

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

**RULES OF PRACTICE
AND PROCEDURE**



Effective 11 October 2010
Amended 12 April 2013

Available online at <http://afcca.law.af.mil>

**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**)

TABLE OF RULES

Rule

- 1. Name and Seal**
- 2. Jurisdiction**
- 3. Scope of Review**
- 4. Quorum**
- 5. Place for Filing Papers**
- 6. Signing of Papers**
- 7. Computation of Time**
- 8. Qualification of Counsel**
- 9. Conduct of Counsel**
- 10. Request for Appellate Defense Counsel**
- 11. Assignment of Counsel**
- 12. Retention of Civilian Counsel**
- 13. Notice of Appearance of Counsel**
- 14. Waiver or Withdrawal of Appellate Review**
- 15. Assignments of Error and Briefs**
- 16. Oral Arguments**
- 17. En Banc Proceedings**
- 18. Orders and Decisions of the Court**
- 19. Reconsideration**
- 20. Petitions for Extraordinary Relief, Answer, and Reply**
- 21. Appeals by the United States**
- 22. Petitions for New Trial**
- 23. Motions**
- 24. Continuances and Interlocutory Matters**
- 25. Suspension of Rules**
- 26. Internal Rules**
- 27. Recording, Photographing, Broadcasting, or Telecasting of Hearings**
- 28. Amendments**

- APPENDIX A Format For Brief On Behalf Of Appellant**
APPENDIX B Format For Brief Submitted On Its Merits
APPENDIX C Format For Opposition To Motion

Rule 1. NAME AND SEAL

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

(1) “United States Army Court of Criminal Appeals.”

(2) “United States Navy-Marine Corps Court of Criminal Appeals.”

(3) “United States Air Force Court of Criminal Appeals.”

(4) “United States Coast Guard Court of Criminal Appeals.”

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

Rule 1.1. *The United States Air Force Court of Criminal Appeals.* The Judge Advocate General of the Air Force (hereinafter TJAG) established the United States Air Force Court of Military Review in JAGO No. 44, ¶ 1 (1 August 1969). Effective 5 October 1994, this Court was renamed the United States Air Force Court of Criminal Appeals, pursuant to the authority of Pub. L. 103-337, 108 Stat. 2663 (1994) and Article 66(a), UCMJ.

Rule 1.2. *Seal of the Court.* The official seal of the Court is used on decisions and orders of the Court and on other official documents and records that are executed and issued by the Clerk of the Court. The seal operates to authenticate documents as official documents of the United States Air Force Court of Criminal Appeals. The Clerk of the Court is the custodian of the Seal.

Rule 1.3. *Scope and Application of Rules.*

(a) *Scope and Application.* The procedures contained within the Air Force Court of Criminal Appeals (AFCCA) rules apply to all persons assigned to the court, persons having pleas to enter, and persons having business before the Court. The AFCCA rules are promulgated by the Chief Appellate Judge and may be waived at the Chief Appellate Judge’s discretion.

(b) *Questions and General Waiver Requests.* Questions regarding the AFCCA Rules of Practice and Procedure or request for a general waiver of any provision of these rules shall be directed to the Clerk of the Court. A general waiver of any provision of these rules may be granted by the Chief Appellate Judge.

Rule 1.4. *Chief Appellate Judge; Senior Appellate Judge; and Appellate Judges.*

(a) *Assignment to the Court.* TJAG certifies each appellate judge as an appellate judge of the United States Air Force Court of Criminal Appeals and designates who shall serve as the Chief Appellate Judge or as the designated Chief Appellate Judge in a specific matter before the Court.

(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, seniority shall be based first on status as a designated Senior Appellate Judge or Appellate Judge, and then on tenure, with the longest service appellate judge in each group having the longest 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.

(e) *Designation of Senior Appellate Judges.* 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 and is responsible for performing the administrative duties necessary for the operation of the panel in completing its statutory responsibilities and for maintaining official liaison between that panel and the Chief Appellate Judge.

(f) *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 1.5. *Court Staff.*

(a) *Clerk of the Court.* Reporting directly to the Chief Appellate Judge, the Clerk of the Court serves as the Senior Judicial Administrator of the Court (Law Office

Manager / Law Office Superintendent). The Clerk of the Court is responsible for the supervision of the paralegal and administrative staff, and for the management of the day-to-day operation of the Court. The Clerk of the Court serves as the primary point of contact for all court-related matters. During oral argument, the Clerk of the Court is responsible for the security of the appellate judges, appellate courtroom, and chambers. The Clerk of the Court is also responsible for the custody of all court records.

(b) *Deputy Clerk of the Court.* Reporting directly to the Clerk of the Court, the Deputy Clerk of the Court performs the duties of the Clerk of the Court in his/her absence. The Deputy Clerk of the Court shall be designated in writing by the Clerk of the Court. The Deputy Clerk of the Court shall also assist in coordinating official travel for court personnel.

(c) *Appellate Court Paralegal(s).* Reporting directly to the Clerk of the Court, the Appellate Court Paralegals duties include, but are not limited to: performing general administrative and paralegal duties as directed by the Clerk of the Court; 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; secures supplies; and serves as the Court's law librarian.

(d) *Reserve Paralegal(s).* Reporting directly to the Clerk of the Court, Reserve Appellate Court Paralegals perform general administrative and paralegal duties as directed by the Clerk of the Court.

(e) *Chief Commissioner.* Appointed by and reporting directly to the Chief Appellate Judge, the Chief Commissioner serves as the executive officer to the Chief Appellate Judge, and performs the duties of Commissioner for the panel in which the Chief Appellate Judge sits. The Chief Commissioner administratively supervises and provides support for all assigned Commissioner's, interns, and externs.

