in the case of argument on motions commences the argument. Counsel for the appellant, petitioner, or movant may reserve a portion of the allotted time for rebuttal. Ordinarily, surrebuttal is not permitted.

(c) *Counsel.* Only one counsel may present oral argument for each party. Any party wishing to deviate from this rule must obtain leave of the Court by motion. Any counsel who has entered an appearance in the case may be seated at the counsel table. Absent leave of court,

only members of the Bar or counsel appearing *pro hac vice* or as *amicus curiae* may be seated inside the bar of the Court.

(d) *Decorum*. Military counsel shall appear in the service dress uniform. Civilian counsel shall wear similarly conservative business attire. Smoking, drinking, eating, and chewing gum or tobacco are prohibited in the courtroom. Persons seated within the bar of the Court are permitted to drink water as needed. Electronic devices not utilized for the purposes of the oral argument shall be turned off in the courtroom. Unauthorized recording devices (audio recording devices, cameras, video cameras, phone cameras, web cameras, and similar devices) are prohibited unless the Court grants prior approval.

(e) *Supplemental Citations of Authority*. Before oral argument, counsel may submit supplemental citations of authority. Such supplemental citations of authority shall be filed no later than 2 business days prior to oral argument. A supplemental citation of authority lists any legal authority not previously cited that counsel wishes to raise for the Court's consideration in oral argument. A supplemental citation of authority may contain a brief statement as to the relevance of the cited authorities; extensive argument is not appropriate in a supplemental citation of authority. Counsel may also submit a supplemental citation of authority within 7 days following oral argument to cite any legal authority presented in oral argument that was not previously cited.

(f) *Memorandum of Argument*. Within 7 calendar days following oral argument, counsel may submit a motion for leave to file a memorandum of argument, addressing matters arising during the oral argument or correcting any representation by counsel made during oral argument. Any reply to a memorandum of argument will be submitted within 7 calendar days following the submission of the memorandum of argument.

~~Rule 22.3~~ Rule 16.3 *Argument by Amicus Curiae or Appellant Pro Se.*

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

~~Rule 22.4~~ Rule 16.4 *Failure to Appear.*

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

~~Rule 23~~ Rule 17. EN BANC PROCEEDINGS

(a) A party may suggest the appropriateness of consideration or reconsideration by the Court as a whole. Such consideration or reconsideration ordinarily will not be ordered except (1) when consideration by the full Court is necessary to secure or maintain uniformity of decision, or (2) when the proceedings involve a question of exceptional importance, or (3) when a sentence being reviewed pursuant to Article 66 extends to death. In cases being reviewed pursuant to Article 66, a party's suggestion that a matter be considered initially by the Court as a whole must be filed with the Court within 7 days after the government files its answer to the assignment of

errors, or the appellant files a reply under Rule 15(b). In other proceedings, the suggestion must be filed with the party's initial petition or other initial pleading, or within 7 days after the response thereto is filed. A suggestion for reconsideration by the Court as a whole must be made within the time prescribed by Rule 19 for filing a motion for reconsideration. No response to a suggestion for consideration or reconsideration by the Court as a whole may be filed unless the Court shall so order.

(b) The suggestion of a party for consideration or reconsideration by the Court as a whole shall be transmitted to each judge of the Court who is present for duty, but a vote need not be taken to determine whether the cause shall be considered or reconsidered by the Court as a whole on such a suggestion made by a party unless a judge requests a vote.

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

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

~~Rule 23.1~~ Rule 17.1 Definitions.

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. A "question of exceptional importance" includes a novel question of law not previously considered by a military appellate court, and argument that existing case law should be overruled or modified. For purposes of these rules, "present for duty" means the judge is properly assigned to the Court, ~~is available to participate in the discussion and vote in a duty status, and is not otherwise conflicted or disqualified from participation in the case.~~ Reserve appellate judges must, in addition, be recalled to active duty with the Court, otherwise serving on extended active duty orders with the Court, or duly assigned to the case prior to participation. ~~recalled to active duty, or otherwise serving on extended orders, will ordinarily be counted in determining quorum and participation in an en banc decision. Reserve appellate 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. When eligible to participate in en banc consideration of a case, reserve appellate 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 interest of justice.~~

~~Rule 23.2~~ Rule 17.2 Opportunity to Respond.

