

UNITED STATES COAST GUARD

RULES OF APPELLATE PROCEDURE



Rev. 07/24

Published together with the **Joint Rules of Appellate Procedure**,
effective 27 May 2024 (indicated in bold)

Contents

I. General	1
Rule 1. Courts of Criminal Appeals.....	1
Rule 1.1. Judges of the Court.....	1
Rule 2. Scope of Rules; Title	2
Rule 3. CCA Rules.....	2
Rule 4. Effective Date	2
Rule 5. Jurisdiction	2
Rule 6. Composition of the Record on Appeal	4
Rule 6.1. Transmittal of Record Under Articles 66 and 69.....	5
Rule 6.2. Original Documents.....	5
Rule 7. Quorum	6
Rule 7.1. Regular Active Service	6
Rule 8. Amendments.....	6
II. Attorneys.....	7
Rule 9. Qualification of Counsel	7
Rule 9.1. Admission Pro Hac Vice	7
Rule 10. Conduct of Counsel.....	7
Rule 10.1. Misconduct.....	7
Rule 10.2. Reporting Requirements	7
Rule 11. Assignment of Counsel	8
Rule 11.1. Offices of Military Counsel.....	8
Rule 12. Notice of Appearance and Withdrawal of Counsel	8
III. Practice Before the Court.....	9
Rule 13. Filing and Service.....	9
Rule 13.1. Filing.....	9
Rule 14. Signing of Papers.....	10
Rule 14.1. Signatures.....	10
Rule 15. Computation of Time	10
Rule 16. Waiver or Withdrawal of Appellate Review.....	10
Rule 16.1. Procedure for Withdrawal	10
Rule 17. Briefs.....	11

Rule 17.1. Format	11
Rule 17.2. Content	11
Rule 17.3. Length.....	12
Rule 18. Appeals by the Accused	12
Rule 18.1. Merits Briefs	13
Rule 18.2. Grostefon Issues	14
Rule 18.3. Docketing of Automatic Reviews.....	14
Rule 19. Extraordinary Relief.....	14
Rule 19.1. Filing.....	16
Rule 19.2. Priority.....	16
Rule 19.3. Action on the Petition	16
Rule 19.4. Procedures for Petitions Containing Sealed Matters	16
Rule 20. Appeals by the United States.....	18
Rule 21. Petitions for New Trial.....	19
Rule 21.1. Petition for New Trial for Case Not Before the Court	19
Rule 22. Amicus Curiae Briefs	20
Rule 22.1. Format	20
Rule 22.2. Victims as Amicus Curiae	20
Rule 22.3. Answers	20
Rule 23. Motions	20
Rule 23.1. Filing of Motions.....	21
Rule 23.2. Motions for Enlargement of Time	21
Rule 23.3. Motion to Examine Sealed Materials.....	22
Rule 23.4. Motion to Cite Supplemental Authority	22
Rule 23.5. Motion to Correct Errata.....	22
Rule 23.6. Motion for Remand to Correct Post-Trial Processing Error	22
Rule 23.7. Motion to Correct Error in Record of Trial	22
Rule 23.8. Motion to Attach a Document or Consider a Directive.....	22
IV. Proceedings of the Court	23
Rule 24. Extensions of Time and Interlocutory Matters.....	23
Rule 25. Oral Arguments.....	23
Rule 25.1 Conduct of Oral Argument	23

Rule 26. Recording, Photographing, Broadcasting, or Telecasting of Hearings.....24
 Rule 26.1. Recording of Oral Argument24
Rule 27. En Banc Proceedings24
Rule 28. Contempt25
Rule 29. Article 66(f) Proceedings26
Rule 30. Orders and Decisions of the Court28
Rule 31. Reconsideration28
 Rule 31.1. Effect of Order Granting Reconsideration29
 Rule 31.2. Composition of Panel upon Reconsideration.....29
Rule 32. Suspension of Rules.....29

I. GENERAL

Rule 1. COURTS OF CRIMINAL APPEALS

(a) The titles of the Courts of Criminal Appeals of the respective services are:

- (1) “United States Army Court of Criminal Appeals.”
- (2) “United States Navy-Marine Corps Court of Criminal Appeals.”
- (3) “United States Air Force Court of Criminal Appeals.”
- (4) “United States Coast Guard Court of Criminal Appeals.”

(b) Each Court is authorized a seal in the discretion of the Judge Advocate General concerned. The design of such seal shall include the title of the Court.

(c) Consistent with Article 66(a), UCMJ, and Rule for Courts-Martial (R.C.M.) 1203(a), the Judge Advocate General concerned shall certify individuals as qualified for duty as appellate military judges and assign them to the Court. Appellate military judges shall serve for a minimum of three years, subject to such exceptions as may be prescribed in regulations issued by the Secretary concerned.

Rule 1.1. Judges of the Court

(a) *Chief Judge.* The Judge Advocate General of the Coast Guard (TJAG) designates the Chief Judge of the Court and may designate an alternate to act as Chief Judge in the event of the Chief Judge’s absence or recusal.

(b) *Seniority.* The Chief Judge has the highest seniority on the Court. For all other appellate judges, seniority shall be based on tenure of uninterrupted service on the Court. In the event of the Chief Judge’s absence or recusal, unless TJAG has designated otherwise, the next senior judge on the Court may perform all duties of the Chief Judge.

(c) *Oath or Affirmation.* Prior to performing duties as an appellate judge, each judge shall take the following oath or affirmation:

“I, _____, do solemnly (swear)(affirm) that I will administer justice without regard to rank or status, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as an appellate military judge, United States Coast Guard Court of Criminal Appeals, under the Constitution and laws of the United States (so help me God).”

Rule 2. SCOPE OF RULES; TITLE

(a) These rules prescribe uniform procedures for the CCAs pursuant to Article 66(h), UCMJ. Practice before each Court must also comport with rules issued under Rule 3.

(b) These rules are to be known as the Joint Rules of Appellate Procedure for Courts of Criminal Appeals or “JRAP.”

Rule 3. CCA RULES

The Chief Judge of each Court may prescribe rules governing that Court’s practice. These will be referred to hereinafter as “CCA rules.” Unless these rules provide otherwise, CCA rules may not be inconsistent with these rules.

Rule 4. EFFECTIVE DATE

Subject to applicability provisions for amendments to the UCMJ and Rules for Courts-Martial, these rules, as amended on 17 May 2024, are effective on 27 May 2024.

Rule 5. JURISDICTION

(a) *Effect of Rules on Jurisdiction.* While this Rule provides a synopsis, nothing in these rules shall be construed to extend or limit the jurisdiction of the Courts of Criminal Appeals.

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

(1) *Automatic Review.* Pursuant to Article 66(b)(3), UCMJ, courts-martial in which the sentence as entered in the judgment under Article 60c, UCMJ, includes:

(A) death;

(B) dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge; or

(C) confinement for two years or more.

(2) *Appeal by the Accused.* Pursuant to Article 66(b)(1), UCMJ, timely appeal of judgments from special and general courts-martial that include a finding of guilty, but are not subject to automatic review under paragraph (1).