(f) *Commissioner(s).* Reporting directly to the Chief Commissioner, Commissioner's are judge advocates who are selected to serve as law clerks based on their knowledge of, and experience in, military law. The Commissioner's perform various collateral duties and assist the Chief Commissioner and the Clerk of the Court as necessary.

Rule 1.6. *Conduct of Court Personnel.* Personnel of the Court shall maintain the confidentiality of the Court's proceedings and avoid *ex parte* communication with litigants. Court personnel shall be fair and impartial, avoiding favoritism or the appearance of favoritism toward any interested party to 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.

Rule 1.7. *Administrative Matters.*

(a) *Court Hours.* The Court's general business hours are from 8:00 am to 4:00 pm on weekdays, except holidays, or when secured by direction of the Chief Appellate Judge. The Court's chambers may be closed during an *en banc* deliberation or 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 restricted. Visitors, including counsel, shall not proceed beyond the reception area without first checking in with the on-duty Appellate Court Paralegal.

(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 motion to 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 is discouraged and will only be permitted with the approval of the Chief Appellate Judge. Requests to remove an original record of trial from the Court's chambers shall be made by motion to the Court. An original record of trial shall not be removed from the Court's chambers for more than one workday unless otherwise granted by the Chief Appellate Judge.

(d) *Requests for Information.* All requests for information regarding a case currently docketed with the Court from a party or a member of the Judge Advocate General's Corps of the Air Force shall be referred to the Clerk of the Court. Press 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 shall promptly inform the Clerk of the Court if a case that is presently before the Court is also pending before any other court.

Rule 1.8. *The Docket.* The Clerk of the Court 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, and 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.

(a) *ACM Number.* The Appellate Records Branch of the Military Justice Division (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.

(b) *Miscellaneous Docket Number.* The Clerk of the Court shall assign a Miscellaneous Docket Number (Misc. Dkt. No.) 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.

(c) *Notice of Docketing.* The Appellate Records Branch of the Military Justice Division (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 a case as well as the Miscellaneous Docket Number of all cases assigned to the Miscellaneous Case Docket.

(d) *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.

(e) *Entry of Judgment.* The Clerk of the Court or their designee shall prepare, certify, date, and enter the judgment immediately upon the filing of the Opinion of the Court. If a judgment is rendered without an opinion, the Clerk of the Court 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 shall distribute to TJAG and interested parties, an electronic copy of the judgment, opinion, or order as applicable.

Rule 1.9. *Cases Involving Classified Information, Controlled Materials, or Contraband.*

(a) *Court Security Manager.* The Clerk of the Court shall serve as the Court Security Manager to provide protection of classified information. The Clerk of

the Court or may designate assistants, as necessary, for such purposes.

(b) *Classified Documents and Controlled Materials.* Except when in use by the Court, classified and controlled documents or materials will be stored by the Court Security Manager in designated secured areas within the Appellate Records Branch of AFLOA/JAJM.

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

Rule 2. JURISDICTION

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

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

(A) death; or

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

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

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

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

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

(3) Review under Article 62. All cases of trial by court-martial in which a punitive discharge may be adjudged and a military judge presides, and in which the government appeals an order or ruling of the

military judge that terminates the proceedings with respect to a charge 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. *Ancillary Jurisdiction.* The Court retains jurisdiction over cases initially reviewed under Article 66, UCMJ, which are remanded for further proceedings, notwithstanding any subsequent reduction of the sentence below the level requiring TJAG to refer the case to this Court pursuant to Article 66(b), UCMJ.

Rule 2.2. *Cases 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 returned to the convening authority for corrective action, a fact-finding hearing, a rehearing, or other trial that are again before the Court for review.

(b) *Procedure for Cases Remanded by the United States Court of Appeals for the Armed Forces Directly to the Court.* 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 that last decided the case. Within 20 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 20 calendar days thereafter to file their response.

(c) Procedure for Cases Remanded by the United States Court of Appeals for the Armed Forces to the Convening Authority. 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 counsel shall file a brief and assignments of error as to any matters not decided by CAAF or inform this Court that the appellant does not wish to file any additional pleadings within 20 calendar days after re-docketing of the record of trial with this court. Appellate counsel for the United States will have 20 calendar days thereafter in which to file its 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 assignments of error, if not previously filed, or submit the case on its merits within 20 calendar days after re-docketing of the record of trial with this Court. If previously filed, the 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 20 calendar days from the filing of the appellant's initial brief or supplemental brief, as applicable, in which to file its 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 4.1. *En Banc.* All appellate judges present for duty, that are participating in a particular decision, will be counted in determining the existence of a quorum.

Rule 5. PLACE FOR FILING PAPERS

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

Rule 5.1. *Place for Filing.* All pleadings and other documents relative to a case are not filed until received at the following address:

(a) *Paper Filing.*

Clerk of the Court
United States Air Force Court of Criminal Appeals
1500 West Perimeter Road, Suite 1900
Joint Base Andrews, Maryland 20762

Telephone: (240) 612-5070 DSN: 612-5070

(b) *Electronic Filing.* (Preferred Method)

E-mail: afjah.filing.workflw@pentagon.af.mil

Rule. 5.2. *Hours of Filing.*

(a) *Paper Filing Times.* All paper filings must be submitted to the Clerk of the Court no later than 4:00 pm on the date the filing is due. Any filing received

after 4:00 pm will be dated as received on the next business day.

(b) *Electronic Filing Times.* All electronic filings must be submitted to the Clerk of the Court no later than 11:59 pm on the date the filing is due. Any filing received after 11:59 pm will be dated as received on the next business day.