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

~~Rule 24~~ 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 24.1~~ **Rule 18.1** *Orders of the Court.*

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

~~Rule 24.2~~ **Rule 18.2** *Types of Orders of the Court.*

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

(b) *Mental Competence/Responsibility Matters.* If, in the opinion of the Court, good cause has been shown to order the convening of a board of medical officers to inquire into the mental competence or responsibility of the appellant, the Court will issue an order directing that such proceedings be instituted. The order may be issued by the Court 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 must include a motion to stay proceedings for the period of time required to accomplish the evaluation. Counsel for the United States has 7 days to file a reply. If the Court grants the petition, the case is sent to TJAG through the Director, USAF Judiciary, who arranges for the evaluation. The petition described in these rules is not a prerequisite to and does not limit an appellant's right to petition for a new trial under Article 73, UCMJ.

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

~~Rule 24.3~~ **Rule 18.3** *Effective Date of Decision.*

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

~~Rule 24.4~~ **Rule 18.4** *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 military justice jurisprudence. Published opinions serve as precedent, providing the rationale of the Court's decision to the public, the parties, military practitioners, and judicial authorities.

(b) *Motion to Publish Decision.* The Court may authorize publication of a previously unpublished opinion upon its own motion or upon written motion to the Court. Such motion to

publish a decision shall be submitted no later than 14 days following issuance of the unpublished decision. The opposing party may respond to the motion to publish a decision within 7 days of the motion to publish a decision.

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

~~Rule 25.~~ 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 25.1~~ 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 ~~the CAAF has not obtained~~ jurisdiction of the case ~~has not been obtained by CAAF~~. Jurisdiction vests with ~~the~~ CAAF when a petition or

certificate has been filed with that court. A motion for reconsideration must state with particularity the interlocutory order the moving party seeks to have reconsidered and whether any other court has acquired jurisdiction over the case. For example, a party may move for reconsideration of an order to conduct oral argument, an order to compel production of documents, or an order to conduct a hearing under *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967). Such a motion must provide a showing of good cause before the Court will reconsider a court order.

Rule 25.2 Rule 19.2 *Motion to Reconsider Decisions or Orders Terminating Cases.*

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

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

- (1) A material legal or factual matter was overlooked or misapplied in the decision;
- (2) A change in the law occurred after the case was submitted and was overlooked or misapplied by the Court;
- (3) The decision conflicts with a decision of the Supreme Court of the United States, the CAAF, another service court of criminal appeals, or this Court; or
- (4) New information is received 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) *Order Granting Reconsideration.* Unless otherwise announced, an order granting reconsideration vacates the decision to be reconsidered.

(d) *Panel Reconsideration.* ~~—To the extent practicable, the same judges who originally decided a matter shall constitute the panel to act on a~~ motion for reconsideration and, if granted, the matter on reconsideration. To the extent not practicable, the Chief Appellate Judge shall retain the discretion to assign the matter to a standing or special panel. ~~—of a panel decision shall, when practical, 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 Appellate Judge shall appoint a special panel consisting of those members of the initial panel still available to serve. When any appellate judge who participated in the decision is unavailable, the Chief Appellate Judge shall appoint a substitute judge.~~

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~~Rule 25.3~~ **Rule 19.3** *Motion for Reconsideration ~~with~~ and Suggestion for En Banc Reconsideration.*

If a party wishes the Court ~~to reconsider~~ as a whole to reconsider a previous decision issued by a panel, ~~two separate consolidated pleadings should may be submitted simultaneously: 1) a motion moving for reconsideration and suggesting that the motion be considered—and the matter reconsidered, if granted—en banc; and 2) a suggestion for en banc consideration of the motion for reconsideration. After the opposing party has had the opportunity to respond to both pleadings, the original panel or reconstituted panel will vote on the reconsideration request in accordance with this Rule. The Court will then circulate both pleadings and any response(s) to the Court as a whole. Pursuant to Rule 17(b), no vote will be taken on the suggestion for en banc consideration unless a judge requests a vote. If a vote is requested but a majority of judges present for duty votes against en banc consideration of the motion to reconsider, the motion to reconsider will not be considered by the Court as a whole and the original panel or an appointed substitute panel will act upon the motion for reconsideration. If a vote is requested and a majority of judges present for duty concurs with the suggestion for en banc consideration, the Court as a whole will then act upon the motion for reconsideration.~~

Commented [KJB10]: This eliminates the requirement to submit separate pleadings in this instance, although the general preference remains to file separate pleadings for separate motions. Internal Court procedures are deleted as unnecessary.