(3) *Application by the Accused.* Pursuant to Article 69(d), UCMJ, summary courts-martial in which the Judge Advocate General has taken action under Article 69(c)(1), UCMJ, and the Court has granted an accused’s timely application for review.

(4) *Appeal by the United States under Article 62, UCMJ.* In all general or special courts-martial or pretrial proceedings under Article 30a, UCMJ, cases in which the United States, after providing timely written notice, appeals:

(A) an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification;

(B) an order or ruling that excludes evidence that is substantial proof of a fact material in the proceeding;

(C) an order or ruling that directs the disclosure of classified information;

(D) an order or ruling that imposes sanctions for nondisclosure of classified information;

(E) a refusal of the military judge to issue or enforce a protective order sought by the United States to prevent disclosure of classified information;

(F) an order or ruling of the military judge entering a finding of not guilty with respect to a charge or specification following the return of a finding of guilty by the members; or

(G) a ruling or order of a military magistrate in the same manner as had the ruling or order been made by a military judge, except that the issue shall first be presented to the military judge who designated the military magistrate or to a military judge detailed to hear the issue.

(5) *Petition for a New Trial.* Petitions for a new trial in cases of trial by court-martial that are referred to the Court by the Judge Advocate General under Article 73, UCMJ.

(6) *Sentence Appeal by the United States.* Sentences of courts-martial in which the Judge Advocate General has approved timely appeal by the United States under Article 56(d), UCMJ.

(7) *Review of Punishment for Contempt.* Punishments for contempt imposed by a military judge or military magistrate under Article 48(c)(1), UCMJ.

(8) *Extraordinary Writ Petitions under 28 U.S.C. § 1651.* Petitions filed under the All Writs Act, 28 U.S.C. § 1651, for extraordinary relief including, but not limited to, writs of *mandamus*, prohibition, *habeas corpus*, and *error coram nobis*.

(9) *Extraordinary Writ Petitions under Article 6b, UCMJ.* Petitions for writs of *mandamus* filed by victims of an offense as defined by Article 6b, UCMJ.

(c) *Waiver and Withdrawal.* In all courts-martial other than those that include a sentence of death, the Court shall not have jurisdiction to hear an appeal in which appellate review was properly waived or withdrawn. For cases reviewed under Article 65(d), UCMJ, the Judge Advocate General, consistent with Article 69(c)(2), UCMJ, determines if a waiver or withdrawal of an appeal is valid and, if not, sends

the case to the CCA. For waivers or withdrawals received after a case has been docketed, the Court, consistent with Rule 16, has jurisdiction to determine the validity of the waiver or withdrawal.

Rule 6. COMPOSITION OF THE RECORD ON APPEAL

(a) Except as provided by subsection (b) below, in any case before the Court for review, the record shall be as follows:

(1) For appeals by the accused reviewed under Rule 5(b)(1), (2), or (4), the record shall be the contents described in R.C.M. 1112(b) as certified under R.C.M. 1112(c), the attachments for appellate review described in R.C.M. 1112(f), and, when applicable, documents germane to timeliness of the appeal under Article 66(c)(1), UCMJ.

(2) For summary courts-martial reviewed under Rule 5(b)(3), the record shall be the contents described in R.C.M. 1305, post-trial documents described in R.C.M. 1306 and 1307, the action of the Judge Advocate General in the case, and documents germane to timeliness of the appeal under Article 69(d)(2)(B), UCMJ.

(3) For interlocutory appeals by the United States reviewed under Rule 5(b)(5), the record shall be that described in R.C.M. 908(b)(5).

(4) For petitions for a new trial reviewed under Rule 5(b)(6), the record shall be those portions of the record as described in R.C.M. 1112(b) that the parties submit as necessary for the Court's review as well as any new matter submitted under subsection (b) of this rule.

(5) For sentence appeals by the United States reviewed under Rule 5(b)(7), the record shall be that described in R.C.M. 1117(d).

(6) For contempt proceedings reviewed under Rule 5(b)(8), the record shall be the contents described in R.C.M. 1112(b) and (f) of both the court-martial and the contempt proceeding that the parties determine are necessary for the Court's review.

(7) For petitions for extraordinary relief reviewed under Rules 5(b)(9) and (10), the record shall be those portions of the record that the petitioner or respondents submit as necessary for the Court's consideration as well as any new matter submitted under subsection (b) of this rule.

(b) In any case reviewed by the Court, the Court may consider matters not contained in the record of trial, as defined in Rule 6(a), if authorized by law to consider such matter, and:

- (1) By agreement or stipulation of the parties;
- (2) Upon taking judicial notice;

(3) When, upon motion filed in compliance with Rule 23, the Court determines the matters are relevant and necessary to determine an issue before it; or

(4) When, upon its own motion, the Court determines that it is necessary to consider matters contained outside the record. Prior to considering matters under this paragraph the Court shall provide the parties notice and an opportunity to object.

(c) *Correction of the Record.* The Court may, either *sua sponte* or upon motion, order correction of any substantial error or omission in the record of trial or may order an Article 66(f), UCMJ, proceeding to resolve questions regarding the correctness of the record of trial.

Rule 6.1. Transmittal of Record Under Articles 66 and 69

The Records Custodian is responsible for transmitting the complete, original record of trial to the Court in accordance with Article 54, UCMJ, and R.C.M. 1112–1114, and for providing an electronic copy to the Office of Legal Assistance and Defense (CG-LAD) at the same time. The Records Custodian shall not transmit any case in which the original record of trial is not a complete record of the proceedings unless the Records Custodian first attaches a memorandum to the original record of trial identifying the missing document(s) or other deficiency and setting forth the actions taken to produce the missing document or resolve any other deficiency.

Rule 6.2. Original Documents

(a) To be complete, each record of trial must have originals, to include original signatures, of the following documents:

- (1) Charge sheet;
- (2) Convening authority's action;
- (3) Entry of judgment;
- (4) Certification of the record of trial.

(b) An original signature must be either hand-signed or a CAC-enabled digital signature.

(c) For any statement made under oath or affirmation or penalty of perjury, or when otherwise required by rule, the original signed document must be filed as soon as possible after any electronic filing. This includes affidavits offered by motion to attach, petitions for new trial (see R.C.M. 1210(c)), and any document submitted to fulfill the requirement for an original of that document in the original record of trial.

(d) Notwithstanding this Rule, the Court may, for good cause shown, accept a duplicate of the above matters unless a genuine question is raised about authenticity or the circumstances make it unfair to accept the duplicate.

Rule 7. QUORUM

(a) When sitting in panel, a majority of the judges assigned to that panel shall constitute a quorum. When sitting *en banc*, a majority of the judges in regular active service with the Court shall constitute a quorum. The concurrence of a majority of such judges, whether present and voting or voting telephonically or electronically, shall be required for a final resolution of any matter before the panel or Court *en banc*, subject to subsections (b), (c), and (d).