(c) *Stated Times.* For the purposes of the AFCCA Rules, all times are stated in Eastern Standard Time (EST).

Rule 5.3. Procedure for Filing. Motions, briefs, notices, and other pleadings may be filed either in paper to the Court or electronically via the Court's e-mail workflow box. No other method of electronic filing will be accepted. Attorneys who are admitted to practice before this Court in accordance with Rule 8.1 and Rule 8.2 of the AFCCA Rules or paralegals acting under the direction and supervision of an attorney who is properly admitted to practice before this Court, or appellants *pro se* may file documents with the Court.

(a) *Paper Filing.* Any paper filing shall be submitted to the Court shall be in PDF format, typed, double-spaced, font to be 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, and signed in compliance with Rule 6.1 of this Court's Rules. All documents shall be pre-punched for a 2.75-inch-wide prong fastener at the top center for insertion into a record of trial.

(b) *Electronic Filing.* Any filing submitted electronically to the Court shall be converted into PDF format, not scanned (if practical to reduce overall file size), typed, double-spaced, font to be 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, and signed in compliance with Rule 6.1 of this Court's Rules. For electronically filed pleadings, a follow-up paper filing is not required.

(1) All electronic filings shall contain the following language in the e-mail subject line:

Certificate of Service – YYMMDD – ACM or Misc. Dkt. No.
(Example: Certificate of Service – 100301 – S111111)

(2) 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.

(3) All PDF files shall be titled in the following format:

Name – ACM–Brief Title of Filing (DD MMM YY)
(Example: Doe – 12345 – Motion for EOT (01 Jan 10))

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

(5) Oppositions to motions, including general oppositions, require the filing of the opposition in motion format. E-mail message oppositions will not be accepted. Each opposition shall be submitted separately.

(6) Classified material and material under seal 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 they 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. The classified or sealed material will be appropriately packaged, marked, and delivered to the Court. The filing will include a notation that it accompanies an electronic filing in the case. All classified material shall be handled in accordance with Rule 9.1. of this Court's Rules of Practice and Procedure.

(7) Counsel will refrain from including and shall redact the following personal data identifiers from documents filed with the Court:

(i) Social Security Numbers; or

(ii) Names of Minors; or

(iii) Dates of Birth; or

(iv) Financial Account Numbers; or

(v) Home Addresses

(c) *Electronic Service of Pleadings.* Service of pleadings filed by electronic means shall be served in accordance with the approved electronic notification procedure. Initial pleadings from non-federal civilian attorneys acting as appellate counsel shall also include an AFCCA Form 013, *Notice of Appearance*. Thereafter, subsequent filings in the case will not require a notice of appearance.

(d) *Return of Service.* 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.

(e) *Service of Pleadings*

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

(i) *Personal Service.* Personal service shall consist of delivery to the office of the counsel of record, either to counsel or, in the case of military counsel, to the Chief, Government Trial and Appellate Counsel Division; or to the Chief, Appellate Defense Division; or to their designee. If the party is not represented, service shall consist of delivery to such party.

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

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

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

(3) *Form of Certificate of Filing and Service.* A certificate indicating the specific manner of filing and the specific manner of service under AFCCA Rules 5 and 15.1(e) shall be included in any pleading or other paper substantially in the following form:

CERTIFICATE OF FILING AND SERVICE

I certify that the original and 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 5.4. *Supplemental Filings.* Supplemental filings must be submitted by motion for leave to file. If the motion is granted, opposing counsel or other party has 30 calendar days to file a response. When opposing counsel or other party has not previously filed a response to the initial filing, the period for responding is automatically extended to coincide with the time for filing a response to the supplemental filing.

Rule 5.5. *Amicus Curiae Briefs.*

(a) A brief of amicus curiae may be filed only by (1) an appellate defense or appellate government division of an armed service other than that in which the case has arisen, (2) invitation of the Court or (3) by leave of this Court and granted on motion. **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), the appellant's brief (Article 62, UCMJ, appeals), or the respondent's response to an order of this Court to show cause (Extraordinary Writ). 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) A motion of amicus curiae to participate in oral argument may be granted only for extraordinary reasons.

(d) 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 5.6. *Lengthy Filings.* All filings exceeding 25 pages in length shall include a table of contents. See AFCCA Rule 15.1(b)(1) for additional guidance.

Rule 5.7. *Citations.*

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

(b) *Citation of Unpublished or Memorandum Opinions.* Unpublished and memorandum decisions have limited precedential value. If counsel desires to cite an unpublished opinion from a court other than the Air Force Court of Criminal Appeals, he/she must attach a copy of the decision to the pleading. If counsel intends to cite an unpublished or memorandum opinion from a court other than the Air Force Court of Criminal Appeals during oral argument, he/she must provide a copy of the decision or memorandum opinion to the Court and opposing counsel at least 3 business days prior to the oral argument.

Rule 5.8. *Filings by Attorneys Not Admitted.* If the counsel signing a filing is not a member of the Bar of this Court, the filing shall nonetheless be received as if such counsel were a member. However, within 5 business days of submission of the filing, such counsel shall apply for admission to the Bar of this Court or move to appear *pro hac vice* in order to continue in the case as counsel of record.

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

Rule 5.10. *Non-compliance with Rules.* Failure to comply with the any provision of the AFCCA Rules of Practice and Procedure may result in the 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 6. SIGNING OF PAPERS

All formal papers shall be signed and shall show, typewritten or printed, the signer's name, address, military grade (if any), and the capacity in which the paper is signed. Such signature constitutes a certification that the statements made therein are true and correct to the best of the knowledge, information, and belief of the persons signing the paper and that the paper is filed in good faith and not for purposes of unnecessary delay.

