

TITLE 10—APPENDIX

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UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES RULES OF PRACTICE AND PROCEDURE

(Effective July 1, 1983, as amended to January 16, 1996)

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| | APPEALS | | Section 941 of Title 10, United States Code, provides that the name of the Court is the "United States Court of Appeals for the Armed Forces." |
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| 20. | Form of Petition for Grant of Review. | | The official seal of the court is as follows: |
| 21. | Supplement to Petition for Grant of Review. | | In front of a silver sword, point up, a gold and silver balance supporting a pair of silver scales, encircled by an open wreath of oak leaves, green with gold acorns; all on a grey-blue background and within a dark blue band edged in gold and inscribed "UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES" in gold letters. |
| 22. | Certificate for Review. | | (As amended Jan. 4, 1995.) |
| 23. | Mandatory Review Case. | | Rule 3. Oath of Judges |
| | BRIEFS | | Before undertaking the performance of the duties of his office, each Judge appointed to this |
| 24. | Form and Content, Page Limitations, Style, and Classified Information. | | |
| 25. | When Briefs are Required. | | |
| 26. | <i>Amicus Curiae</i> Briefs. | | |
| | EXTRAORDINARY RELIEF | | |
| 27. | Petition for Extraordinary Relief, Writ Appeal Petition, Answer, and Reply. | | |
| 28. | Form of Petition for Extraordinary Relief, Writ Appeal Petition, Answer, and Reply. | | |
| | PETITIONS FOR NEW TRIAL | | |
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Rule 3A TITLE 10, APPENDIX—RULES OF COURT OF APPEALS FOR THE
ARMED FORCES

Court shall take the oath or affirmation prescribed in Section 453 of Title 28, United States Code.

Rule 3A. Senior Judges

(a) With the Senior Judge's consent, and at the request of the Chief Judge, a Senior Judge may perform judicial duties with the Court if an active Judge of the Court is disabled or has recused himself or if there is a vacancy in an active judgeship on the Court. For the periods of time when performing judicial duties with the Court, a Senior Judge shall receive the same pay, per diem, and travel allowances as an active Judge; and the receipt of pay shall be in lieu of receipt of retired pay or annuity with respect to these same periods. The periods of performance of judicial duties by a Senior Judge shall be certified by the Chief Judge and recorded by the Clerk of Court. The Clerk of Court shall notify the appropriate official to make timely payments of pay and allowances with respect to periods of time when a Senior Judge is performing judicial duties with the Court and shall notify the Department of Defense Military Retirement Fund to make appropriate adjustments in the Senior Judge's retired pay or annuity. *See* Article 142(e)(2), Uniform Code of Military Justice (UCMJ), 10 USC §942(e)(2).

(b) In addition to the performance of judicial duties with the Court, a Senior Judge may, at the request of the Chief Judge and with the Senior Judge's consent, perform such other duties as the Chief Judge may request or the Court may direct. Such other duties may include, but are not limited to, service as a special master or as an adviser on Court operations, administration, and rules; representation of the Court at conferences, seminars, committee meetings or other official or professional functions; coordination of or assistance with conferences being conducted by the Court; and assistance in the compilation of history or archives of the Court. A Senior Judge shall not receive pay for the performance of such other duties with the Court but may be paid per diem and travel allowance to reimburse expenses incurred by the Senior Judge while performing such duties.

(c) Whether in the performance of judicial duties or other duties, a Senior Judge shall be provided such administrative and secretarial assistance, office space, and access to the Courthouse, other public buildings, court files, and related information, as the Chief Judge considers appropriate for the performance of those duties by the Senior Judge.

(d) The title of Senior Judge may not be used in any way for personal gain or in connection with any business activity, advertisement, or solicitation of funds. However, the title of a Senior Judge may be referred to in any professional biography or listing and may be used in connection with any judicial or other duties that the Chief Judge requests the Senior Judge to perform.

(e) No Senior Judge of the Court may engage in the practice of law in connection with any matter that involves an investigation or trial for any matter arising under the Uniform Code of Military Justice or appellate review of any

court-martial proceeding by a Court of Criminal Appeals, the United States Court of Appeals for the Armed Forces, or the Supreme Court of the United States.

(f) These rules shall apply to "senior judges" as defined by Article 142(e)(1), UCMJ, 10 USC 942(e)(1) and are promulgated pursuant to Article 142(e)(5), UCMJ, 10 USC §942(e)(5).

(Added Sept. 29, 1990, eff. Oct. 1, 1990; amended Oct. 12, 1994.)

Rule 4. Jurisdiction

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

(1) *Death sentences.* Cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death. *See* Rule 18(a)(3);

(2) *Certified by a Judge Advocate General.* Cases reviewed by a Court of Criminal Appeals, including decisions on appeal by the United States under Article 62, UCMJ, 10 USC §862 (1983), or on application for extraordinary relief filed therein, which a Judge Advocate General forwards by certificate for review to the Court. *See* Rule 18(a)(2);

(3) *Petitions by the accused.* Cases reviewed by a Court of Criminal Appeals, including decisions on appeal by the United States under Article 62, UCMJ, 10 USC §862 (1983), in which, upon petition of the accused and on good cause shown, the Court has granted review. *See* Rule 18(a)(1).

(b) *Extraordinary Writs.* (1) The Court may, in its discretion, entertain original 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. *See* 28 USC §1651(a) and Rules 18(b), 27(a), and 28. Absent good cause, no such petition shall be filed unless relief has first been sought in the appropriate Court of Criminal Appeals. Original writs are rarely granted.

(2) The Court may, in its discretion, entertain a writ appeal petition to review a decision of a Court of Criminal Appeals on a petition for extraordinary relief. *See* Rules 18(a)(4), 19(e), 27(b), and 28.

(c) *Rules Not to Affect Jurisdiction.* These Rules shall not be construed to extend or to limit the jurisdiction of the United States Court of Appeals for the Armed Forces as established by law.

(As amended July 19, 1984, eff. Aug. 1, 1984; Oct. 1, 1987; Oct. 12, 1994; Nov. 1, 1995, eff. Nov. 15, 1995.)

Rule 5. Scope of Review

The Court acts only with respect to the findings and sentence as approved by reviewing authorities, and as affirmed or set aside as incorrect in law by a Court of Criminal Appeals, except insofar as it may take action on a certificate for review or a petition for review of a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 USC §862 (1983), or to grant extraordinary relief in aid of its jurisdiction, including the exercise of its supervisory powers over the administration of the Uniform Code of Military Justice. The Court may specify or act on any issue con-

cerning a matter of law which materially affects the rights of the parties.

(As amended Oct. 1, 1987; Oct. 12, 1994.)

Rule 6. Quorum

(a) A majority of the judges in regular active service authorized to constitute the United States Court of Appeals for the Armed Forces shall constitute a quorum. The concurrence of the majority of such judges, whether present and voting or voting telephonically or electronically, shall be required for a final resolution of any matter before the Court, subject to subsections (b), (c), and (d). In the event there are fewer than three active judges, such active judges shall constitute a quorum. *See* Article 144, UCMJ, 10 USC §944.

(b) The Chief Judge, or the judge performing the duties of the Chief Judge, shall have the authority to issue temporary orders or stays pending the convening of a quorum. *See* Rules 15(f) and 27(a)(4).

(c) If no judge is present, the Clerk may adjourn the Court from day to day. *See* Rule 9(d).