(b) Unless defined differently pursuant to Rule 7(c), a judge assigned to the Court shall be deemed to be in regular active service for the purposes of these rules if: (1) in the active component of the armed forces; (2) in the reserve component of the armed forces and serving on active duty with the Court for a period of more than 30 consecutive days; or (3) a civilian judge who is a full-time employee of the agency from which appointed. Also, when a reserve component military judge who does not meet the above criteria is duly assigned to a matter, that judge shall be deemed to be in regular active service with respect to that matter.

(c) Each Court may establish its own definition of “regular active service” in its CCA rules even if inconsistent with Rule 7(b).

(d) Notwithstanding Rule 7(b), consistent with procedures as may be prescribed by the Chief Judge of the CCA concerned, a judge on the panel or Court considering a matter may, acting alone, issue all necessary orders, to include temporary orders or stays, provided the orders do not finally dispose of a petition, appeal, or case. A Court may delegate to its Clerk of the Court or other designated staff the authority to act on motions regarding procedural matters.

Rule 7.1. Regular Active Service

All judges assigned to the Court, including judges in the reserve component, are deemed to be in regular active service at all times.

Rule 8. AMENDMENTS

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

II. ATTORNEYS

Rule 9. QUALIFICATION OF COUNSEL

(a) *All Counsel.* Counsel in any case before the Court shall be a member in good standing of the Bar of the highest court of a State, Territory, Commonwealth, or Possession of the United States.

(b) *Military Counsel.* Assigned military appellate counsel shall, in addition, be certified and detailed in accordance with Article 27(b) and, as applicable, Article 70(a), UCMJ.

(c) *Admission.* Each Court may admit counsel to appear before it or may allow counsel to appear *pro hac vice*.

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

Rule 9.1. Admission Pro Hac Vice

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.

Rule 10. CONDUCT OF COUNSEL

The conduct of counsel appearing before the Court shall be in accordance with rules of conduct prescribed pursuant to R.C.M. 109 by the Judge Advocate General concerned. The Court, however, retains its authority to regulate counsel appearing before it, including the power to remove counsel from a particular case for misconduct in relation to that case or to punish counsel for contempt in accordance with Article 48, UCMJ, and Rule 28. Conduct deemed by the Court to warrant consideration of suspension from practice or other professional discipline shall be reported by the Court to the Judge Advocate General concerned.

Rule 10.1. Misconduct

If it appears an attorney appearing before this Court has persistently or deliberately failed to comply with these rules or other rules or orders of the Court or has engaged in misconduct as defined by COMDTINST M5800.1 (Coast Guard Legal Professional Responsibility Program), the Court may either report the matter directly to TJAG or may order the attorney to show cause why the matter should not be reported to TJAG.

Rule 10.2. Reporting Requirements

Any counsel appearing before 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 7 days of such action. Likewise, any counsel who is suspended from practice in courts-martial or another court of criminal appeals, or whose certification pursuant to Article 26(b) or 27(b), UCMJ, is withdrawn for cause, shall notify the Clerk of the Court within 7 days of such action.

Rule 11. ASSIGNMENT OF COUNSEL

(a) Upon docketing of a case, the appropriate Judge Advocate General or designee shall, unless previously done, designate appellate military counsel to represent the parties and, if applicable and appropriate, victims of an offense as defined by Article 6b, UCMJ. In a case involving a petition for extraordinary relief when the United States is represented by counsel or when an accused has been denominated as the real party in interest by a filing party or by the Court, the Judge Advocate General or designee shall also designate appellate military counsel to represent such accused. Nothing in this Rule creates a right to counsel beyond that established by regulation or law.

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

Rule 11.1. Offices of Military Counsel

For the purposes of these Rules, "TJAG's designee" is the Office of Military Justice (CG-LMJ). Appellate government counsel ordinarily are assigned from CG-LMJ. Appellate defense counsel ordinarily are assigned from CG-LAD. Counsel for victims ordinarily are assigned from the Office of Member Advocacy (CG-LMA).

Rule 12. NOTICE OF APPEARANCE AND WITHDRAWAL OF COUNSEL

(a) Military and civilian appellate counsel shall file a written notice of appearance with the Court. The filing of any pleading relative to a case that contains the signature of counsel pursuant to Rule 14 constitutes notice of appearance of such counsel.

(b) Leave to withdraw by any counsel who has entered an appearance under subsection (a) must be requested by motion in accordance with Rule 23. A motion by an appellate defense counsel must indicate whether the accused consents or objects to the withdrawal, the reasons for the withdrawal, and the provisions that

have been made for continued representation of the accused. A copy of a motion filed by an appellate defense counsel shall be delivered or mailed to the accused by the moving counsel.

III. PRACTICE BEFORE THE COURT

Rule 13. FILING AND SERVICE

(a) A notice of appearance, pleading, or other paper required or permitted to be filed with the Court must be filed with the Clerk of that Court in such place and manner as may be required by CCA rules.

(b) At or before the filing of any pleading or other paper relative to a case, a copy thereof shall be served on all counsel of record, including *amicus curiae* counsel.

(c) Service by electronic means is complete upon transmission. If transmitted by mail or by other non-electronic means, service is complete upon receipt.

Rule 13.1. Filing

(a) Pleadings and documents may, except as noted below, be filed electronically via email to the Clerk of the Court and the judges of the Court. Pleadings and documents will be deemed filed as of the date of the email. Counsel may use the following email distribution lists: HQS-DG-CG-094C-CLERK@uscg.mil (Clerk of the Court) and HQS-DG-CG-094C@uscg.mil (judges of the Court) (except as prescribed by Rule 13.1(d)). Electronic filing is encouraged subject to the limitations of this rule.

(b) Paper filings may be sent to:

Clerk of the Court
U.S. Coast Guard Court of Criminal Appeals
1254 Charles Morris Street, SE, Suite 320
Washington Navy Yard
Washington, DC 20374-5124

(c) Classified materials shall not be filed electronically and may only be filed in person after coordination with the Clerk of the Court.

(d) When a filing includes materials required to be filed under seal (*see* Rule 17.2(b)), any email effecting the filing or service on other parties shall be encrypted and password-protected. The materials required to be filed under seal may be filed in a separate email from the remainder of the filing. Materials required to be filed under seal shall not be emailed to nonessential persons such as other appellate counsel not involved in the case or appellate judges not involved in the case.

(e) Any pleading filed by email must be in PDF format (preferably converted, not scanned, to minimize file size).

Rule 14. SIGNING OF PAPERS

All formal papers shall be signed, either by hand or electronically, and shall include, at a minimum, the signer's name, military grade (if applicable), email address, and the capacity in which the paper is signed. Such signature constitutes a certification that the statements made therein are true and correct to the best of the knowledge, information, and belief of the person or persons signing the paper and that the paper is filed in good faith and not for purposes of unnecessary delay.

Rule 14.1. Signatures

- (a) Counsel may sign an electronically-filed pleading by a scanned or CAC-enabled electronic signature.
- (b) 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 person granting such authority.

Rule 15. COMPUTATION OF TIME

In computing any period of time prescribed or allowed by these rules, order of the Court, or any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, or a day on which the Court is closed when the act to be done is the filing of a paper with the Court, in which event the period runs until the end of the next day that is not a Saturday, Sunday, holiday, or day on which the Court is closed. Unless specified otherwise, "day" indicates calendar day, and shall end at 2359 Eastern Time.