Rule 6.1. *Signatures.* Counsel of record, who is admitted to practice before the Bar of this Court shall sign an electronically filed pleading by use of an approved Department of Defense digital signature or in the following format, //SIGNED//. Counsel of record, who are admitted to practice before the Bar of this Court shall sign a paper pleading by use of their actual signature. Non-federal civilian counsel or an appellant *pro se* must also include their address, telephone number, and e-mail address below the signature line of each filing. Interns assigned to AFLOA/JAJA and AFLOA/JAJG may sign filings below the signature of the counsel of record with their typed name and their capacity as "Counsel Under Supervision." One counsel may sign a filing "for" another attorney 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. For further guidance on the use of a digital signature, contact the Clerk of the Court.

Rule 7. COMPUTATION OF TIME

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

Rule 8. QUALIFICATION OF COUNSEL

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

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

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

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

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

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

(a) *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 CCA Rule 8(a) that states that the applicant is a member of the Bar in good standing. The certificate of good standing must be an original and must be dated within 1 year of the date of the application. Applications may be obtained from the Clerk of the Court or downloaded from the Court's website at <http://afcca.law.af.mil>. Upon leave of the Court, attorney's currently certified by a Judge Advocate General pursuant to Article 26(b) or 27(b), UCMJ, may be admitted without application.

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

(c) *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 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* (hereinafter JASOC). Where the applicant is a current JASOC student at the United States Air Force Judge Advocate General School (hereinafter AF/JAGS), the Chief of the Administrative Division, AF/JAGS, will verify that the applicants possess an original certificate of good standing from their state Bar. The certificate of good standing must be dated within 1 year of the date of application. The Chief of the Administrative Division 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 Before the United States Air Force Court of Criminal Appeals*. Failure to do so shall result in the application being denied.

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 9. CONDUCT OF COUNSEL

The conduct of counsel appearing before the Court shall be in accordance with rules of conduct prescribed pursuant to Rule for Courts-Martial 109 by the Judge

Advocate General of the service concerned. However, the Court may exercise its inherent power to regulate counsel appearing before it, including the power to remove counsel from a particular case for misconduct in relation to that case. Conduct deemed by the Court to warrant consideration of suspension from practice or other professional discipline shall be reported by the Court to the Judge Advocate General concerned.

Rule 9.1. *Conduct of Counsel.* In addition to rules applicable in their respective jurisdictions, the professional conduct of counsel appearing before the Court is governed by the current *Manual for Courts-Martial*, CCA Rule 9, the American Bar Association's Code of Professional Responsibility, and the United States Air Force Rules of Professional Responsibility.

Rule 9.2. *Reporting Requirements.* Any member of the Bar of this Court who is subjected to discipline that results in disbarment, suspension, or other loss of good standing in the Bar of any court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth, or possession of the United States, shall notify the Clerk of the Court within 10 business days at the address shown in AFCCA Rule 5.1. 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 26(b) or 27(b), UCMJ, is withdrawn for cause, shall notify the Clerk of the Court within 10 business days.

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

Rule 10. REQUEST FOR APPELLATE DEFENSE COUNSEL

An accused may be represented before the Court by appellate counsel detailed pursuant to Article 70(a) or by civilian counsel provided by the accused, or both. An accused who does not waive appellate review pursuant to Rule for Courts-Martial 1110 shall, within 10 days after service of a copy of the convening authority's action under Rule for Courts-Martial 1107(h), forward to the convening authority or the Judge Advocate General:

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

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

counsel), or

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

(d) A waiver of representation by counsel.

Rule 11. ASSIGNMENT OF COUNSEL

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

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

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

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

(b) In any case—

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

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

Rule 11.1. Designation of Appellate Counsel.

(a) *Determination of Counsel Representation.* Upon docketing of a case before this Court, an Appellate Court Paralegal shall review each record of trial to determine if the appellant has requested representation by appellate counsel. If the Appellate Court Paralegal is unable to discern this from the record of trial, the

Court shall return it to the Appellate Records Branch of the Military Justice Division (AFLOA/JAJM), who will obtain the AF Form 304, *Request for Appellate Defense Counsel*. In any case that has been remanded to a convening or supervisory authority for further proceedings, an appellant's prior request for appellate defense counsel remains effective in subsequent appellate proceedings before this Court unless the appellant affirmatively withdraws the request in writing.

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

Rule 12. RETENTION OF CIVILIAN COUNSEL

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

Rule 12.1. *Retention of Civilian Counsel*. In any case where the appellant has specifically requested named civilian counsel, the Appellate Defense Division (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 the AFCCA 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 at <http://afcca.law.af.mil>.

Rule 13. NOTICE OF APPEARANCE OF COUNSEL

Military and civilian appellate counsel shall file a written notice of appearance with the Court. The filing of any pleading relative to a case which contains the signature of counsel constitutes notice of appearance of such counsel.

Rule 13.1. *Representation by Detailed Appellate Military Counsel and Federal Civilian Counsel*. Any filing relative to a case that contains the signature of counsel constitutes notice of appearance in said case.

Rule 13.2. *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)*.

Rule 13.3. *Counsel Appearing Pro Hac Vice*. All attorneys appearing *pro hac vice* shall file a certificate of good standing from a qualified Bar 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. Additionally, counsel must submit to this Court an AFCCA Form 013, *Notice of Appearance (Civilian Counsel)*, within 15 days of retention by the appellant.