(d) In the event a senior judge is recalled under Article 142(e), UCMJ, 10 USC §942(e), or an Article III judge is designated under Article 142(f), UCMJ, 10 USC §942(f), to sit on the Court, such judge shall be deemed to be a judge in regular active service under this rule with respect to those matters over which that judge has been recalled or designated to serve. To the extent that a judge in regular active service has been replaced under any circumstance set forth in Article 142(e)(1)(A)(i), (ii), or (iii), 10 USC §942(e)(1)(A)(i), (ii), or (iii), that judge shall not be included in the constitution of a quorum under this rule.

(Interim change May 11, 1994; amended Oct. 12, 1994; Nov. 1, 1995, eff. Nov. 15, 1995.)

Rule 7. Process

All process of the Court, except mandates, shall be in the name of the United States and shall contain the names and the military rank or civilian office, if any, of the parties.

Rule 8. Parties

(a) The title of any case filed with the Court shall contain the name, military rank and service number of an accused and, where appropriate, the official military or civilian title of any named party who is an agent or officer of the United States acting in such official capacity. In the case of an appeal taken by the United States under Article 62, UCMJ, 10 USC §862 (1983), the appeal shall be docketed under the same title given to the action in the court-martial with the accused and the United States denominated as the sole parties therein.

(b) The party petitioning for grant of review of a decision of a Court of Criminal Appeals, whether from a decision on appeal by the United States under Article 62, UCMJ, 10 USC §862 (1983), or from a decision affecting the findings or sentence or both of a court-martial, or from a decision on application for extraordinary relief, will be deemed to be the appellant. Other named parties will be deemed to be appellees.

(c) When a certificate for review is filed by a Judge Advocate General, the party prevailing below on the certified issues will be deemed to be the appellee. The other party will be deemed to be the appellant.

(d) When a mandatory review case is filed, the accused therein will be deemed to be the appellant. The other party will be deemed to be the appellee.

(e) If a petition for grant of review or a certificate for review is filed after an action has been docketed in the same case, the party on whose behalf relief is sought in the second action will be deemed to be the appellant or cross-appellant, depending on whether such party has been deemed to be the appellant or appellee in the first action. The other party in the second action will be deemed to be the appellee or cross-appellee in a similar manner.

(f) The party or parties filing a petition for extraordinary relief with the Court will be deemed to be the petitioner or petitioners, and other parties named in such petition will be deemed to be the respondents. When an accused has not been named as a party to an action involving a petition for extraordinary relief, such accused shall be identified by the petitioner and shall be designated as the real party in interest.

(As amended Oct. 1, 1987; Feb. 27, 1991; Oct. 12, 1994.)

CLERK'S OFFICE

Rule 9. Clerk

(a) *Location of office.* The Clerk's office shall be located in the courthouse at 450 E Street, Northwest, Washington, D.C. 20442.

(b) *Oath of office.* Before entering upon the execution of his office, the Clerk shall take the oath or affirmation prescribed in Section 951 of Title 28, United States Code.

(c) *Custodian of records.* The Clerk shall serve as custodian of the records of the Court, and shall not permit any documents relative to a case to be taken from the courthouse except by order of a judge of the Court. However, after final action on a case in which documents containing classified information have been filed with the Court under Rule 24(d), the Clerk shall, as Court Security Officer, consult with the originating armed service to determine the appropriate disposition of such documents. *See* Rule 12.

(d) *Disposition of procedural matters.* Notwithstanding the provisions of Rule 6, the Clerk, on behalf of the Court, may entertain and act on any motion seeking an enlargement of time not to exceed 30 days, leave to withdraw as counsel, or permission to file citations, pleadings, or other papers relative to a matter pending before the Court, provided such motion is not opposed and such action does not substantially affect the rights of the parties or the ultimate decision in the case. The order of the Clerk shall be deemed the order of the Court.

(e) *Hours.* The Clerk's office shall be open for the filing of pleadings and other papers from 9:00 a.m. to 5:00 p.m. every day except Saturdays, Sundays, and legal holidays, or as otherwise ordered by the Court. *See* Rule 36(a).

Rule 10 TITLE 10, APPENDIX—RULES OF COURT OF APPEALS FOR THE
ARMED FORCES

(As amended Mar. 31, 1994.)

Rule 10. Docket

(a) *Maintenance of docket.* The Clerk shall maintain:

(1) a regular docket for cases subject to mandatory review, petitions to review convictions or sentences affirmed by a Court of Criminal Appeals, and certificates for review of final decisions in a Court of Criminal Appeals;

(2) a miscellaneous docket for petitions for grant of review and certificates for review of decisions by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 USC §862 (1983), petitions for extraordinary relief, writ appeal petitions, and certificates for review of decisions on application for extraordinary relief in a Court of Criminal Appeals; and

(3) a special docket of the matters arising under Rule 15 concerning complaints of unprofessional conduct against a member of the Bar of this Court.

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

(b) *Docket number.* In a mandatory review case, a docket number will be assigned upon receipt of the record from the Judge Advocate General. In all other cases, a docket number will be assigned upon receipt of the initial pleading. All pleadings or other papers subsequently filed in the case will bear the assigned docket number.

(c) *Notice of docketing.* The Clerk shall notify the appropriate Judge Advocate General and all parties of the receipt and docketing of a case and the docket number assigned. In the case of a petition for extraordinary relief, the Clerk shall also notify all named respondents of the petition's receipt and docketing.

(d) *Entry of final decision.* The Clerk shall prepare, sign, and enter the final decision following receipt of the opinion of the Court. If a final decision is rendered without opinion, the Clerk shall prepare, sign, and enter the final order following the instructions of the Court. The Clerk shall, on the date a final decision is entered, distribute to all parties and the Judge Advocate General a copy of the opinion, if any, or of the final order if no opinion was written, and notice of the date of entry thereof.

(As amended Oct. 1, 1987; Oct. 12, 1994.)

Rule 11. Calendar

(a) The Clerk shall prepare a calendar, consisting of the cases that have become or will be available for hearing, which shall be arranged in the first instance in the chronological order in which petitions for grant of review have been granted or certified questions and mandatory appeals have been filed with the Court. The arrangement of cases on the calendar shall be subject to modification in light of the availability

of pleadings, extensions of time to file briefs, and orders to advance or specially set cases for hearing.

(b) The Clerk shall periodically publish hearing lists in advance of each Court session for the convenience of counsel and the information of the public.

(c) The Clerk shall advise counsel when they are required to be present in Court. *See* Rule 40(b)(1).

(d) Cases may be advanced or postponed by order of the Court, upon motion duly made showing good cause therefor, or on the Court's own motion. *See* Rule 40(b).

(e) Two or more cases involving the same question may, on the Court's own order or by special permission, be heard together as one case or on such terms as may be prescribed.

Rule 12. Cases Involving Classified Information

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

(b) *Classified documents.* Documents containing classified information will be stored and safeguarded by the Court Security Officer in accordance with the Department of Defense Information Security Program Regulation (DOD Regulation 5200.1-R) or the Security Procedures Established by the Chief Justice of the United States pursuant to Pub. L. 96-456, 94 Stat. 2025, as appropriate. *See* Rules 9(c) and 24(d).

(c) *Security clearances.* Security clearances for personnel on the staff of the Court will be obtained by the Court Security Officer in accordance with the Department of Defense Information Security Program Regulation.