Rule 16. WAIVER OR WITHDRAWAL OF APPELLATE REVIEW

Once a case has been received by the Court for appellate review, a waiver or withdrawal of appellate review filed in accordance with R.C.M. 1115 will be referred to the Court. Pursuant to Article 61(d), UCMJ, a valid waiver or withdrawal bars further review under Article 66. At its discretion, the Court may issue a show-cause order. If the Court determines the waiver or withdrawal to be valid, it shall dismiss the appeal and return the record of trial to the Judge Advocate General without further action by the Court.

Rule 16.1. Procedure for Withdrawal

Consistent with R.C.M. 1115(e), a withdrawal of appellate review shall be filed directly with TJAG's designee, with a courtesy copy to the Court. If the withdrawal is in substantial

compliance with R.C.M. 1115, TJAG's designee shall refer it to the Court. If the Court finds it to be in substantial compliance with R.C.M. 1115, the Court will remove the case from the docket and return the record of trial to the Records Custodian.

Rule 17. BRIEFS

Except as otherwise expressly provided in these rules, form, content, and space limitations for pleadings and briefs shall be pursuant to CCA rules. Chief Judges shall confer with one another and endeavor to make such rules as consistent among the CCAs as practicable.

Rule 17.1. Format

All pleadings shall appear in proportional type such as Times New Roman, at least 12-point, typed and with at least 15-point spacing 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.

Rule 17.2. Content

(a) *Minimum Requirements for Briefs.* Assignment of Error Briefs, Appeals by the United States, and Answer Briefs shall, at a minimum, contain the following:

- (1) Statement of the Case, including a statement of jurisdiction.
- (2) Assignments of Error or Issues Presented.
- (3) Statement of Facts.

(4) Argument. The following shall be addressed for each assignment of error or issue: the applicable standard of review, contentions, reasons, supporting authority, and relief sought.

- (5) Certificate of Service.

(b) *Protection of Information.* Bearing in mind that pleadings are, generally, publicly releasable without further screening or redaction, counsel shall not include personal or sensitive information in their pleadings unless filed separately under seal pursuant to Rule 13.1(d). This includes, but is not limited to, the following:

(1) *Names of complainants, victims, or witnesses.* If an identifier is used, use only the rank (if applicable) and initials or other method to mask the names of complainants, victims, or witnesses;

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

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

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

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

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

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

(8) *Sealed matters.*

Rule 17.3. Length

Any pleading exceeding 30 pages shall contain a table of contents and authorities, and summaries of arguments.

Rule 18. APPEALS BY THE ACCUSED

(a) *Assignments of Error.* Appellate counsel for the accused may file assignments of error, setting forth separately each error asserted.

(b) *Grosteffon Issues.* Issues raised pursuant to *United States v. Grosteffon*, 12 M.J. 431 (C.M.A. 1982), shall comply with CCA rules and counsel shall articulate *Grosteffon* issues with particularity.

(c) *Pro Se Submissions.* A litigant who represents him or herself is known as a “*pro se*” litigant.

(1) The Court and its employees cannot give legal advice to any person. All litigants are expected to follow the rules that govern the practice of law and be familiar with these rules and any CCA Rules established under Rule 3.

(2) *Pro se* filings must include a statement indicating whether designated military or other counsel currently represents the filer. A person who is represented by counsel may make a *pro se* filing only if the Court grants leave to file for good cause shown. To establish good cause, a person who is represented by a counsel who has entered an appearance must explain why representation by that counsel is inadequate.

(d) *Time for Filing and Number of Briefs*

(1) *Automatic Appeals under Article 66(b)(3), UCMJ.* An appellant's brief shall be filed no later than 60 days after the Court has received the record of trial pursuant to Article 65(b), UCMJ, and has docketed the case. An answer by the United States shall be filed no later than 30 days after the filing of an appellant's brief. A reply brief may be filed by the appellant no later than 7 days after the filing of the United States' answer. If no brief is filed on behalf of an accused, a brief on behalf of the United States may be filed within 30 days after expiration of the time allowed for the filing of a brief on behalf of the accused.

(2) *Non-automatic Appeals under Article 66(b)(1)(A), UCMJ.* An appeal under Article 66(b)(1)(A), UCMJ, shall be considered timely provided the accused files a Notice of Appeal with the Court, in such form as the Court may direct, before the later of: (1) 90 days after the accused is provided notice of appellate rights under Article 65(c), UCMJ; or (2) the date set by the Court by rule or order. As soon as practicable after the filing of a Notice of Appeal, the government shall provide the Court a complete record, including a verbatim transcript, and provide a copy to the defense. An appellant's brief shall be filed no later than 60 days thereafter. An answer by the United States shall be filed no later than 30 days after the filing of an appellant's brief. A reply brief may be filed by the appellant no later than 7 days after the filing of the United States' answer.

(3) *Appeals of Summary Courts-Martial under Article 66(b)(1)(B), UCMJ*

(A) An application for review of a summary court-martial under Article 66(b)(1)(B) shall be filed no later than 60 days from the earlier of: (1) the date on which the accused is notified of the decision of the Judge Advocate General; or (2) the date on which a copy of the decision of the Judge Advocate General is deposited in the United States mails in accordance with Article 69(d)(2)(B)(ii), UCMJ.

(B) The application shall state with particularity the asserted substantial basis for concluding that the Judge Advocate General's action on review under Article 69(c) constituted prejudicial error.

(C) Thereafter, no further briefs shall be filed unless ordered by the Court and upon such schedule as the Court may establish.

(4) *Upon Remand or Reconsideration.* If a case has already been the subject of an initial order or decision by the Court and has been returned following a remand or grant of reconsideration, no further briefs shall be filed except to the extent permitted by CCA rule or order.

(e) *Appendix.* The brief of either party may include an appendix. If citing an unpublished opinion that is not available in the legal research platform used by the Court, 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 to attach any other matter.

Rule 18.1. Merits Briefs

A brief submitting a case for review on its merits without assignment of error need only contain a statement of the case. Government counsel need not respond to a case submitted on its merits.

Rule 18.2. Grostefon Issues

Any *Grostefon* issues an appellant wishes to raise shall be in substantially the following form:

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

[List issues and any argument for each issue.]

Rule 18.3. Docketing of Automatic Reviews

A case subject to automatic review under Article 66(b)(3), UCMJ, shall be deemed to be docketed with the Court on the date the record of trial is transmitted to the Court and to appellate defense counsel. If, upon reviewing the record, the Court determines that substantial errors or omissions in the record make it necessary, the Court may direct that the case be removed from the docket. In such a case, the time for filing a brief will not be triggered until a corrected record is transmitted to the Court.

Rule 19. EXTRAORDINARY RELIEF

(a) *Applicability.* This rule applies to petitions for extraordinary relief filed pursuant to 28 U.S.C. § 1651 and pursuant to Article 6b, UCMJ.