Rule 13.4. *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 14. WAIVER OR WITHDRAWAL OF APPELLATE REVIEW

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

Rule 14.1. *Waiver and Withdrawal from Appellate Review*.

(a) When the Clerk of the Court receives a waiver of appellate review, after a record of trial has been referred to the Court but before issues are joined, that appears to have been timely filed with the convening authority and is in substantial compliance with R.C.M. 1110, the Clerk of the Court may revoke the referral and return the record to the Appellate Records Branch of AFLOA/JAJM for return to the appropriate trial jurisdiction for review pursuant to R.C.M. 1112. Otherwise, the waiver will be referred to the accused's appellate counsel or to the Court, as appropriate.

(b) A case may be withdrawn from appellate review at any time before the Court

completes its review, but only by leave of the Court. The motion to withdraw a case from appellate review must be dated and signed by both counsel and the appellant. The Court will remand all cases in which withdrawal has been granted to the Appellate Records Branch of AFLOA/JAJM for compliance with R.C.M. 1112.

(c) Appeals by the United States pursuant to Article 62, UCMJ, are withdrawn as indicated in Rule 21.1(f).

(d) Other pending matters may be withdrawn by a motion to withdraw naming the matter to be withdrawn.

Rule 15. ASSIGNMENTS OF ERROR AND BRIEFS

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

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

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

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

(a) *Time Requirements.*

(1) *Initial Filings.* An appellant's initial brief and assignment of error is due no later than 60 days after the case is docketed with the Court and appellate counsel has received a record of trial. An enlargement of time for a period of 120 days is granted automatically and runs consecutively to the 60-day filing requirement for the initial brief and assignment of error. Therefore, the brief and assignment of error is due to the Court no later than 180 days after the case is docketed. The automatic 120-day continuance does not apply to cases before the Court on further review. Supplemental assignments of error may be filed only upon leave of the Court. Motions to file supplemental assignments of error shall be filed in accordance with Rule 23.10.

(2) *Answers and Subsequent Filings.* Except as indicated below, the appellee's answer must be filed within 30 days after the appellant's brief and assignment of error is filed. If the Court grants the appellant leave to file a supplemental brief and assignment of error, the appellee's answer must be filed within 30 days after the supplemental brief and assignment of error is filed or by the current due date of the appellee's answer to the initial brief and assignment of error, whichever is later. If the appellee's answer to the initial brief and assignment of error was not previously filed, consolidation of the answers is encouraged and the same time requirements apply. The appellant's counsel may file a reply within 7 calendar days after the filing of an answer by the appellee. Otherwise, any replies must be accompanied by a motion for leave to file.

(b) *Format.*

(1) *Initial Filings.* An assignment of error on behalf of an appellant shall be filed in compliance with CCA Rule 15 and Appendix A. Additionally, any briefs in excess of 25 pages must include an Index, to include a subject index of the matters contained therein and a table of cases (alphabetically arranged), statutes and other authorities cited, and references to the pages of the brief where cited.

(2) *Answers.* Answer briefs will follow the same format as an appellant's filing, responding separately to each assigned error or entering a general opposition in accordance with Appendix C. Answers may adopt the

appellant's or petitioner's summary of proceedings and statement of facts and may state additional facts.

(c) *Merits Cases.* Cases will be designated as “merits” cases when appellate defense counsel does not assign and the Court does not specify issues. Counsel for AFLOA/JAJG need not respond to a case submitted on its merits. Briefs submitted on the merits of a case shall conform to the format set forth in Appendix B and be titled “MERITS BRIEF.”

(d) *Grostefon Issues.*

(1) Counsel shall provide the Court with notice of any errors raised personally 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 any 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.

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

Rule 16. ORAL ARGUMENTS

Oral arguments may be heard in the discretion of the Court upon motion by either party or when otherwise ordered by the Court. The motion of a party for oral argument shall be made no later than 7 days after the filing of an answer to an appellant's brief. Such motion shall identify the issue(s) upon which counsel seek argument. The Court may, on its own motion, identify the issue(s) upon which it wishes argument.

Rule 16.1. *Oral Argument.*

(a) *Notice of Hearing.* 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 of any limitations of said argument.

(b) *Filing of Associated Paper Pleadings.* Within 7 calendar days after receiving the Notice of Hearing, counsel for any party that has elected to file paper filings shall provide to the Court 4 copies of its pleadings in the case. If the hearing is

to be by the Court *en banc* and copies of the pleadings have not been provided previously, counsel shall provide a number of copies sufficient for each judge and each clerk then assigned to the Court. Parties who have filed their pleadings electronically need not file any paper documents but the electronic submission must contain the motion and the pleadings.

(c) *Location of Oral Argument.* Unless otherwise announced, oral arguments before a panel of the Court or *en banc* shall be held in the courtroom of the United States Air Force Court of Criminal Appeals, located at 1500 West Perimeter Road, Suite 1900, Andrews Air Force Base, Maryland. Oral arguments may be heard elsewhere, including outside the Washington Metropolitan Area, and when so scheduled the Court will notify counsel of the time, date, and location.

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. Blackberrys, PDAs, cellular phones, pagers, watch alarms, and other unauthorized electronic devices shall be turned off in the courtroom. Unauthorized recording devices, i.e., audio recording devices, cameras, video cameras, phone camera, web cameras, and similar devices are prohibited unless the Court grants prior approval.

(e) *Supplemental Citations of Authority.* Supplemental citations of authority may be submitted by a motion for leave to file no later than 2 business days prior to oral argument with sufficient copies for each judge and honors law clerk involved in the oral argument. Within 7 calendar days following oral argument, counsel may submit a motion for leave to file a memorandum of argument or motion for leave to file a supplemental citation of authority for any argument or citation made during the hearing that was not set forth in the brief filed prior to argument.