~~Rule 19.4. Reconsideration of En Banc Decision. If a party wishes the Court to reconsider a decision previously issued by the Court as a whole, that party should submit a motion for reconsideration of the en banc decision. After the opposing party has had an opportunity to respond, the Court will transmit the motion for reconsideration and any response to the Court as a whole. Reconsideration of an en banc decision will not be granted unless at least one member of the original majority concurs with the motion for reconsideration.~~

Commented [KJB11]: Not included in other courts' rules and doesn't really add anything.

~~Rule 27.~~ **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 27.1~~ Rule 20.1 *Petitions for Extraordinary Relief.*

The preferred method for filing a petition for extraordinary relief is electronic filing. See Rule 5.1. The petition must include a certificate of service covering each named respondent, each real party in interest, and the chief of the opposing appellate division. The petition shall be filed as soon as possible after the petitioner learns of the basis on which relief is sought. A petition filed on behalf of the United States or any officer or agent thereof shall be coordinated with the Chief, AFLOA/JAJG. A petition must be captioned so as to specify the type of writ sought. If the petition seeks a stay of ongoing or impending proceedings, the caption of the petition must state this request.

~~Rule 27.2~~ Rule 20.2 *Action on the Petition.*

The respondent(s) need not file a response to a writ petition unless ordered by the Court. If the Court orders a response, the petitioner may file a reply to the response within 10 days of its receipt. If the Court orders a stay in the trial or other ongoing or prospective proceedings, the Clerk of the Court will cause copies of the stay order to be expeditiously delivered to TJAG; the Chief Trial Judge, Air Force Trial Judiciary; and the Chief, Appellate Records Branch of AFLOA/JAJM for immediate transmittal to the convening authority, military

judge, and all counsel or unrepresented parties involved. In view of the time limit for filing a writ appeal petition with [the](#) CAAF (see CAAF Rule 19(e)), the Clerk of the Court will serve counsel and expedite delivery to the Chief, Appellate Records Branch of AFLOA/JAJM 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 28.~~[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 28.1~~[Rule 21.1](#) Appeals by the United States.

(a) Processing Appeals.

(1) Upon filing of an appeal under Article 62, UCMJ, the representative designated by TJAG shall promptly deliver the original record to the Clerk of the Court who will then

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docket the case. One copy of the appeal shall also be promptly delivered to AFLOA/JAJA and AFLOA/JAJD by AFLOA/JAJG. The appeal shall be docketed under the same title given to the action in the court-martial with the accused and the United States listed as the sole parties therein.

(2) Upon receipt of the appeal under Article 62, UCMJ, the Clerk of the Court will assign the matter a miscellaneous docket number and issue a notice of docketing to all interested parties. The Clerk of the Court will also notify TJAG and the Chief, Appellate Records Branch of AFLOA/JAJM of the receipt of the appeal.

(3) Once the appeal under Article 62, UCMJ, and the associated brief are received by the Court, the Clerk of the Court shall assign the matter to an appellate judge for priority consideration.

(4) After the Court has rendered a decision, the original record with any accompanying documents plus a copy of the Order of the Court are released to AFLOA/JAJM for compliance with Rule 18 and R.C.M. 908(c)(3).

(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 pertinent authorities;

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

(E) proof of service on the Chief, AFLOA/JAJA, 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 pursuant to R.C.M. 908(b)(6); and

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

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

(c) *Decision Not to Appeal or Withdrawal of Appeal.* After the original record is deposited with the Court but before the appeal is filed, appellate government counsel shall notify the Court in writing if it decides not to pursue an appeal. The original record will then be returned directly to the appellate government counsel. If the government elects to withdraw an existing 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 the Chief, Appellate Records Branch of AFLOA/JAJM.

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~~Rule 29~~ **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 29.1~~ **Rule 22.1** *Petitions for New Trial.*

(a) *Cases Before the Court.* If a petition for new trial pursuant to Article 73, UCMJ, is received from TJAG and the case is pending before the Court, the Clerk of the Court shall forward the petition to the panel to which the case is assigned. The Clerk of the Court shall ensure that appellate counsel are notified of such receipt. Counsel will file their brief in support of petition, answer, and reply brief within the time limits set forth in Rule 22.

(b) *Cases Not Before the Court.* If a petition for new trial is received on a case not pending before the Court, the petition will be referred directly to AFLOA/JAJM for action on behalf of TJAG.