(b) *Petition for Extraordinary Relief*

(1) A petition for extraordinary relief shall be filed as soon as possible but, in any event, no later than 20 days after the petitioner learns of the action complained of. This does not, however, apply to petitions for writs of *habeas corpus* or *error coram nobis*, which may be filed at any time.

(2) A petition for extraordinary relief shall contain, at a minimum, the following:

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

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

(C) A statement of the issue(s);

(D) The specific relief sought;

(E) Reasons for granting the relief requested;

(F) In the case of a petition filed in the course of an ongoing proceeding, a statement of whether a stay of proceedings is requested. A proceeding is

considered ongoing until it is docketed for appellate review pursuant to Article 66, UCMJ;

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

(H) If the petition relies on sealed matters, a statement identifying whether each party had access to the sealed material at trial;

(I) If necessary and authorized, a request for appointment of appellate counsel; and

(J) A copy of any order or opinion or any parts of the record that may be essential to understand the matters set forth in the petition.

(3) The petition for extraordinary relief shall be captioned “In Re [name of Petitioner]” and shall identify all real parties in interest.

(c) *Filing and Service.* A petitioner for extraordinary relief shall serve a copy of the petition on all respondents, real parties in interest, and any military judge whose decision, judgment, or order is the subject of the petition.

(d) *Notice to the Judge Advocate General.* Immediately upon the Court’s receipt of any petition, the Clerk of the Court shall forward a copy of the petition for extraordinary relief to the appropriate Judge Advocate General or designee.

(e) *Priority.* To the extent practicable, a petition for a writ of *mandamus* filed under Article 6b, UCMJ, shall have priority over all other proceedings.

(f) *Initial Action by the Court.* The Court may dismiss or deny the petition without answer, order the respondent to show cause and file an answer, or take whatever other action it deems appropriate.

(g) *Answer*

(1) The respondent may not file a response to a writ petition unless the Court issues an order directing the respondent to show cause or granting leave to file a response. In such cases, unless otherwise specified, the respondent may file an answer within 20 days of receipt of the order and the petitioner may file a reply to the answer within 7 days of receipt of the answer.

(2) When the Court directs that an answer be filed, two or more respondents may answer jointly.

(3) The Court may invite or order any military judge whose decision, judgment, or order is the subject of the petition to respond or may invite any *amicus curiae* to do so. A military judge may request permission to respond but may not respond unless invited or ordered to do so by the Court.

(h) *Oral Argument and Final Action.* The Court may set the matter for oral argument. However, on the basis of the pleadings alone, the Court may grant or

deny the relief sought or make such other order in the case as the circumstances require.

Rule 19.1. Filing

(a) Petitions may only be filed by or on behalf of a single petitioner and must include a certificate of service on appellate counsel and each named respondent and real party in interest not represented by counsel.

(b) Unless filed by appellate government counsel acting pursuant to Article 70(b), UCMJ, a petition and brief filed on behalf of the United States or any officer or agent thereof shall be coordinated with appellate government counsel.

(c) When practicable, electronic transmission of petitions for extraordinary relief and supporting materials is strongly preferred.

Rule 19.2. Priority

All writ petitions filed in the course of an ongoing proceeding, including those filed pursuant to Article 6b, UCMJ, will be given priority consideration by counsel as well as the Court.

Rule 19.3. Action on the Petition

(a) 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 CG-LMJ for immediate transmittal to the convening authority, military judge, and all counsel or unrepresented parties involved.

(b) In the event the Court orders the respondent(s) to show cause and file an answer, TJAG shall designate appellate counsel to represent the named parties or, as appropriate, real parties in interest. Appellate government counsel will represent the United States.

Rule 19.4. Procedures for Petitions Containing Sealed Matters

(a) Consistent with applicable sealing orders and trial judiciary procedures, counsel may, after filing appropriate notice with the trial court, file a petition that includes sealed matters, provided they strictly adhere to the below procedures.

(b) Procedures for Electronic Transmission (preferred):

(1) Encrypt and password-protect petitions that reference sealed matters.

(2) Encrypt and password-protect a copy of any sealed matters or sealed parts of the record that are included in the petition pursuant to Rule 19(b)(2). To the extent practicable, separate the sealed matter, portion of the transcript, or recording into individual files. For each individual file, provide a filename that reasonably describes it (e.g., Transcript of M.R.E. 412 Hearing).

(3) Email any unsealed portions of the petition and an explanation of what is being filed separately under seal to the following personnel and email distribution groups:

(A) The Judges of the Coast Guard Court of Criminal Appeals, HQS-DG-CG-094C@uscg.mil.

(B) The Clerk of the Court, HQS-DG-CG-094C-CLERK@uscg.mil.

(C) TJAG's designee, Records Custodian, and HQS-DG-LST-CG-LMJ@uscg.mil.

(D) Appellate defense counsel, HQS-DG-LST-CG-LAD-Appellate@uscg.mil.

(E) The following personnel, as may be appropriate:

(i) The military judge whose decision, judgment or order is the subject of the petition;

(ii) Trial counsel; and

(iii) Trial defense counsel.

(iv) Any other respondent, including victims' counsel, if any.

(4) Email any sealed portions of the petition to the Clerk of the Court at HQS-DG-CG-094C-CLERK@uscg.mil and to the Chief Judge.

(5) Separately email the password for the sealed documents to the Clerk of the Court at HQS-DG-CG-094C-CLERK@uscg.mil and to the Chief Judge.

(c) Procedures in Event Electronic Transmission Impracticable:

(1) The petitioner shall place the petition (if filed under seal), any sealed matter, and sealed copies of portions of the transcript or recording, as applicable, in a separate sealed envelope. Attach a copy of the military judge's written sealing order, if applicable, on the outside of the envelope.

(2) The sealed materials may be hand delivered, provided delivery is coordinated with the Clerk of the Court. Alternatively, in accordance with Rule 13.1(b), mail the original petition, sealed envelopes, and any other attachments via DHS-approved trackable means (e.g., FedEx or UPS) to:

Clerk of the Court
U.S. Coast Guard Court of Criminal Appeals
1254 Charles Morris Street SE, Suite 320
Washington Navy Yard
Washington, DC 20374-5124

(3) Upon receipt, the Clerk of the Court will forward the petition for extraordinary relief to the Chief, CG-LMJ, as The Judge Advocate General's designee pursuant to Rules 19(d) and 19.1(c).

(4) To comply with Rule 19(c), the petitioner shall inform all potential respondents, including but not limited to trial counsel, defense counsel, appellate government counsel, appellate defense counsel, and the military judge, when any petition or part thereof has been filed under seal.

(d) Procedures In Event Court Issues Show Cause Order

(1) If the Court orders appellate counsel to show cause why the petition should not be granted or otherwise provide an answer to the petition, CG-LAD and CG-LMJ shall notify the Clerk of the Court, as soon as practicable, who has been designated as appellate counsel to represent named parties or real parties in interest. Upon receipt of such notification, the Clerk of the Court will provide respective counsel any sealed portions of the petition along with the password, as appropriate.