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.

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 17. EN BANC PROCEEDINGS

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

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

made by a party unless a judge requests a vote.

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

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

Rule 17.1. *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 this rule, “present for duty” means the judge is physically present in a duty status at the location at which the Court will sit as a whole and is not otherwise conflicted from participation in the case. Reserve appellate judges recalled to active duty, or otherwise serving on extended active duty, will ordinarily be counted in determining quorum and participation in an *en banc* decision. Reserve appellate 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 17.2. *Requests for En Banc Consideration.* A copy of the pleadings and briefs in the case shall be appended to a request for *en banc* consideration.

Rule 17.3. *Oral Arguments.* At the discretion of the Court, oral arguments may be heard on the merits of a case designated for *en banc* consideration upon order of the Court or motion by a party.

Rule 18. ORDERS AND DECISIONS OF THE COURT

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

Rule 18.1. *Orders of the Court.*

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

(b) *Signature.* 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 their 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.

(c) *Types of Orders of the Court.*

(1) *Specifying an Issue.* If the Court desires additional briefs on an issue, whether or not raised by counsel, it may issue an order specifying the issue(s) to be briefed and the time frame within which the responses shall be filed with the Court. The time allowed for filing the brief and answer to the specified issue(s) is usually 15 days but the Court, in its discretion, may modify the time. The Court may also direct additional oral arguments on the specified issue(s) or allow counsel the opportunity to present such argument.

(2) *Insanity Matters.* If, in the opinion of the Court, good cause has been shown to order the convening of a board of medical officers to inquire into the mental competence or responsibility of the appellant, the Court will issue an order directing that such proceedings be instituted. The order may be issued by the Court on its own motion after a review of the record or upon motion by counsel accompanied by sufficient documentation to justify the order. Requests by appellate counsel for psychiatric evaluation of an appellant in a case pending before the Court are made directly to the Court. The request is made as a petition for psychiatric evaluation supported by a concise statement justifying the need for a current psychiatric evaluation. A copy of the petition is served on appellate government counsel at the same time it is filed with the Court. The petition 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.

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

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

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

Rule 18.3. *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 Air Force jurisprudence. Published opinions serve as precedent, providing the rationale of the Court's decision to the public, the parties, military practitioners, and judicial authorities.

(b) *Requests for Publication.* The Court may authorize publication of a previously unpublished opinion upon written request to the Clerk of the Court.

(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 19. RECONSIDERATION

(a) The Court may, in its discretion and on its own motion, enter an order announcing its intent to reconsider its decision or order in any case not later than 30 days after service of such decision or order on the appellate defense counsel or on the appellant, if the appellant is not represented by counsel, provided a petition for grant of review or certificate for review has not been filed with the United States Court of Appeals for the Armed Forces, or a record of trial for review under Article 67(b) has not been received by that Court. No briefs or arguments shall be received unless the order so directs.

(b) Provided a petition for grant of review or certificate for review has not been filed with the United States Court of Appeals for the Armed Forces, or a record of trial for review under Article 67(b) or writ appeal has not been received by the United States Court of Appeals for the Armed Forces, the Court may, in its discretion, reconsider its decision or order in any case upon motion filed either:

(1) By appellate defense counsel within 30 days after receipt by counsel, or by the appellant if the appellant is not represented by counsel, of a decision or order, or

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

(c) A motion for reconsideration shall briefly and directly state the grounds for reconsideration, including a statement of facts showing jurisdiction in the Court. A reply to the motion for reconsideration will be received by the Court only if filed within 7 days of receipt of a copy of the motion. Oral arguments shall not be heard on a motion for reconsideration unless ordered by the Court. The original of the motion filed with the Court shall indicate the date of receipt of a copy of the same by opposing counsel.

(d) The time limitations prescribed by this rule shall not be extended under the authority of Rule 24 or Rule 25 beyond the expiration of the time for filing a petition for review or writ appeal with the United States Court of Appeals for the Armed Forces, except that the time for filing briefs by either party may be extended for good cause.

Rule 19.1. *Motion to Reconsider Interlocutory Orders.* Upon motion by a party or on its own motion, the Court may reconsider an interlocutory order previously rendered by it, provided that jurisdiction of the case has not been obtained by CAAF. Jurisdiction vests with CAAF when a petition or certificate has been filed with that Court. A motion for reconsideration must state with particularity the interlocutory order the moving party seeks to have reconsidered and whether any other court has acquired jurisdiction over the case. For example, a party may move 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 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 the government or the appellant within 30 days after delivery of the decision to the respective appellate divisions or to the place of business of civilian appellate defense counsel, the Court may reconsider a decision or order terminating the case previously rendered by it, provided that jurisdiction of the case has not been obtained by CAAF. Jurisdiction vests with CAAF when a petition or certificate has been filed with that Court. A motion for reconsideration must state the date on which the appellate division or civilian counsel 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, 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, 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.* A motion for reconsideration 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 due to reassignment, lengthy absence, or death, the Chief Appellate Judge shall appoint a substitute judge. Reconsideration shall only be granted upon concurrence of a majority of the panel.

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

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

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

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

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

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

(4) A statement of the issue;

(5) The specific relief sought;

(6) Reasons for granting the writ;

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

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

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

(c) Electronic Petitions. The Court will docket petitions for extraordinary relief submitted by electronic means. A petition submitted by electronic means will conclude with the full name and address of petitioner's counsel, if any, and will state when the written petition and brief, when required, were forwarded to the Court and to all named respondents and by what means they were forwarded.