~~Rule 30~~ **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 therefore. 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 30.1~~ *Rule 23.1 Filing of ~~Consent~~ Motions.*

(a) Using the format contained in Appendix C, each motion will state with particularity the relief sought, the grounds therefor, and the specific Rule authorizing such relief. Except as otherwise expressly provided in these Rules or authorized by the Court, counsel shall not consolidate more than one motion into one pleading.

(b) In order to expedite any given motion, counsel may consult opposing counsel to inform opposing counsel of the intended filing of a specific motion. In the case of a defense motion, if appellate counsel for the United States has not yet been assigned to the case, appellate defense counsel may consult with any appropriate AFLOA/JAJG representative. If the other party consents to the relief requested by the motion, the title of the motion shall begin with the words "Consent Motion." Consent motions will be immediately forwarded to an appellate judge for action without awaiting a response.

~~Rule 30.2~~ *Rule 23.2 Response to Motions.*

Responses to motions for enlargement of time must be filed within 2 business days after receipt by the responding party. Responses to all other motions must be filed within 7 calendar days after receipt by the responding party. ~~All responses shall be submitted as an individual response in the format set forth in Appendix C.~~

~~Rule 30.3~~ *Rule 23.3 Types of Motions.*

Those persons with standing to do so may file any appropriate motion with the Court. Such motions include, but are not limited to, the following:

(a) Motion for Oral Argument. See Rule 16.

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

(c) *Motion to Stay Proceedings.* A motion to stay proceedings may be submitted when appropriate. See, for example, Rule 20.1.

(d) *Motion to Cite Supplemental Authorities.* In the event that relevant new law has been issued or discovered by counsel subsequent to the submission of a brief, counsel shall supplement the filings by bringing the citation of a relevant authority to the attention of the Court. Such motions will briefly explain the relevance of each newly-cited authority to the issues before the Court. See Rule 16.2(e).

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

(f) *Motion to Review ~~Sealed Previously Undisclosed~~ Records.* ~~—Except as provided below, appellate counsel may, in accordance with Rule for Courts-Martial 1103A(b)(4), view sealed~~

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~~materials without filing a motion. Arrange such viewings directly with the Court's administrative staff. However, counsel may not, however, absent order of the Court, view materials that were previously reviewed in camera and not released to trial government or defense counsel. Counsel desiring to review such materials must counsel shall submit a motion to the Court requesting authorization and demonstrating to review sealed exhibits. Counsel must show good cause for such a request. A motion to review sealed records shall be presented as a consent motion whenever feasible. The Court's administrative and paralegal staff maintains responsibility for resealing all sealed exhibits.~~

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Commented [KJB12]: This is an attempt to reduce filing unnecessary motions while controlling review of previously-undisclosed materials. The only contentious sealed materials are those described here.

- (g) Motion to File Amicus Curiae Brief. See Rule 15.3.
- (h) Motion for Withdrawal of Appellate Defense Counsel. See Rule 13.3.
- (i) Motion for Waiver or Withdrawal of Appellate Review. See Rule 14.
- (j) Suggestion for En Banc Proceedings. See Rule 17.
- (k) Motion for Reconsideration. See Rule 19.
- (l) *Motion to Abate Proceedings.* A motion to abate proceedings may be filed where appropriate. In the case of an appellant who dies pending review under Article 66, UCMJ, such motion shall be accompanied by sufficient evidence of the appellant's death.
- (m) Motion for Enlargement of Time:¹

Commented [KJB13]: The below suggested changes seek to ensure conformity with the joint rule and to eliminate automatic extensions.

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(1) Upon motion and for good cause shown, the Court may grant an enlargement of time to file a brief, motion, motion response, or other filing permitted under these rules. Any motion for enlargement must be requested at least 7 calendar days before the filing is due. Each motion for enlargement of time will note whether it is the first, second, third or subsequent such motion in the case ~~and shall show good cause for the requested enlargement.~~ The Court will endeavor to promptly answer motions for enlargement of time.

(2) An appellant's motion for first enlargement may be granted for up to 60 calendar days and does not require a showing of good cause.

(3) An appellant's motions for subsequent enlargements and an appellee's motion for enlargement will only be granted when good cause is shown with particularity, and may be granted only for periods not to exceed 30 calendar days.