(2) To facilitate expedited review, the Court will consider issuing an order *sua sponte* to grant respective appellate counsel and the Records Custodian permission to examine sealed matters included with the petition. If such an order is issued, the Clerk of the Court will, as soon as practicable, provide respective appellate counsel the sealed matters along with the password, as appropriate.

(3) Unless granted permission to examine the sealed matters included with the petition, appellate counsel shall follow the procedures of Rule 23.3 to request to examine any sealed matters.

Rule 20. APPEALS BY THE UNITED STATES

(a) *Restricted Filing*

(1) Only a representative of the United States designated by the Judge Advocate General concerned may file an appeal by the United States under Article 62, UCMJ.

(2) Only the Judge Advocate General may approve the filing of an appeal of a sentence by the United States under Article 56(d), UCMJ.

(b) *Form of Appeal*

(1) An appeal under Article 62, UCMJ, must comply with R.C.M. 908, these rules, and CCA rules. The appeal shall include the Notice of Appeal described in R.C.M. 908(b)(3). The Notice of Appeal must reflect the date and time of the military judge's ruling or order from which the appeal is taken and the date and time of service upon the military judge.

(2) An appeal under Article 56(d), UCMJ, must comply with R.C.M. 1117, these rules, and CCA rules.

(c) *Time for Filing.* All procedural rules shall apply except as follows:

(1) *Appeal Under Article 62, UCMJ*

(A) The trial counsel shall have 20 days from the date of the Notice of Appeal to forward the appeal, including the record, to the representative of the United States designated by the Judge Advocate General. The person designated by the Judge Advocate General shall, within 5 days of receipt, file the original record with the Court with a copy to opposing counsel.

Appellate government counsel shall have 20 days from the date the appeal is filed with the Court to file a supporting brief. Should the United States decide to withdraw the appeal after it is received by the Court, appellate government counsel shall notify the Court in writing.

(B) Appellee shall have 20 days from the date the United States' brief is filed to file an answer.

(C) The United States shall have 7 days from the date Appellee's answer is filed to file a reply brief.

(2) Pursuant to R.C.M. 1117, an appeal under Article 56(d), UCMJ, must be filed within 60 days after the date on which the judgment of the court-martial is entered into the record.

(d) The parties shall give appeals under Article 62, UCMJ, priority over all other proceedings where practicable.

Rule 21. PETITIONS FOR NEW TRIAL

(a) Whether submitted to the Judge Advocate General by the accused in *propria persona* or by counsel for the accused, a timely petition for a new trial submitted under Article 73, UCMJ, while the accused's case is pending before a Court of Criminal Appeals shall be filed in accordance with these and CCA rules and shall comply with R.C.M. 1210(c).

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

(c) A petition for new trial shall explicitly state whether the petitioner intends to file a separate, supplemental brief in support of the petition. Unless the petition specifically states that the petitioner intends to file a supplemental brief, the petition shall be construed as incorporating a brief in support of the petition and the respondent may file an answer within 30 days after filing of the petition. If, alternatively, the petition indicates intent to file a supplemental brief in support of the petition, the petitioner shall have 30 days from filing the petition to file the brief in support of the petition and the respondent may file an answer within 30 days after filing of the brief. A reply may be filed no later than 7 days after the filing of the respondent's answer.

Rule 21.1. Petition for New Trial for Case Not Before the Court

Any petition for new trial received on a case not pending before the Court will be transmitted to TJAG's designee.

Rule 22. AMICUS CURIAE BRIEFS

(a) A brief of an *amicus curiae* may be filed (1) by invitation of the Court; or (2) by motion for leave to file granted by the Court.

(b) Only an attorney admitted to practice as a member of the Bar of the Court or an attorney appearing *pro hac vice* may file an *amicus curiae* brief.

(c) All motions and briefs filed under Rule 22(a)(2) must contain a statement of the movant's interest and why the matters asserted are relevant to the disposition of the case. *Amicus curiae* briefs filed pursuant to Rule 22(a)(2) that bring relevant matter to the attention of the Court not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored. Unless the movant is a victim of an offense as defined by Article 6b, UCMJ, the motion must also provide a statement as to whether the parties consent to the filing of the *amicus curiae* brief.

Rule 22.1. Format

Briefs of *amicus curiae* must be filed in accordance with the Court's rules and in the approved format. Such briefs must indicate service on all parties and respondents.

Rule 22.2. Victims as Amicus Curiae

A victim of an offense, as defined by Article 6b, UCMJ, may, through counsel, file a brief as *amicus curiae* under this rule without leave of the Court provided that: (1) it pertains to matters delineated in Article 6b(e)(4); and (2) it is filed within the same time prescribed for the respondent's or appellee's answer.

Rule 22.3. Answers

Any party may file an answer to an *amicus curiae* brief within 7 days of its filing or within 7 days of the Court granting leave to file, whichever is later. Further, an *amicus curiae* may file a reply to an answer within 7 days of the answer being filed.

Rule 23. MOTIONS

(a) *Content.* All motions shall be filed in writing, unless presented by leave of the Court during a hearing, and state with particularity the relief sought and the grounds therefor.

(b) *Motions to Attach Documents*

(1) The Court will normally not consider any facts outside of the record, as described in Rule 6. Requests to consider factual material not in the record shall be presented by a motion to attach. The motion shall explain why it is appropriate

for the Court's consideration. Motions filed pursuant to this rule will be granted only for good cause shown.

(2) 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.

(3) All documents written in a language other than English shall have attached a certified English translation.

(c) *Opposition.* Unless prescribed otherwise by CCA rules, any opposition to a motion shall be filed within 7 days after receipt of the motion by the opposing party.

(d) *Leave to File.* Any pleading not authorized or required by these or CCA rules shall be accompanied by a motion for leave to file such pleading. A motion for leave to file the pleading and the pleading may be combined in the same document.

Rule 23.1. Filing of Motions

(a) Except as otherwise provided in these Rules, counsel should avoid consolidating more than one motion into one pleading.

(b) In order to expedite a motion, counsel may consult opposing counsel prior to filing it. If the other party does not oppose the action requested by the motion, the title of the motion shall begin with the words "Consent Motion." The Court may immediately act on consent motions without awaiting a response.

(c) Any document filed in conjunction with a motion shall be attached as an individual appendix and labeled accordingly. Documents filed in subsequent motions by the same party shall continue the numbering of appendices in sequence rather than restarting, for example, at Appendix 1.

Rule 23.2. Motions for Enlargement of Time

(a) Except for a motion for enlargement of time to Reply, any motion for enlargement of time must be submitted at least 7 calendar days before the filing is due. The 7-day period shall not be shortened by application of Rule 15. The motion shall note whether it is the first, second, third, or subsequent such motion in the case.

(b) A motion for enlargement of time to Reply must be submitted at least 5 calendar days before the filing is due.

(c) Enlargements of time ordinarily will only be granted up to 30 calendar days. An appellant's motion for first enlargement does not require a showing of good cause. All other motions for enlargement will be granted only when good cause is shown with particularity.

(d) Any opposition to a motion for enlargement of time must be filed within 2 business days of receipt by the responding party.