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

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

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

(g) Oral Argument and Final Action. The Court may set the matter for oral argument. However, on the basis of the pleadings alone, the Court may grant or deny the relief sought or make such other order in the case as the circumstances may require. This includes referring the matter to a special master, who need not be a military judge, to further investigate; to take

evidence; and to make such recommendations as the Court deems appropriate.

Rule 20.1. *Petitions for Extraordinary Relief.*

(a) *Filing the Petition.* Original hard copy petitions for extraordinary relief, including supporting briefs, must be filed with the Clerk of Court, except when the filing is accomplished through electronic means. See AFCCA Rules 5.2(b) and 5.3(b-d) regarding electronic filing. The petition must include a certificate of service on 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 but no later than 20 days after the petitioner learns of the action for which relief is sought.

(1) *Petitions Filed on Behalf of the United States.* Unless filed by the Chief, AFLOA/JAJG, a petition filed on behalf of the United States or any officer or agent thereof shall be coordinated with the Chief, AFLOA/JAJG.

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

(b) *Action on the Petition.*

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

(2) If the Court orders a stay in the trial or other ongoing or prospective proceedings, the Clerk of 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.

(3) In view of the time limit for filing a writ appeal with 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 21. APPEALS BY THE UNITED STATES

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

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

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

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

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

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

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

Rule 21.1. *Appeals by the United States.*

(a) *Processing Appeals.*

(1) 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 docket the case. One copy of the appeal shall also be promptly delivered to the Chief, AFLOA/JAJA and AFLOA/JAJD by the Chief, 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 Misc. Dkt. No. 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 associated brief is received by the Court, the Clerk of the Court shall assign it 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 CCA 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 CCA 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) *Answer.* Appellate defense counsel may prepare an answer in the manner prescribed by CCA Rule 15 and shall file any such answer within 20 days after the government's appeal and brief are filed with the Court.

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

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

(f) *Withdrawal of Appeal.* If the government elects to withdraw an appeal before the Court has issued a decision, appellate government counsel shall file a motion to withdraw the appeal. If the motion is granted, the original record shall be released to the Chief, Appellate Records Branch of AFLOA/JAJM.

Rule 22. PETITIONS FOR NEW TRIAL

(a) Whether submitted to the Judge Advocate General by the accused in propria persona or by counsel for the accused, a petition for new trial submitted while the accused’s case is undergoing review by a Court of Criminal Appeals shall be filed with an original and two copies and shall comply with the requirements of Rule for Courts-Martial 1210(c).

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

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

Rule 22.1. Petitions for New Trial.

(a) 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 CCA 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 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 23.1. *Motions Generally.*

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

(b) Ability to Consult. In order to expedite any given motion, and at their discretion, counsel may consult opposing counsel to inform them 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 would consult with the Chief, AFLOA/JAJG. 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.

(c) 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. For good cause, the responding party may move for an enlargement of time for up to 30 calendar days to file a response. Such a request must state good cause with particularity. All responses shall be submitted as an individual response in the format set forth in Appendix C. No grouped responses or e-mail message responses shall be permitted.

Rule 23.2. *Summary Disposition.* As appropriate, the Court may summarily act on any matter or motion before it without awaiting a brief, answer, reply, opposition, etc. Any party adversely affected by the Court's action may request reconsideration, vacation, or modification of such action.

Rule 23.3. *Motion for Oral Argument.*

(a) *General.* Oral arguments may be heard in the discretion of the Court upon motion by either party. Counsel for either party may move for oral argument no later than 7 calendar days after the filing of an answer to the appellant's brief. Such motion shall propose a date and time for the oral argument and identify the issue(s) upon which counsel seek argument. Without leave of the Court, no more than 3 issues will be argued. Unless the appellant has assigned 3 or fewer errors, motions for oral argument that do not specify the issues to be argued shall be denied. The other party to the action shall file a response stating whether it opposes or supports the motion and whether it has any conflict with the proposed date and time.

(b) *Court Ordered Argument.* The Court may direct oral argument in any case, identifying the issue(s) upon which it wishes to hear argument.

Rule 23.4. *Motion to Attach Documents.*

(a) A motion to attach documents to the record of trial shall include a title and summary of the proposed items to be attached and a statement as to their relevance to the case.

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

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

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

(a) A motion to conduct a mental health evaluation under R.C.M. 706 may be

made to the Court if, in the opinion of either party, good cause has been shown to order the convening of a medical board to inquire into the appellant's mental responsibility at the time of the offense, or mental capacity to stand trial, or mental capacity to participate in the review of the case at the appellate level.

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

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

Rule 23.8. Motion to Cite Supplemental Authorities. In the event that relevant new law has been issued or discovered by counsel subsequent to the submission of a brief, answer, or reply, counsel shall supplement the filings by bringing the citation of a relevant authority to the attention of the Court in a motion to cite supplemental authorities within 2 business days. Such motions will briefly explain the relevance of each newly cited authority to the issues before the Court.

Rule 23.9. Motion to Compel. Whenever it is clear that the original record of trial is missing an item necessary for the Court's consideration, counsel may move the Court to compel the government to produce the item. Such a motion should identify with particularity the item that is missing and how it is relevant to the Court's review.

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

Rule 23.11. Motion to Review Sealed Records. Counsel shall submit a motion to the Court requesting authorization to review sealed exhibits. Counsel must show cause for such a request. The Court's administrative and paralegal staff maintains responsibility for resealing all sealed exhibits.