ATTORNEYS

Rule 13. Qualifications to Practice

(a) No attorney shall practice before this Court unless the attorney has been admitted to the bar of this Court or is appearing *pro hac vice* by leave of the Court. *See* Rule 38(b).

(b) It shall be a requisite to the admission of attorneys to the Bar of this Court that they be a member of the Bar of a Federal court or of the highest court of a State, Territory, Commonwealth, or Possession, and that their private and professional character shall appear to be good.

(c) Each applicant shall file with the Clerk an application for admission on the form prescribed by the Court, together with an application fee of \$25 and a certificate from the presiding judge, clerk or other appropriate officer of a court specified in (b) above, or from any other appropriate official from the Bar of such court, that the applicant is a member of the Bar in good standing and that such applicant's private and professional character appear to be good. The certificate of good standing must be an original and must be dated within one year of the date of the application.

(d) If the documents submitted demonstrate that the applicant possesses the necessary qualifications, the Clerk shall so notify the applicant

and he or she may be admitted without appearing in Court by subscribing a written oath or affirmation. However, if the applicant so elects, the admission may be on oral motion by a member of the Bar of this Court in open court. Upon admission, the Clerk shall issue to the attorney a wallet-size admission card and a large certificate of admission suitable for framing.

(e) Each applicant shall take or subscribe the following oath or affirmation:

"I * * *, do solemnly swear (or 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."

(f) Admissions will be granted on motion of the Court or upon oral motion by a person admitted to practice before the Court. Special admissions may be held by order of the Court.

(As amended July 16, 1990, eff. Aug. 15, 1990; Aug. 15, 1991, eff. Oct. 1, 1991.)

Rule 13A. Student Practice Rule

(a) *Appearance by Law Student.* With leave of this Court, an eligible law student acting under a supervising attorney may appear in a particular case, except a case in which any party is under or is potentially subject to a sentence of death, on behalf of any party, including the United States, provided that the student and supervising attorney comply with the provisions of this rule.

(b) *Eligibility of Student.* To be eligible to appear and participate in any case, a law student must:

(1) be a student in good standing in a law school approved by the American Bar Association, or be a recent graduate of such school awaiting the result of a state bar examination;

(2) have completed legal studies amounting to at least four semesters, or the equivalent if the school is on some basis other than a 3 year, 6 semester basis;

(3) have completed and received a passing grade in courses in criminal procedure and criminal law;

(4) neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the services are rendered; and

(5) be familiar with the Uniform Code of Military Justice and the rules of this Court.

(c) *Supervising Attorney Requirements.* A supervising attorney must:

(1) be an attorney of record in the case;

(2) be a member in good standing of the bar of this Court;

(3) have been admitted to practice for a minimum of two years and have appeared and argued in at least one case before this Court or appeared and argued in at least three cases before state or Federal appellate courts;

(4) not supervise more than five (5) students at any one time;

(5) appear with the student in any oral presentations before this Court;

(6) read, approve and sign all documents filed with this Court;

(7) assume personal professional responsibility for the student's work in matters before this Court;

(8) be responsible to supplement the oral or written work of the student as necessary to ensure proper representation of the client;

(9) guide and assist the student in preparation to the extent necessary or appropriate under the circumstances;

(10) be available to consult with the client; and

(11) neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the services are rendered.

(d) *Authorization and Certification.* (1) The party on whose behalf the student appears must consent to the representation by that student in writing.

(2) The supervising attorney must indicate in writing approval of the appearance by the law student and consent to supervise the law student.

(3) The law student must be certified by the dean of the student's law school as being of good character and competent legal ability.

(4) Before commencing student representation in any case under this rule, the supervising attorney shall file a motion for leave to allow student representation in such case. The motion should put forth that the provisions of this rule have been met and that in counsel's view the case is an appropriate one for student representation. The written consent, approval and certification referred to above shall be attached to the motion. A copy of the motion shall be served on opposing counsel, but no answer will be allowed except with leave of the Court. Once these documents are filed, the Court will decide, using its discretion on a case-by-case basis, whether to allow the student representation.

(e) *Activities.* Upon fulfilling the requirements of this rule, the student may enter an appearance in a case and:

(1) assist in the preparation of briefs and other documents to be filed in this Court, but such briefs or documents must also be signed by the supervising attorney;

(2) participate in oral argument, but only in the presence of the supervising attorney; and

(3) take part in other activities in connection with the case, subject to the direction of the supervising attorney.

(f) *Termination.* The dean's certification of the student:

(1) shall remain in effect, unless sooner withdrawn, until the publication of the results of the first bar examination taken by such student following the student's graduation. For any student who passes that examination the certification shall continue in effect until the date the student is admitted to the bar;

(2) may be withdrawn by the Court at any time; and

(3) may be withdrawn by the dean at any time.

(g) *Exceptions.* (1) This rule does not apply to an appearance or an oral argument by a law student on behalf of an *amicus curiae*.

(2) Nothing in this rule shall preclude the Government or any agency, firm, or organization from compensating a law student for services rendered under such rule.

(3) The Court retains the authority, on good cause shown, to establish exceptions to these procedures in any case. *See* Rule 33.

(Added Nov. 1, 1995, eff. Nov. 15, 1995.)

Rule 14. Honorary Membership

Honorary membership in the Bar of the Court may be granted from time to time to distinguished members of the legal profession of other nations who are knowledgeable in the fields of military justice or the law of war. A candidate for honorary membership will be presented at the Bar in person after the nomination has previously been approved by the Court. A certificate of honorary membership in the Bar will be presented to the person so honored.

Rule 15. Disciplinary Action

(a) The Model Rules of Professional Conduct of the American Bar Association are hereby adopted as the rules of conduct for members of the Bar of this Court. After notice, investigation, and hearing as provided in this rule, the Court may take any disciplinary action it deems appropriate for failure to comply with the Model Rules of Professional Conduct.

(b) For purposes of this rule, the Court shall appoint an Investigations Committee consisting of five members of the Bar of this Court who shall be appointed for a period of three years. The Investigations Committee shall consider such complaints as may be referred to it for investigation, including the taking of evidence, and shall submit a report of such investigation to the Court.

(c) Upon receipt and docketing of a written complaint under oath of unprofessional conduct against a member of its Bar, the Court will cause a copy thereof to be served by certified mail, return receipt requested, on the attorney thus accused. The Clerk will, in addition, acknowledge by letter, to the person filing such complaint, the receipt thereof. The accused attorney will answer the complaint by filing a formal pleading responsive to each allegation of misconduct within 30 days of receipt of the complaint, but extensions of time may be granted by order of the Court on the accused attorney's application. A complaint will be docketed only if the Court makes a preliminary determination that it is not frivolous.

(d) On consideration of the complaint and answer, and if it believes a substantial basis exists for the complaint, the Court will refer the matter to its Investigations Committee for consideration under subsection (b). Otherwise, the Court will dismiss the complaint. Any such investigation will be held privately, unless the accused attorney requests that it be opened to the public.

(e) On receiving the report of the Investigations Committee, the Court may dismiss the complaint or order the matter set down for hearing, giving due notice to the accused attorney. At the hearing, the accused attorney will be given opportunity to present such matters relevant to the complaint as he or she deems appropriate and to examine any witnesses against such attorney. All documents received in con-

nection with a complaint under this rule shall be furnished to the accused attorney. A majority vote of the Court is necessary to find an attorney guilty of unprofessional conduct and to fix any penalty.