Rule 23.3. Motion to Examine Sealed Materials

(a) Counsel seeking to examine sealed portions of a record of trial shall file a motion to examine sealed materials. In addition to service on the opposing party, a copy of any motion to examine sealed material shall be served on any respondents, and any affected victim or victim's counsel. For victims who are unrepresented by counsel, appellate government counsel shall ensure service on the victim.

(b) Any opposition to a motion to examine sealed materials that were disclosed to all parties at the proceeding below shall be filed within 2 business days of receipt by the responding party. Any opposition to a motion to examine sealed materials that were *not* disclosed to all parties at the proceeding below shall be filed within 7 days of receipt by the responding party.

Rule 23.4. Motion to Cite Supplemental Authority

Counsel who become aware of relevant new law after submitting a pleading shall bring the new law to the Court's attention by filing a motion to cite supplemental authorities. Such motion shall briefly explain the relevance of each newly cited authority to the issues before the Court.

Rule 23.5. Motion to Correct Errata

Counsel who become aware of clerical or other errors after submitting a pleading may file a motion to correct errata.

Rule 23.6. Motion for Remand to Correct Post-Trial Processing Error

Any party may move at any time for immediate remand of a case to correct an error in post-trial processing.

Rule 23.7. Motion to Correct Error in Record of Trial

Prior to filing a motion under Rule 6(c) to correct a substantial error or omission in the record of trial, the moving party shall notify the Records Custodian and, as needed, government counsel of the deficiency and attempt to resolve the matter informally. The motion shall note the efforts made.

Rule 23.8. Motion to Attach a Document or Consider a Directive

If a party desires to attach a document other than a statement of a person, it must be authenticated, and an accompanying affidavit may be required. If a party desires the Court to consider a directive, it may move for the Court to take judicial notice it. To ensure full understanding of the directive's application to the issue for which it is to be considered, an accompanying affidavit with motion to attach may be required.

IV. PROCEEDINGS OF THE COURT

Rule 24. EXTENSIONS OF TIME AND INTERLOCUTORY MATTERS

Except as otherwise provided in Rule 31(e), the Court, in its discretion, may extend any time limits prescribed and may dispose of any interlocutory or other appropriate matter not specifically covered by these rules, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case.

Rule 25. ORAL ARGUMENTS

Oral arguments may be heard in the discretion of the Court upon motion or when otherwise ordered by the Court. Any motion for oral argument shall be filed no later than the due date for a reply brief. Such motion shall identify the issue(s) on which counsel seek argument.

Rule 25.1 Conduct of Oral Argument

(a) *Location.* Oral arguments will be conducted at a location specified by the Court by written order.

(b) *Procedure.* The Chief Judge or the senior judge on the panel will preside at all formal sessions of the Court. Motions for admission and outstanding motions regarding the case set for argument are the first order of business followed by argument on the case. To assist counsel, the Crier of the Court will signal when 5 minutes remain by illuminating a yellow signal light and the red light when time has expired. Counsel must cease argument upon illumination of the red light except by leave of the Court.

(c) *Length and Order of Argument.* Each side will normally be allotted 30 minutes to present oral argument. Counsel for the appellant, petitioner, or movant will open argument and, if the Court grants permission in advance to reserve time for rebuttal, close argument.

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

(e) *Attire.* Judge advocates appearing before the Court on behalf of litigants shall wear the Service Dress Blue uniform, or the service equivalent. Civilian attorneys shall wear conservative professional attire.

Rule 26. RECORDING, PHOTOGRAPHING, BROADCASTING, OR TELECASTING OF HEARINGS

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

Rule 26.1. Recording of Oral Argument

(a) Unless impracticable, the Court ordinarily arranges an official audio recording of each oral argument. Coast Guard personnel may request access to an existing recording of an oral argument by contacting the Clerk of the Court.

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

Rule 27. EN BANC PROCEEDINGS

(a) A majority of judges who are in regular active service, as defined in Rule 7 or CCA rules, and not disqualified may, *sua sponte* or in response to a suggestion, order that an appeal or other proceeding be considered or reconsidered by the Court *en banc*. *En banc* consideration or reconsideration is not favored and ordinarily will not be ordered unless: (1) necessary to secure or maintain uniformity of the Court's decisions; (2) the opinion overrules a binding precedent of the Court; (3) the proceeding involves a question of exceptional importance; or (4) a sentence being reviewed pursuant to Article 66, UCMJ, extends to death.

(b) A party may suggest consideration or reconsideration of a proceeding *en banc*. In cases being reviewed pursuant to Article 66, UCMJ, a suggestion for *en banc* consideration must be filed with the Court within 7 days after the United States files its answer to the assignments of error, or the appellant files a reply under Rule 18(d). In other proceedings, the suggestion must be filed with the party's initial pleading, or within 7 days after the response thereto is filed. A suggestion for *en banc* reconsideration must be made within the time prescribed by Rule 31 for filing a motion for reconsideration. No response may be filed to a suggestion for *en banc* consideration or reconsideration unless the Court so orders.

(c) A suggestion for *en banc* consideration or reconsideration shall be transmitted to each judge of the Court who is in regular active service and not disqualified, but a vote need not be taken to determine whether the case shall be considered or reconsidered *en banc* unless a judge requests a vote.

(d) Although only the Court *en banc* may overrule a binding precedent, a party may argue, in its brief and oral argument, to overrule a binding precedent without

petitioning for hearing *en banc*. The panel will decide whether to ask the remaining judges to consider hearing the case *en banc*.

Rule 28. CONTEMPT

(a) Contempt Proceedings

(1) Under Article 48, UCMJ, any judge of the Court may punish any person for contempt.

(2) *Summary Disposition.* A judge of the Court may summarily punish contempt when the judge directly witnesses the contemptuous conduct during the course of an appellate proceeding. Prior to holding a person in contempt, the judge shall provide the alleged offender with an opportunity to make a statement. If the alleged offender declines to make a statement, no negative inference will be drawn. If a contempt is punished summarily, the judge shall ensure there is an adequate record accurately reflecting the misconduct that the judge directly witnessed.

(3) *Disposition upon Notice and Hearing.* If the judge did not personally witness the contemptuous conduct at issue, the alleged offender shall be provided written notice of the alleged contempt and given a reasonable opportunity to respond and to present evidence before the Court. The written notice shall include notice that the alleged offender has the right to be represented by counsel and that no negative inference will be drawn from failure to respond and to present evidence. The government shall provide military alleged offenders counsel at no expense to them. The contempt must be proved beyond a reasonable doubt before it may be punished.

(4) *Appeal.* A person found in contempt by the Court shall be notified of their right to appeal the contempt findings and sentence to the United States Court of Appeals for the Armed Forces in accordance with that Court's rules and Article 48, UCMJ.

(5) *Stays.* Upon written request or its own motion, the Court may stay the imposition of punishment pending an appeal.