Rule 24. CONTINUANCES AND INTERLOCUTORY MATTERS

Except as otherwise provided in Rule 19(d), the Court, in its discretion, may extend any time limits prescribed and may dispose of any interlocutory or other

appropriate matter not specifically covered by these rules, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case. See Rule 4.

Rule 24.1. *Motion for Enlargement of Time.*

(a) *Motion Submission.* Upon motion and for good cause shown, the Court may grant counsel an enlargement of the time prescribed by the CCA Rules. The filing of a motion for enlargement of time does not toll the prescribed time period. Counsel's time continues to run until the motion is granted. Counsel must file motions for an enlargement of time at least 5 calendar days before the filing is due to permit the opposing party to submit their opposition and for the Court to give timely consideration. Each motion for enlargement of time will note whether it is the first, second, third, etc. in that case and show good cause for the enlargement.

(b) *Assignments of Error and Answer Submission.*

(1) *Initial Motion.* Motions for the first enlargement of time shall be filed within 175 calendar days of receipt of the record of trial. The first motion for enlargement of time will not normally be granted for periods longer than 30 calendar days and will be granted only upon a showing of good cause.

(2) *Subsequent Motion.* Subsequent motions for enlargement of time will not normally be granted for periods longer than 30 calendar days and will be granted only upon a showing of good cause. In any motion for enlargement of time requesting a filing date beyond 30 calendar days, if counsel cites caseload as a reason for the delay, a detailed explanation of the number and complexity of counsel's pending cases; weekly working hours; and the number and prioritization of other duties, specifically time spent assisting other counsel with their cases, preparing for oral argument, and executing collateral duties is required. Hardship to counsel, if a factor, must be explained. Counsel for the moving party shall be prepared to present oral argument on the motion if so directed by the Court.

(3) *Content.* Motions for enlargement of time shall indicate the number of days that have elapsed since the case was first docketed with the Court; the number of days that will have elapsed since docketing on the date requested; the number of litigated specifications, if any, and the findings and sentence approved by the convening authority; a brief description of any motions raised at trial that were preserved for appeal; the length of the transcript of the appellant's trial and the number of trial and appellate exhibits; whether

the appellant is confined, any other information counsel deems relevant to the request. Counsel for appellant will state whether appellant has concurred in the requested delay in any case that has been, or will become during the requested time frame, docketed with this Court for 365 days or longer. The Court may, by order, shorten the time frame for requiring this information in any case that has been or will become, during the requested time frame, docketed with the Court for 365 days or longer. Where the appellant opposes such enlargement request or cannot be contacted for consultation, the requested enlargement for a filing date beyond 30 calendar days from docketing will only be granted upon a showing of extraordinary circumstances.

Rule 25. SUSPENSION OF RULES

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

Rule 26. INTERNAL RULES

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

Rule 26.1. *Implementation of Rules.* The AFCCA Rules of Practice and Procedure, and any Internal Operating Procedures implemented and supplement the CCA Rules set forth in 44 M.J. LXIII-LXXX and those provisions of the current edition of the MANUAL FOR COURTS-MARTIAL, UNITED STATES that apply to the operation of the Court.

Rule 26.2. *Scope and Application of Rules.* The AFCCA Rules are promulgated by the Chief Appellate Judge and apply to all appellate military judges, Court staff, members of the Bar admitted to practice before the Court, and *amicus curiae* when permitted.

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

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

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

(a) Audio and/or Audio-Visual recording of oral arguments before the Court are 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 AFCCA 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 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.

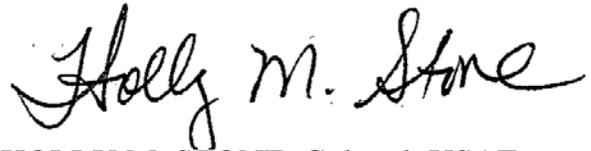
(c) When practical, audio and/or audio-visual recordings of oral arguments shall remain posted on the Court's website for 1 year from the date of posting.

Rule 28. AMENDMENTS

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

General shall refer them to the Chief Judges of the Courts for comment. The Chief Judges shall confer on any proposed changes, and shall report to the Judge Advocates General as to the suitability of proposed changes and their impact on the operation of the Courts and on appellate justice.

Rule 28.1. *Questions, General Waiver Requests, and Suggested 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.



HOLLY M. STONE, Colonel, USAF
Chief Appellate Judge



FOR THE COURT



STEVEN LUCAS
Clerk of the Court

APPENDIX A

FORMAT FOR BRIEF ON BEHALF OF APPELLANT

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL

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

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

Issue Presented

[Set forth each alleged error in bold type. If asserting more than one error, number each alleged 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).]

Summary of Proceedings

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

Statement of Facts

[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 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, copies of decisions of other courts, and unpublished decisions. See CCA Rule 15(c). Appendices may not be used to submit extra-record factual matters, which must instead be submitted to the Court by separate motion.]

[Signature of Counsel]

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

[Title]

[Organization]

[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

UNITED STATES	)	MERITS BRIEF
<i>Appellee,</i>)	
	)	Before Panel No. ____
v.)	
	)	ACM _____
[Rank of Appellant])	
[NAME OF APPELLANT],	)	Tried at [location] on [date] before
USAF,	)	[type of court-martial] convened by
<i>Appellant.</i>	)	[convening authority][(MAJCOM)]

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

Summary of Proceedings

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

Statement of Facts

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	OPPOSITION TO [DESCRIBE]
<i>Appellee,</i>)	
)	
v.)	
	)	ACM _____
[Rank of Appellant])	
[NAME OF APPELLANT],)	
USAF,)	
<i>Appellant.</i>	)	Panel No. [Panel #]

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

[Set forth basis for 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]