(4) ~~*Appellant Motions for Enlargement, Article 66 Review.* In the case of a review under Article 66, UCMJ, an appellant is granted an automatic enlargement until 180 calendar days after docketing. An appellant may request subsequent enlargements for any appropriate amount of time. A motion for an enlargement requiring good cause shall that is scheduled to expire 270 days or less after docketing will~~ contain the following information: whether opposing counsel has consented to the motion; 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 that were preserved for appeal; the length of the transcript of the appellant's trial and the number of trial and

¹ The following change of rules regarding enlargements of time shall apply only to cases docketed on or after the date of this amendment.

appellate exhibits; whether the appellant is confined; ~~and~~ any other information counsel deems relevant to the request.

(5) ~~An appellee's motion for enlargement to file a reply shall contain the following information: whether opposing counsel has consented to the motion; 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; a statement as to the reason for the requested delay; and if counsel's workload is cited as the reason for the delay, an explanation of counsel's other duties since the assignment of errors was filed.~~

(6) A motion for an enlargement that is scheduled to expire more than ~~270-180~~ days, ~~in the case of an appellant, or more than 240 days, in the case of an appellee,~~ after docketing will contain, ~~in addition~~ the above-referenced information, ~~as well as the following items:~~ a detailed explanation of the number and complexity of counsel's pending cases; a statement of other matters that have priority over the subject case; and a statement as to progress being made on the subject case (whether the record has been reviewed, whether a brief has been drafted, etc.). ~~For requested enlargements scheduled to expire more than 270 days after docketing, appellate defense counsel may request a docketing conference in lieu of providing this information in the motion for enlargement. The Court will not normally grant enlargements in increments of greater than 30 days past the point where more than 270 days have elapsed since docketing.~~

Commented [KJB14]: Although this proposed change does not add a requirement that an appellant must include a statement as to whether he or she personally concurs with an extension, that information continues to be relevant as to whether counsel has shown good cause for further delay.

~~(1) — (7) Government Responses to Appellant Motions for Enlargements, Article 66 Review. In the case of a review under Article 66, UCMJ, the government's general opposition to any requested enlargement that is scheduled to expire 270 days or less after docketing is presumed unless a written submission to the contrary is timely submitted. The government does not need to file a written opposition in this situation to document its opposition; however, a representative of AFLOA/JAJG shall acknowledge receipt of any such motions for enlargement. A motion for enlargement of time that is scheduled to expire more than 270 days after docketing requires a written response (opposition or concurrence) from the government.~~

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~~Government Motions for Enlargement, Article 66 Review. Any government motion for enlargement to file a reply to an assignment of errors in a case for review under Article 66, UCMJ, shall contain the following information: the number of days that have elapsed since the case was first docketed with the Court; the number of days that will have elapsed since docketing on the date requested; a statement as to the reason for the requested delay; and if counsel's workload is cited as the reason for the delay, an explanation of counsel's other duties since the assignment of errors was filed.~~

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Motions for Enlargement of Time Out of Time. Any motion for enlargement of time not filed at least 7 calendar days before the filing is due will be titled as a motion filed out of time. Good cause must be shown why the filing was submitted out of time. The Court may order a status conference to discuss the out-of-time filing. Any motion for enlargement of time out of time does not automatically extend the filing deadline, and counsel should not presume a motion for enlargement of time out of time will be granted. In the absence of a granted motion for enlargement of time out of time, the original filing deadline remains in place.

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

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

~~Rule 31.~~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 32.~~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 33.~~Rule 26. INTERNAL RULES

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

~~Rule 34.~~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 34.1~~Rule 27.1 *Photographing, Televising, Recording, or Broadcasting of Oral Argument.*

(a) An audio recording of an oral argument before the Court is ordinarily produced by Court staff or other personnel working on behalf of the Court. The recording of an oral argument in an individual case may be cancelled by order of the Court for good cause, including unavailability of equipment or personnel. This rule is not intended to create any right to a recording by any party in a case pending before this Court.

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

~~Rule 34.2~~Rule 27.2 *Dissemination of Recorded Hearings.*

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

(b) Prior to posting any recorded hearing, the Clerk of the Court will 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) bank account information; and
- (5) addresses and telephone numbers.

(c) When practical, audio recordings of oral arguments shall remain posted on the Court’s website for one year from the date of posting.