(f) When it is shown to the Court that any member of its Bar has been disbarred or suspended from practice by any court, such member will be forthwith called upon to show cause within 30 days why similar action should not be taken by this Court. Upon the filing of the member's answer to an order to show cause, or upon the expiration of 30 days if no answer is filed, the Court will enter an appropriate order; but no order of disbarment or suspension will be entered except with the concurrence of a majority of the judges participating.

(g) Penalties for unprofessional conduct may extend to reprimand, suspension, or disbarment.

(h) Except for an order of reprimand, suspension or disbarment, no papers, pleadings or other information relative to a complaint in a disciplinary proceeding will be published or released to the public without prior approval of the Court. The docket of matters arising under this rule shall not be available to the public.

(As amended July 16, 1990, eff. Aug. 15, 1990.)

Rule 16. Entry of Appearance and Withdrawal by Counsel

(a) Counsel shall enter an appearance in writing before participating in the representation of a party to an action before the Court; however, the filing of any pleading or other paper relative to a case which contains the signature of counsel shall constitute such an entry of appearance. *See* Rules 13(a) and 38.

(b) Leave to withdraw by any counsel who has entered an appearance under subsection (a) must be requested by motion in accordance with Rule 30. A motion by an appellate defense counsel must indicate the reasons for the withdrawal and the provisions which have been made for continued representation of the accused. A copy of a motion filed by an appellate defense counsel shall be delivered or mailed to the accused by the moving counsel.

Rule 17. Assignment of Counsel

Upon receipt of a notice of the docketing of a case issued under Rule 10(c), the appropriate Judge Advocate General shall designate appellate military counsel to represent the parties, unless such counsel have previously been designated. In a case involving a petition for extraordinary relief wherein an accused has been denominated as the real party in interest by a filing party or has been so designated by the Court, the Judge Advocate General shall also designate appellate military counsel to represent such accused.

APPEALS

Rule 18. Methods of Appeal

(a) The Court will entertain the following appeals:

(1) *Cases under Article 67(a)(3)*. Cases under Article 67(a)(3), UCMJ, 10 USC §867(a)(3) (1989), in-

cluding decisions by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 USC §862 (1983), may be appealed by the filing of a petition for grant of review by an appellant or by counsel on behalf of an appellant substantially in the form provided in Rule 20(a) or (b).

(2) *Cases under Article 67(a)(2)*. Cases under Article 67(a)(2), UCMJ, 10 USC §867(a)(2) (1989), including decisions by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 USC §862 (1983), which are forwarded by a Judge Advocate General by a certificate for review must be substantially in the form provided in Rule 22(a).

(3) *Cases under Article 67(a)(1)*. Cases under Article 67(a)(1), UCMJ, 10 USC §867(a)(1) (1989), will be forwarded by a Judge Advocate General by the filing of the record with the Court, together with the form prescribed by Rule 23(a).

(4) *Cases under Rule 4(b)(2)*. Decisions by a Court of Criminal Appeals on petitions for extraordinary relief may be appealed by filing a writ appeal petition and accompanying brief in accordance with Rules 24, 27(b), and 28.

(b) In addition, 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. See Rules 4(b)(1), 27(a) and 28.

(As amended Oct. 1, 1987; Oct. 12, 1994.)

Rule 19. Time Limits

(a) *Petition for grant of review/supplement/answer/reply*. (1) A petition for grant of review shall be filed no later than 60 days from the earlier of:

(A) the date on which the appellant is notified of the decision of the Court of Criminal Appeals; or

(B) the date on which a copy of the decision of the Court of Criminal Appeals, after being served on appellate counsel of record for the appellant (if any), is deposited in the United States mails for delivery by first-class certified mail to the appellant at an address provided by the appellant or, if no such address has been provided by the appellant, at the latest address listed for the appellant in his official service record. Under circumstances where certified mail is not available, registered mail may be used. See Article 67(b), UCMJ, 10 USC §867(b) (1989).

(2) A certificate of notification shall be placed in the appellant's record of trial setting forth the manner and date that the appellant was notified of the decision of the Court of Criminal Appeals or the date that a copy of such decision was mailed to the appellant after service of a copy of such decision on appellate defense counsel of record.

(3) For purposes of this rule, a petition for grant of review will be deemed to have been filed on the date when the petition has been mailed or delivered by an appellant or by counsel on behalf of an appellant directly to the Court.

(4) Any petition for grant of review received from an appellant or counsel on behalf of an appellant shall, upon receipt, be accepted and

docketed by the Clerk. If it appears that such petition is not in accord with Article 67, UCMJ, 10 USC §867 (1989), or with the Court's rules, the United States may move to dismiss such petition.

(5)(A) *Article 62, UCMJ, appeals*. In cases involving a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 USC §862 (1983), a supplement to the petition establishing good cause in accordance with Rule 21 shall be filed no later than 20 days after the issuance by the Clerk of a notice of docketing of such a petition for grant of review. See Rule 10(c). An appellee's answer to the supplement to the petition for grant of review shall be filed no later than 10 days after the filing of such supplement. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer.

(B) *Other appeals*. In all other appeal cases, a supplement to the petition establishing good cause in accordance with Rule 21 shall be filed no later than 30 days after the issuance by the Clerk of a notice of docketing of a petition for grant of review. See Rule 10(c). An appellee's answer to the supplement to the petition for grant of review may be filed no later than 30 days after the filing of such supplement. See Rule 21(e). A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

(6) The Court shall act promptly on a petition for grant of review. See Article 67(b), UCMJ, 10 USC §867(b) (1989).

(7) *Granted petitions*. (A) *Article 62, UCMJ, appeals*. Where a petition has been granted in a case involving a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 USC §862 (1983), no further pleadings will be filed and the Court will, whenever practicable, give priority to such cases.

(B) *Other appeals*. Where a petition has been granted in all other appeal cases and briefs have been ordered, an appellant's brief shall be filed in accordance with Rule 24 no later than 30 days after the date of the order granting the petition. 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 by the appellant no later than 10 days after the filing of the appellee's answer.

(b) *Certificate for review/brief/answer/reply*. (1) *Article 62, UCMJ, cases*. In cases involving a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 USC §862 (1983), a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, shall be filed with the Court by the Judge Advocate General no later than 30 days after the date of the decision of the Court of Criminal Appeals. See Rules 22 and 34(a). An appellee's answer shall be filed no later than 10 days after the filing of such certificate for review and supporting brief. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer.

(2) *Extraordinary relief cases*. In cases involving a decision by a Court of Criminal Appeals on application for extraordinary relief filed therein, a certificate for review, together with a supporting brief in accordance with Rule 24 on behalf of

the appellant, shall be filed with the Court by the Judge Advocate General no later than 30 days after the date of the decision of the Court of Criminal Appeals. *See* Rules 22 and 34(a). An appellee's answer shall be filed no later than 10 days after the filing of such certificate for review and supporting brief. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer.

(3) *Other cases.* In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review filed by the Judge Advocate General shall be filed no later than 30 days after the date of the decision of the Court of Criminal Appeals. *See* Rules 22 and 34(a). An appellant's brief shall be filed in accordance with Rule 24 no later than 30 days after the issuance by the Clerk of a notice of docketing of the certificate for review. 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 by the appellant no later than 10 days after the filing of the appellee's answer.