(b) Appeals from Contempt Proceedings Below

(1) *Notice of Appeal.* Any person found in contempt by a military judge or military magistrate may appeal the punishment by filing a notice of appeal with the Court, via the Clerk of the Court, within 20 days of being found in contempt. The notice of appeal must, at a minimum:

(A) be titled *In Re [Contempt-Appellant]*;

(B) list the parties to the proceeding, the name of the judicial officer who made the contempt finding, any victims of an offense as defined by Article 6b, UCMJ, and the punishment imposed, if applicable;

(C) list the names and addresses of counsel for all parties to the proceeding and any victims of an offense as defined by Article 6b, UCMJ; and

(D) indicate whether the contempt-appellant requests a stay of unexecuted punishment.

(2) *Action by United States upon Service.* Within 20 days of receiving or filing a notice of appeal, the trial counsel shall forward a record of the contempt proceedings to appellate counsel for the United States. Appellate counsel for the United States shall promptly file the original record of the contempt proceedings with the Clerk of the Court and forward copies to opposing counsel.

(3) *Action by Court upon Service.* Upon receipt of any notice of appeal, the Clerk of the Court will docket the case and forward a copy of the notice to the appropriate Judge Advocate General or designee.

(4) *Resolution of Appeal*

(A) *Briefing.* A contempt-appellant must file a brief in support of his or her appeal within 30 days of being served with a copy of the record under subsection (b)(2) of this rule. Opposing counsel may respond within 20 days of receiving the contempt-appellant's brief. If the appellate government division is conflicted or elects not to respond, the Court may direct the Judge Advocate General to detail appellate counsel to defend the finding of contempt and punishment.

(B) *Argument.* The Court may, in its discretion, order oral argument.

(C) *Final action.* An appeal of a finding of contempt will be reviewed for an abuse of discretion. The Court may affirm or set aside the finding or the punishment, in whole or in part, or make any other order in the case as the circumstances require.

Rule 29. ARTICLE 66(F) PROCEEDINGS

(a) *In General.* The Court may, upon motion by any party or *sua sponte*, order a remand under Article 66(f)(3), UCMJ, for further proceedings. Such orders shall be directed to the Chief Trial Judge. The Judge Advocate General or designee shall designate a general court-martial convening authority who shall provide support for the hearing. Although within the discretion of the Court, remand is generally not appropriate to determine facts or investigate matters that could, through a party's exercise of reasonable diligence, have been investigated or considered at trial, or to resolve post-trial claims that are:

(1) inadequate on their face;

(2) facially adequate but appellate filings and the record as a whole compellingly demonstrate their improbability;

(3) uncontested; or

(4) based on statements or documents not included in the record of trial and

(A) the statement is unsworn or not filed in compliance with Rule 23(b); or

(B) the statement is made by a person who lacks personal knowledge of the material facts that the Court is asked to rely on.

(b) *Jurisdiction.* The Court ordering remand retains jurisdiction unless it expressly dismisses the appellate proceeding.

(1) *Remand When Court Retains Jurisdiction.* When a Court remands but does not dismiss the appellate proceeding, such as for fact-finding or for correction of the record, the remand does not return jurisdiction over the case to the court-martial and military judge. Rather, the Court retains jurisdiction over the case throughout the Article 66(f) proceeding. Such a remand is an appellate proceeding conducted on behalf of the Court but presided over by a military judge or magistrate. Any finding or recommendation arising out of a proceeding shall be forwarded to the Court for consideration and action.

(2) *Remand When Court Dismisses Appellate Proceeding and Returns Jurisdiction.* A remand of a case that returns jurisdiction over the case to the military judge and court-martial will specifically state the scope of the remand and the range of actions that may be taken. If an action during a remand terminates the case, an appellate attorney authorized to act on behalf of the United States shall so inform the Court. Such a remand may be appropriate, for instance, when a matter in the case requires corrective action by the trial court such as to correct an error in the judgment or to address an inconsistency or omission in the factual basis of an accused's plea.

(c) *Remand Impracticable.* The convening authority designated to provide support or, as applicable, a special trial counsel, may determine that the proceeding is impracticable. In such a case, an appellate attorney authorized to act on behalf of the United States shall forward this determination, accompanied by an explanation for the determination, to the Court. The Court may direct that the proceeding continue. If the Court does not direct that the proceeding continue, the Court may take any other action authorized by law that does not materially prejudice the substantial rights of the accused.

(d) *Article 66(f) Hearings.* The military judge detailed to an Article 66(f) proceeding may order one or more Article 66(f) hearings as may be necessary to fulfill the purpose of the remand. The following procedural rules shall apply at Article 66(f) hearings directed under this rule:

(1) A record of the proceedings shall be created and certified in substantial compliance with R.C.M. 1112.

(2) The parties may question and challenge the military judge as provided by R.C.M. 902.

(3) In the case of a remand in which the Court has returned jurisdiction over the case under subsection (a)(2) the rules applicable to the conduct of a post-trial Article 39(a) shall apply.

(4) In the case of a remand in which the Court has maintained jurisdiction over the case under subsection (a)(1) the following rules shall apply:

(A) The Judge Advocate General shall provide the accused with the same right to counsel as would be had at a post-trial Article 39(a) session.

(B) The accused's right to personally be present at a proceeding shall generally be the same as for similar proceedings held in United States District Courts. The military judge may authorize remote appearances of witnesses and parties as provided by R.C.M. 914A and 914B.

(C) The military judge may apply any other Rule for Courts-Martial that the military judge determines is appropriate to apply to a post-conviction fact-finding hearing for the just determination of the issues involved. In applying such a rule, the military judge shall construe the rule to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Rule 30. ORDERS AND DECISIONS OF THE COURT

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

Rule 31. RECONSIDERATION

(a) The Court may, either upon motion or *sua sponte*, reconsider any order, decision, or opinion of the Court.

(b) A motion for reconsideration must be filed no later than 30 days after the date of the order, decision, or opinion. The motion shall briefly and directly state the grounds for reconsideration, including a statement of facts showing jurisdiction in the Court.

(c) An answer to a motion for reconsideration must be filed no later than 7 days after receipt of a copy of the motion.

(d) If the Court announces its intent to reconsider, no briefs or arguments may be filed unless the Court so directs.

(e) Pursuant to Rule 24, the Court may, for good cause shown, extend the time for filing a motion for reconsideration, but in no instance beyond the deadline for filing a petition for review, certificate for review, or writ appeal with the United States Court of Appeals for the Armed Forces. Likewise, the Court may *sua sponte* reconsider an order, decision, or opinion at any time, but in no instance beyond the deadline for filing a petition for review, certificate for review, or writ appeal with the United States Court of Appeals for the Armed Forces.

Rule 31.1. Effect of Order Granting Reconsideration

Unless otherwise specified, an order granting reconsideration vacates the decision or order to be reconsidered.

Rule 31.2. Composition of Panel upon Reconsideration

To the extent practicable, the same judges who originally decide a matter will constitute the panel to act on a motion for reconsideration and, if granted, the matter on reconsideration. To the extent not practicable, the Chief Judge retains the discretion to assign the matter to a panel.

Rule 32. SUSPENSION OF RULES

Except as provided in Rule 31(e), for good cause shown, the Court may suspend any of these rules in a particular case, on application of a party or on its own motion, and may order proceedings in accordance with its direction.



Approved by

L. I. MCCLELLAND
Chief Judge
31 July 2024