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~~Rule 35.~~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 35.~~Rule 28.1 *Questions, General Waiver Requests, and Suggested Amendments.*

Questions regarding the AFCCA Rules of Practice and Procedure shall be addressed to the Clerk of the Court. Requests for a general waiver of any provision and suggested amendment to these rules shall be forwarded to the Chief Appellate Judge via the Clerk of the Court.

~~MARK L. ALLRED~~RODGER A. DREW, JR., Colonel, USAF
Chief Appellate Military Judge



FOR THE COURT

KURT J. BRUBAKER
Clerk of Court

Appendices

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

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

Assignment(s) of Error~~Issue Presented~~

[Set forth each alleged-assignment of error in bold type. If asserting more than one error, number each alleged-assignment of error with consecutive Roman Numerals. See AFCCA Rule 15.1(d) regarding issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).]

Statement of the Case

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

Statement of Facts

[Accurately set forth all facts pertinent to the issues raised, including specific page references and exhibit designations per CCA Rule 15(a). Answers may adopt the appellant's statement of facts if there is no dispute; may state additional facts; or, if there is a dispute, may restate the facts as they appear from the appellee's viewpoint. The repetition of uncontroverted matters is not desired. Assertions of fact should be supported by specific citations to the record of trial, exhibits, or allied papers, as appropriate.]

Argument

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

Appendix

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

[Signature of Counsel]

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

[Title]

[Organization]

[Phone Number (if civilian counsel)]

[Email Address (if civilian counsel)]

CERTIFICATE OF 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]

*Appendix B – Format for Brief Submitted on Its Merits in
the United States Air Force Court of Criminal Appeals*

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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

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

Statement of the Case

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

Statement of Facts

None filed.

Errors

No specific assignment of error is filed. — This case is submitted to this Honorable Court on its merits.

[Signature of Counsel]
[Name, rank and branch of military counsel, or name of civilian counsel]
[Title]
[Organization]
[Phone Number (if civilian counsel)]
[Email Address (if civilian counsel)]

CERTIFICATE OF 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]

Appendix C – Format for ~~OPPOSITION TO~~ Motion / Opposition in the United States Air Force Court of Criminal Appeals

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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

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

[Set forth basis for motion/opposition].

[Signature of Counsel]
[Name, rank and branch of military counsel, or name of civilian counsel]
[Title]
[Organization]
[Phone Number (if civilian counsel)]
[Email Address (if civilian counsel)]

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]

Appendix D – Summary of Filing Time Standards

1	Brief following CAAF remand to AFCCA (Rule 152.2 (b))	60 days following docketing
2	Response to brief following CAAF remand to AFCCA (Rule 152.2 (b))	30 days following initial brief
3	Brief following CAAF remand to convening authority (Rule 152.2 (e))	60 days following re-docketing
4	Response to brief following CAAF remand to convening authority (Rule 15(b)2.2(e))	30 days following initial brief
5	Request for leave to file supplemental pleading or notice of intent not to file for Brief following case already briefed, but returned by AFCCA to TJAG for remand for anything other than rehearing (Rule 2.2(d)15.4)	30 days following re-docketing (or 10 calendar days from re-docketing to submit supplemental pleading or inform Court of desire not to file additional pleadings if brief previously filed)
6	Response to brief following case returned by AFCCA to TJAG for remand (Rule 15(b)2.2(d))	30 days following initial or supplemental brief
7	Notification of discipline that results in disbarment, suspension, or other loss of good standing in the Bar of any United States federal or state/territory/commonwealth/possession court. (Rule 9.2)	10 business days
8	Notification of suspension from practice in courts-martial or another service court of criminal appeals, or that Article 26(b) or 27(b), UCMJ, certification is withdrawn for cause. (Rule 9.2)	10 business days
9	Request for representation by military appellate defense counsel, and/or notice that civilian counsel has been retained or action has been taken to retain civilian counsel, or waiver of representation by counsel (Rule 10)	10 days following service of copy of the convening authority's action
10	Notice of appearance by non-federal civilian counsel (Rule 13.1)	15 business days following retention
11	Certificate of good standing by counsel appearing <i>pro hac vice</i> (Rule 13.2)	Prior to oral argument
12	Notice of appearance by successor appellate defense counsel following withdrawal of appellate defense counsel (Rule 13.3)	10 days following retention
13	Assignments of errors (Rule 15(b) and 23.3(m))	180–60 days following docketing