(c) *Mandatory review case.* The record in a mandatory review case shall be filed with the Court by the Judge Advocate General, together with the form prescribed by Rule 23(a), upon the expiration of the time for filing a petition for reconsideration of the decision of the Court of Criminal Appeals or, in the event of the filing of such petition, upon the final disposition thereof. A brief setting forth assigned errors shall be filed by the appellant in accordance with Rule 24 no later than 60 days after the issuance by the Clerk of a notice of docketing of the case. An appellee's answer shall be filed no later than 60 days after the filing of the appellant's brief. A reply may be filed by the appellant no later than 20 days after the filing of the appellee's answer.

(d) *Petition for extraordinary relief.* A petition for extraordinary relief under Rule 4(b)(1) shall be filed, with a supporting brief and any available record, as soon as possible but, in any event, no later than 20 days after the petitioner learns of the action complained of. However, a petition for a writ of habeas corpus or writ of error coram nobis may be filed at any time. *See* Rules 27(a) and 28.

(e) *Writ appeal petition.* A writ appeal petition under Rule 4(b)(2) for review of a decision by a Court of Criminal Appeals acting on a petition for extraordinary relief shall be filed, together with any available record, no later than 20 days after the date the decision of the Court of Criminal Appeals is served on the appellant or appellant's counsel. Unless it is filed *in propria persona*, such writ appeal petition shall be accompanied by a supporting brief. An appellee's answer shall be filed no later than 10 days after the filing of an appellant's brief. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer. *See* Rules 27(b) and 28.

(f) *Petition for new trial.* When a petition for new trial has been filed with the Court in a case pending before the Court, a brief in support thereof, unless expressly incorporated in the petition, shall be filed no later than 30 days after the issuance by the Clerk of a notice of the filing of the petition. 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. *See* Rule 29.

(As amended Oct. 1, 1987; Oct. 12, 1994; Nov. 1, 1995, eff. Nov. 15, 1995.)

Rule 20. Form of Petition for Grant of Review

(a) *Form to be used by an appellant.* A petition for grant of review under Rule 18(a)(1) filed personally by an appellant will be substantially in the following form:

IN THE UNITED STATES COURT OF APPEALS FOR THE
ARMED FORCES

| | |
|--|--|
| UNITED STATES, Appellee v. <hr style="width: 80%; margin-left: 0;"/> (Full typed name, rank & service of appellant) (Service no. _____), Appellant | PETITION FOR GRANT OF REVIEW CMR Dkt. No. ____ USCA Dkt. No. ____ [For Court use only] |
|--|--|

TO THE JUDGES OF THE UNITED STATES COURT OF
APPEALS FOR THE ARMED FORCES:

1. I hereby petition the Court for review of the decision of the Court of Criminal Appeals [on appeal by the United States under Article 62, Uniform Code of Military Justice, 10 USC §862 (1983)] [on appeal under Article 66, Uniform Code of Military Justice, 10 USC §866].

2. I understand that, unless I specifically request the contrary, a military lawyer will be designated by the Judge Advocate General to represent me free of charge before the U.S. Court of Appeals for the Armed Forces.

SIGNED: _____
(Put your signature here)

DATED: _____
(Put mailing date here)

MAIL TO:
 U.S. COURT OF APPEALS FOR THE
 ARMED FORCES
 450 E Street, N.W.
 Washington, D.C. 20442-0001

(b) *Form to be used by an appellant's counsel.* A petition for grant of review under Rule 18(a)(1) filed by counsel on behalf of an appellant will be substantially in the following form:

IN THE UNITED STATES COURT OF APPEALS FOR THE
ARMED FORCES

| | |
|--|--|
| UNITED STATES, Appellee v. <hr style="width: 80%; margin-left: 0;"/> (Full typed name, rank & service of appellant) (Service no. _____), Appellant | PETITION FOR GRANT OF REVIEW CMR Dkt. No. ____ USCA Dkt. No. ____ [For Court use only] |
|--|--|

TO THE JUDGES OF THE UNITED STATES COURT OF
APPEALS FOR THE ARMED FORCES:

The undersigned counsel, on behalf of (*insert appellant's full name here*), hereby petitions the United States Court of Appeals for the Armed Forces for a grant of review of the decision of the Court of Criminal Appeals [on appeal by the United States under Article 62, Uniform Code of

Military Justice, 10 USC §862 (1983)] [on appeal under Article 66, Uniform Code of Military Justice, 10 USC §866], pursuant to the provisions of Article 67(a)(3), Uniform Code of Military Justice, 10 USC §867(a)(3) (1989).

(Signature of counsel)

(Typed name of counsel)

(Address of counsel)

(Telephone no. of counsel)

(c) An appellant or counsel on behalf of an appellant shall file a petition for grant of review in the manner and within the time limits set forth in Rule 19(a).

(d) When a petition for grant of review is filed with the Court, the Clerk will cause a copy thereof to be delivered to the Judge Advocate General of the appellant's service, to the appellant's counsel, if named in the petition, and to government counsel. Upon receipt of a copy of the petition from the Clerk, the Judge Advocate General shall designate counsel to represent the parties unless such parties are already represented by counsel. *See* Rule 17.

(e) Upon issuance by the Clerk under Rule 10(c) of a notice of docketing of a petition for grant of review, counsel for the appellant shall file a supplement to the petition in accordance with the applicable time limit set forth in Rule 19(a)(5)(A) or (B), and the provisions of Rule 21.

(As amended Oct. 1, 1987; Oct. 12, 1994.)

Rule 21. Supplement to Petition for Grant of Review

(a) Review on petition for grant of review requires a showing of good cause. Good cause must be shown by the appellant in the supplement to the petition, which shall state with particularity the error(s) claimed to be materially prejudicial to the substantial rights of the appellant. *See* Article 59(a), UCMJ, 10 U.S.C. §859(a).

(b) The supplement to the petition shall be filed in accordance with the applicable time limit set forth in Rule 19(a)(5)(A) or (B), shall include an Appendix required by Rule 24(a), shall conform to the provisions of Rule 24(b), (c), and (d), and shall contain:

(1) A statement of the errors assigned for review by the Court;

(2) A statement of the case setting forth a concise chronology, including the results of the trial, the actions of the intermediate reviewing authorities and the Court of Criminal Appeals, and any other pertinent information regarding the proceedings;

(3) A statement of facts of the case material to the errors assigned, including specific page references to each relevant portion of the record of trial;

(4) A direct and concise argument showing why there is good cause to grant the petition, demonstrating with particularity why the errors assigned are materially prejudicial to the substantial rights of the appellant. Where applicable, the supplement to the petition shall also indicate whether the court below has:

(A) decided a question of law which has not been, but should be, settled by this Court;

(B) decided a question of law in a way in conflict with applicable decisions of (i) this Court, (ii) the Supreme Court of the United States, (iii) another Court of Criminal Appeals, or (iv) another panel of the same Court of Criminal Appeals;

(C) adopted a rule of law materially different from that generally recognized in the trial of criminal cases in the United States district courts;

(D) decided the validity of a provision of the Uniform Code of Military Justice or other act of Congress, the Manual for Courts-Martial, a service regulation, a rule of court or a custom of the service the validity of which was directly drawn into question in that court;

(E) decided the case (i) en banc or (ii) by divided vote;

(F) so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a court-martial or other person acting under the authority of the Uniform Code of Military Justice, as to call for an exercise of this Court's power of supervision; or

(G) taken inadequate corrective action after remand by the Court subsequent to grant of an earlier petition in the same case and that appellant wishes to seek review from the Supreme Court of the United States; and

(5) A certificate of filing and service in accordance with Rule 39(c).

(c)(1) *Answer/reply in Article 62, UCMJ, appeals.* An appellee's answer to the supplement to the petition for grant of review in an Article 62, UCMJ, 10 USC §862 (1983), case shall be filed no later than 10 days after the filing of such supplement. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer.

(2) *Answer/reply in other appeals.* An appellee's answer to the supplement to the petition for grant of review in all other appeal cases may be filed no later than 30 days after the filing of such supplement, *see* Rule 21(e); as a discretionary alternative in the event a formal answer is deemed unwarranted, appellee may file with the Clerk of the Court a short letter, within 10 days after the filing of the appellant's supplement to the petition under Rule 21, setting forth one of the following alternative positions: (i) that the United States submits a general opposition to the assigned error(s) of law and relies on its brief filed with the Court of Criminal Appeals; or (ii) that the United States does not oppose the granting of the petition (for some specific reason, such as an error involving an unsettled area of the law). A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

(d) The Court may, in its discretion, examine the record in any case for the purpose of determining whether there appears to be plain error not assigned by the appellant. The Court may then specify and grant review of any such errors as well as any assigned errors which merit review.

Rule 22

TITLE 10, APPENDIX—RULES OF COURT OF APPEALS FOR THE ARMED FORCES

(e) Where no specific errors are assigned in the supplement to the petition, the Court will proceed to review the petition without awaiting an answer thereto. See Rule 19(a)(5).

(f) An appellant or counsel for an appellant may move to withdraw his petition at any time. See Rule 30.

(As amended Oct. 1, 1987; July 16, 1990, eff. Aug. 15, 1990; Oct. 12, 1994.)

Rule 22. Certificate for Review

(a) A certificate for review under Rule 18(a)(2) will be substantially in the following form:

IN THE UNITED STATES COURT OF APPEALS FOR THE
ARMED FORCES

UNITED STATES,
 (Appellee)
 (Appellant)
 v.
 _____,
 (Full typed name, rank &
 service of accused)
 (Service no. _____)
 (Appellant)
 (Appellee)

CERTIFICATE FOR
REVIEW
 CMR Dkt. No. ____
 USCA Dkt. No. ____
 [For Court use only]

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES:

1. Pursuant to Article 67(a)(2) of the Uniform Code of Military Justice, 10 USC §867(a)(2) (1989), the record of trial and decision of the United States _____ Court of Criminal Appeals in the above-entitled case are forwarded for review.

2. The accused has been found guilty by a (*type of court-martial*) of a violation of Article(s) _____ of the Uniform Code of Military Justice and has been sentenced to (*include entire adjudged sentence*) on the (*insert trial date*). The trial took place at (*location*). The convening authority approved the following findings and sentence: _____. The officer exercising general court-martial jurisdiction (where applicable) took the following action: _____. The Court of Criminal Appeals (*state action taken*). [Substitute different case history facts as appropriate when the Court of Criminal Appeals decision involves an application for extraordinary relief.]

3. It is requested that action be taken with respect to the following issues:

[set out issues here]

The Judge Advocate General

Received a copy of the foregoing Certificate for Review this _____ day of _____, 19 ____.

Appellate Government Counsel

Address and telephone no.

Appellate Defense Counsel

Address and telephone no.

(b)(1) *Article 62, UCMJ, cases.* A certificate for review of a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 USC §862 (1983), shall be filed, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, no later

than 30 days after the date of the decision of the Court of Criminal Appeals. See Rule 34(a). An appellee's answer shall be filed no later than 10 days after the filing of such certificate for review and supporting brief. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer.

(2) *Extraordinary relief cases.* A certificate for review of a decision by a Court of Criminal Appeals on application for extraordinary relief filed therein shall be filed, together with a supporting brief in accordance with Rule 24 on behalf of the appellant, no later than 30 days after the date of the decision of the Court of Criminal Appeals. See Rule 34(a). An appellee's answer shall be filed no later than 10 days after the filing of such certificate for review and supporting brief. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer.

(3) *Other cases.* In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review shall be filed no later than 30 days after the date of the decision of the Court of Criminal Appeals. See Rule 34(a). A brief in support of the certified issues shall be filed by the appellant in accordance with Rule 24 no later than 30 days after the issuance by the Clerk of a notice of docketing of the certificate for review. 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 by the appellant no later than 10 days after the filing of the appellee's answer.

(As amended Oct. 1, 1987; Oct. 12, 1994.)

Rule 23. Mandatory Review Case

(a) The record in a mandatory review case under Rule 18(a)(3) will be filed, together with the following form:

IN THE UNITED STATES COURT OF APPEALS FOR THE
ARMED FORCES

UNITED STATES,
 Appellee
 v.
 _____,
 (Full typed name, rank &
 service of appellant)
 (Service no. _____)
 Appellant

MANDATORY REVIEW
CASE
 CMR Dkt. No. ____
 USCA Dkt. No. ____
 [For Court use only]

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES:

1. The appellant, having an approved sentence to death, is entitled to mandatory review under Article 67(a)(1) of Uniform Code of Military Justice, 10 USC §867(a)(1) (1989).

2. The appellant was notified of the decision of the Court of Criminal Appeals on (*insert notification date*).

The Judge Advocate General

written and double spaced on white paper, 8.5 by 11 inches in size, securely fastened at the top. Copies of typewritten pleadings and papers may include those produced by any process capable of producing a clearly legible black image on white paper but shall not include ordinary carbon copies. If papers are filed in any other form, the Clerk shall require the substitution of new copies, but such substitution will not affect the filing date of the papers or pleadings involved. See Rule 37.

(2) All pleadings presented to the Court shall, unless they are less than 5 pages in length, be preceded by a subject index of the matter contained therein, with page references, and a table of cases (alphabetically arranged with citations), textbooks and statutes cited, with references to the pages where cited.

(3) Citations shall conform with the *Uniform System of Citation*.

(4) All references to the record of trial shall include page numbers or exhibit designations, as appropriate.

(5) No pleading or other paper filed with the Court shall incorporate by reference any material from any other source.

(d) *Classified information*. Classified information will be included in documents filed with the Court only when necessary to a proper consideration of the issues involved. The original or one complete copy of a document containing the classified information shall be filed with the Court. The party filing such document shall give written notice to the Clerk and to all other parties prior to the time of such filing that such document contains classified information. In addition, there shall be filed in accordance with Rule 37 an original and seven copies of each such document from which the classified information has been deleted or omitted in such manner that the pages which contained the deleted or omitted classified information are clearly identified. (As amended Oct. 1, 1987; Oct. 30, 1991, eff. Nov. 4, 1991; Mar. 3, 1992, eff. Apr. 1, 1992; Oct. 12, 1994.)

Rule 25. When Briefs are Required

Unless otherwise ordered by the Court, briefs shall be filed in all mandatory review cases and in support of all granted petitions, certificates for review, petitions for extraordinary relief, writ appeal petitions, and petitions for new trial. The appellee's or respondent's answer and appellant's or petitioner's reply in any of the foregoing instances shall also be in the format specified in Rule 24. The answer and reply to the supplement to a petition for grant of review shall be in accordance with Rule 21(c).