14	Answer to assignment <u>s</u> of error <u>s</u> (Rule 15(b))	30 days following assignment <u>s</u> of error <u>s</u>
15	Reply to Government's answer to assignment of errors (Rule 15(b))	7 days following answer
16	Brief on behalf of the Government where the appellant does not submit a brief (Rule 15(b))	30 days following expiration of time allowed for filing of appellant's brief
17	Amicus curiae brief (Rule 15.3)	10 days following filing of the Government's answer (Article 66 reviews), or the appellee's reply brief (Article 62 appeals). In the case of a petition for extraordinary relief, an amicus curiae brief should be submitted as soon as possible after the filing of the petition.
18	Supplemental filings (Rule 15.4)	No specified time, but must be submitted by motion for leave to file
19	Response to supplemental filings (Rule 15.4)	As specified by the Court
20	Motion for oral argument (Rule 16)	7 days following answer to appellant's brief
21	Supplemental citations of authority (Rule 16.2(e))	No later than 2 business days before oral argument, or within 7 days following oral argument
22	Memorandum of argument (Rule 16.2(f))	7 days following oral argument
23	Suggestion for matter considered initially by the Court to be considered en banc (Rule 17(a))	7 days following Government's answer to the assignment of errors or appellant's reply brief
24	Suggestion for en banc consideration of other proceedings (Rule 17(a))	With initial petition or pleading, or within 7 days following the response thereto
25	Appellant's suggestion for en banc consideration of motion for reconsideration (Rules 17(a) and 19(b)).	30 days following receipt by appellate defense counsel (if appellant is represented), or 30 days

		following decision or order (if appellant is not represented)
26	Government's suggestion for en banc consideration of motion for reconsideration (Rules 17(a) and 19(b)).	30 days following receipt by appellant government counsel
27	Response to suggestion for consideration or reconsideration en banc (Rule 17.2)	7 days following en banc suggestion
28	Brief in response to specified issue (Rule 18.1)	As directed by the Court
29	Petition to order convening of board to inquire into mental competence or responsibility of appellant (Rule 18.2(b))	No specified time frame
30	Government's response to petition to order convening of board to inquire into mental competence or responsibility of appellant (Rule 18.2(b))	7 days following petition
31	Motion to publish a previously-unpublished decision (Rule 18.4(b))	14 days following issuance of unpublished decision
32	Response to motion to publish a previously-unpublished decision (Rule 18.4(b))	7 days following motion to publish
33	Appellant's motion for reconsideration (Rule 19(b))	30 days following receipt by appellate defense counsel (if appellant is represented), or 30 days following decision or order (if appellant is not represented), provided a petition for grant of review or certificate for review has not been filed with CAAF, or writ appeal has not been received by CAAF.
34	Government's motion for reconsideration (Rule 19(b))	30 days following receipt by appellant government counsel, provided a petition for grant of review or certificate for review has not been filed with CAAF, or writ appeal has not been received by CAAF.
35	Reply to motion for reconsideration (Rule 19(c))	7 days following motion for reconsideration
36	Petition for extraordinary relief (Rule 20)	As soon as possible after the petitioner learns of

		the basis on which relief is sought. Petition for extraordinary relief must be accompanied by a brief in support of the petition unless it is filed in propria persona.
37	Answer to petition for extraordinary relief (Rule 20(e))	10 days following show cause order (if issued)
38	Reply to answer to petition for extraordinary relief (Rule 20(e))	7 days following answer (if show cause order is issued)
39	Article 62 appeal by the United States (Rule 21(d)(1))	20 days following written notice to appeal filed with the trial court. Must include an original and two copies of the record of trial.
40	Brief in support of Article 62 appeal by the United States (Rule 21(d)(1))	20 days following filing of record with the Court
41	Answer to brief in support of Article 62 appeal by the United States (Rule 21(d)(2))	20 days following government brief
42	Petition for new trial (Rule 22)	No specified time frame, but brief in support of the petition must be filed within 30 days following filing of the petition (or receipt of notice of submission of petition for new trial, if submitted by other than appellate defense counsel)
43	Motions (generally) (Rule 23)	No specified time frame
44	Opposition to motion other than motion for enlargement of time (Rule 23(c))	7 days following service of motion
45	Motion for enlargement of time	7 calendar days before filing is due
46	Response to motion for enlargement of time (Rule 23.2)	2 business days following receipt of motion (note: government's general opposition to any requested enlargement that is scheduled to expire 270

		days or less after docketing is presumed unless a written submission to the contrary is timely submitted)
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* Note: The date 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 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.