Rule 26. Amicus Curiae Briefs

(a) A brief of an *amicus curiae* may be filed (1) by an appellate government or defense division of an armed service other than that in which the case has arisen, (2) by invitation of the Court, or (3) by motion for leave to file granted by the Court.

(b) Unless otherwise ordered by the Court, a brief of an *amicus curiae* under subsection (a)(1) of this rule shall be filed no later than 10 days after the filing of the answer by the appellee or respondent.

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

(d) A brief of an *amicus curiae* shall not exceed 30 pages, excluding appendices.

EXTRAORDINARY RELIEF

Rule 27. Petition for Extraordinary Relief, Writ Appeal Petition, Answer, and Reply

(a) *Petition for extraordinary relief*. (1) A petition for extraordinary relief, together with any available record, shall be filed within the time prescribed by Rule 19(d), shall be accompanied by proof of service on all named respondents, and shall contain:

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

(B) A concise statement of the facts necessary to understand the issue presented;

(C) A statement of the issue;

(D) The specific relief sought;

(E) The jurisdictional basis for the relief sought, including an explanation of how the writ will be in aid of the Court's jurisdiction; the reasons the relief sought cannot be obtained during the ordinary course of trial or appellate review or through administrative procedures; and the reasons relief has not been sought from the appropriate Court of Criminal Appeals, if that is the case, see Rule 4(b)(1); and

(F) Reasons for granting the writ.

(2) *Service on Judge Advocate General*. The Clerk shall forward a copy of the petition to the Judge Advocate General of the service in which the case arose.

(3) *Brief, answer and reply*. Each petition for extraordinary relief shall be accompanied by a brief in support of the petition substantially in the form specified in Rule 24, unless it is filed *in propria persona*. The Court may issue an order to show cause, in which event the respondent(s) shall file an answer. The petitioner may file a reply to the answer. See Rule 28(b)(1) and (c)(1).

(4) *Initial action by the Court*. The Court may, as the circumstances require, dismiss or deny the petition, order the respondent(s) to show cause and file an answer within a time specified, or take any other action deemed appropriate, including referring the matter to a special master, who may be a military judge or other person, to make further investigation, to take evidence, and to make such recommendations to the Court as are deemed appropriate. See *United States v. DuBay*, 17 USCMA 147 (1967).

(5) *Hearing and final action*. The Court may set the matter for hearing. However, on the basis of the pleadings alone, the Court may grant or deny the relief sought or issue such other order in the case as the circumstances may require.

(6) *Electronic message petitions*. The Court will docket petitions for extraordinary relief submitted by means of an electronic message.

(A) The message will contain the verbatim text of the petition, will conclude with the full name and address of petitioner's counsel, and will state when counsel placed the written petition and brief required by subsections (a)(1) and (a)(3) in the mail addressed to the Court and to all named respondents in accordance with Rules 36 and 39.

(B) As the Court does not possess the capability for direct receipt of electronic messages, each such message will be transmitted to the Chief of the Appellate Defense Division or Appellate Government Division, as appropriate, within the Office of the Judge Advocate General of petitioner's service, with copies to all named respondents. Upon receipt of the message in the appropriate appellate division office, clearly legible copies will be reproduced and filed in accordance with Rule 37 by an appellate counsel appointed within such office.

(b) *Writ appeal petition, answer and reply.* A writ appeal petition for review of a decision by a Court of Criminal Appeals acting on a petition for extraordinary relief shall be filed by an appellant, together with any available record, within the time prescribed by Rule 19(e), shall be accompanied by proof of service on the appellee, and shall contain the specific information required by subsection (a)(1) above. In addition, unless it is filed *in propria persona*, such petition shall be accompanied by a supporting brief substantially in the form specified in Rule 24. If such petition is filed *in propria persona*, appellate military counsel designated by the Judge Advocate General in accordance with Rule 17 will file a supporting brief no later than 20 days after the issuance by the Clerk of a notice of docketing of the petition. The appellee shall file an answer no later than 10 days after the filing of the appellant's brief. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer. *See* Rule 28(b)(2) and (c)(2). Upon the filing of pleadings by the parties, the Court may grant or deny the writ appeal petition or take such other action as the circumstances may require.

(As amended Oct. 12, 1994; Nov. 1, 1995, eff. Nov. 15, 1995.)

Rule 28. Form of Petition for Extraordinary Relief, Writ Appeal Petition, Answer, and Reply

(a) *Petition/writ appeal petition.* A Petition for extraordinary relief or a writ appeal petition for review of a Court of Criminal Appeals decision on application for extraordinary relief will be accompanied by any available record and will be substantially in the following form:

IN THE UNITED STATES COURT OF APPEALS FOR THE
ARMED FORCES

[PETITION FOR
EXTRAORDINARY RELIEF
IN THE NATURE OF
(Type of writ sought)]
or
[WRIT APPEAL PETITION
FOR REVIEW OF COURT
OF CRIMINAL APPEALS
DECISION ON
APPLICATION FOR
EXTRAORDINARY
RELIEF]
[CMR MISC. DKT.
No. ____]
[Use for Writ Appeal
only]
USCA MISC. DKT.
No. ____
[For Court use only]

_____,
(Petitioner)
(Appellant)

v.

_____,
(Respondent)
(Appellee)

Preamble

The (petitioner) (appellant) hereby prays for an order directing the (respondent) (appellee) to:
[Briefly state the relief sought.]

I

History of the Case

[See Rule 27(a)(1)(A)]

II

Statement of Facts

[See Rule 27(a)(1)(B)]

III

Statement of Issue

[Do not include citations of authority or discussion of principles. Set forth no more than the full question of law involved.]

IV

Relief Sought

[State with particularity the relief which the petitioner or appellant seeks to have the Court order.]

V

Jurisdictional Statement

[See Rule 27(a)(1)(E)]

VI

Reasons for Granting the Writ

[Where applicable, indicate why the Court of Criminal Appeals erred in its decision]

Signature of [petitioner] [appellant]
[counsel]

Address & phone number of
[petitioner] [appellant] [counsel]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [mailed] [delivered] to the Court and [mailed]

[delivered] to the [respondent] [appellee] on
_____. (Date)

MOTIONS

Rule 30. Motions

(a) All motions will be filed in writing and will state with particularity the relief sought, the factual or legal grounds for requesting such relief, and will include a certificate of filing and service in accordance with Rule 39(c). A copy will be served on opposing counsel and others who have entered an appearance in the proceedings.

(b) An answer to a motion may be filed no later than 5 days after the filing of the motion.

(c) A reply to an answer to a motion may be filed no later than 5 days after the filing of the answer.

(d) Motions will be separately filed before the Court and shall not be incorporated in any other pleading.

(e) Once a notice of hearing has been given to counsel for the parties, motions other than those to file recent supplemental citations of authority without additional argument may not be filed within 5 working days prior to the date on which such hearing is scheduled except by leave of the Court and for good cause shown.

(f) Oral motions presented by counsel by leave of the Court during a hearing shall be forthwith reduced to writing by the moving counsel and filed with the Court within 3 days after such hearing.

(g) Notwithstanding any other provision of these rules, the Court may immediately act on any motion without awaiting an answer or a reply, if it appears that the relief sought ought to be granted. Any party adversely affected by such action may request reconsideration, vacation, or modification of such action.

(As amended Nov. 1, 1995, eff. Nov. 15, 1995.)

RECONSIDERATION

Rule 31. Petition for Reconsideration

(a) A petition for reconsideration may be filed no later than 10 days after the date of any order, decision, or opinion by the Court.

(b) An answer may be filed by opposing counsel no later than 5 days after the filing of the petition.

(c) A reply to an answer to a petition may be filed no later than 5 days after the filing of the answer.

(d) The concurrence of two judges who participated in the original decision shall be required for the allowance of a petition for reconsideration.

(e) Consecutive petitions for reconsideration, and any such petition that is out of time, will not be filed unless accompanied by a motion for leave to file the same, in accordance with Rule 30, and unless such motion is granted by the Court.

(As amended Nov. 1, 1995, eff. Nov. 15, 1995.)

Rule 32. Form of Petition for Reconsideration

A petition for reconsideration, will be filed in substantially the following form:

(Typed name and signature)

(Address and telephone no.)

(b) *Answer.* (1) The respondent's answer to an order to show cause, if ordered by the Court after consideration of a petition for extraordinary relief, shall be in substantially the same form as that of the petition, except that the answer may incorporate the petitioner's statement of facts, add supplementary facts, or contest the statement. To the extent that the petitioner's statement of facts is not contested by the respondent, it shall be taken by the Court as representing an accurate declaration of the basis on which relief is sought. The answer to the order to show cause will be filed no later than 10 days after service on the respondent of the order requiring such answer, unless a different time for filing the answer is specified in the Court's order.

(2) The appellee's answer to a writ appeal petition shall be filed no later than 10 days after the filing of the appellant's writ appeal petition and supporting brief.

(c) *Reply.* (1) A reply may be filed by the petitioner no later than 5 days after the filing of a respondent's answer to an order to show cause.

(2) A reply may be filed by an appellant, in the case of a writ appeal petition, no later than 5 days after the filing of an appellee's answer.

(As amended Oct. 12, 1994.)

PETITIONS FOR NEW TRIAL

Rule 29. Filing, Notice, and Briefs

(a) *Filing.* A petition for new trial will be filed with the Judge Advocate General of the service concerned, who, if the case is pending before this Court, will transmit it, together with seven copies, to the Clerk's office for filing with the Court.

(b) *Notice.* Upon receipt of a petition for new trial transmitted by the Judge Advocate General, the Clerk will notify all counsel of record of such fact.

(c) *Briefs.* A brief in support of a petition for new trial, unless expressly incorporated in the petition, will be filed substantially in the form specified in Rule 24 no later than 30 days after the issuance by the Clerk of a notice of the filing of the petition. 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.

(d) *Special Master.* The Court may refer a petition for new trial to a special master, who may be a military judge or other person, to make further investigation, to take evidence, and to make such recommendations to the Court as are deemed appropriate. *See United States v. DuBay*, 17 USCMA 147 (1967).

(As amended Mar. 31, 1994.)

IN THE UNITED STATES COURT OF APPEALS FOR THE
ARMED FORCES

| | | |
|-------|--------------|---------------------|
| _____ | (Appellee) | |
| | (Appellant) | |
| | (Respondent) | |
| | (Petitioner) | |
| v. | | PETITION FOR |
| | | RECONSIDERATION |
| | | CMR Dkt. No. _____ |
| | | USCA Dkt. No. _____ |
| _____ | (Appellant) | |
| | (Appellee) | |
| | (Petitioner) | |
| | (Respondent) | |

TO THE JUDGES OF THE UNITED STATES COURT OF
APPEALS FOR THE ARMED FORCES:

The Court is requested to reconsider its (opinion) (order) (decision) in this case for the following reason(s):

[The petition shall state with particularity the points of law or fact which, in the opinion of the party seeking reconsideration, the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the party desires to present. Petitions are not to contain merely a restatement of arguments already presented.]

(Counsel's typed name and signature)

(Counsel's address and telephone no.)

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [mailed] [delivered] to the Court and [mailed] [delivered] to the [appellant] [appellee] [petitioner] [respondent] on _____. (Date)

(Typed name and signature)

(Address and telephone no.)

(As amended Oct. 12, 1994.)

PRACTICE BEFORE THE COURT

Rule 33. Suspension of Rules

For good cause shown, the Court may suspend any of these rules in a particular case, on application of a party or on its own motion, and may order proceedings in accordance with its direction.

Rule 34. Computation of Time

(a) *General.* In computing any period of time prescribed or allowed by these Rules, order of the Court, or any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than 7 days, intervening Saturdays, Sundays, and legal holidays, will be excluded in the computation. When a period of time is computed under these rules from the date of the decision of a Court of Criminal Appeals, such time is to be computed from the date of such decision unless a petition

for reconsideration is timely filed, in which event the period of time is to be computed from the date of final action on the petition for reconsideration.

(b) *Additional time when service by mail.* Whenever a party has the right or is required to do some act within a prescribed period after the issuance of an order or the filing of a notice, pleading, or other paper relative to a case when service thereof is made upon him by mail, 5 days will be added to the prescribed period if the party upon whom the service is made is within the limits of the contiguous 48 States and the District of Columbia, and 15 days will be added if the party is located outside these limits, including the States of Alaska and Hawaii. This provision for additional time shall not apply, however, to the time limitations prescribed in Rule 19(a)(1) for the filing of a petition for grant of review.

(As amended Oct. 1, 1987; Oct. 12, 1994.)

Rule 35. Filing of Record

The record shall be filed by the Judge Advocate General as soon as practicable after the docketing of any action pursuant to Rule 4. *See* Rule 27(a)(1) and (b).

Rule 36. Filing of Pleadings

(a) All pleadings or other papers relative to a case will be submitted to the Clerk's office, 450 E Street, Northwest, Washington, D.C. 20442-0001. Pleadings transmitted by mail or other means for filing in the Clerk's office will be deemed to have been filed when received by the Court or when deposited in the United States mails addressed to the Court, whichever occurs first. *See* Rule 27(a)(6).

(b) If any pleading or paper is not filed or offered for filing in compliance with these rules or an order of the Court, the Court may issue an order to show cause, dismiss the proceeding, or return the proffered pleading or paper on its own motion or the motion of a party.

Rule 37. Copies

An original and seven legible copies of all pleadings or other papers relative to a case shall be filed. *See* Rule 24(d) concerning documents which contain classified information.

(As amended Oct. 30, 1991, eff. Nov. 4, 1991.)

Rule 38. Signatures

(a) *General.* Except for documents filed *in propria persona* and those provided for in subsection (b), all original pleadings or other papers filed in a case will bear the signature of at least one counsel who is a member of this Court's Bar and who is participating in the case. The name, address, telephone number, and rank, if any, of the person signing, together with the capacity in which such counsel signs the paper will be included. This signature will constitute a certificate that the statements made in the pleading or paper are true and correct to the best of the counsel's knowledge, information, or belief, and that the pleading or paper is filed in good faith and not for the purpose of unnecessary delay. A

counsel who signs a pleading “for” some other counsel whose name is typed under such signature must, in addition, affix their own signature in a separate signature block with their own name, address, telephone number, and rank, if any, typed thereunder.

(b) *Exception.* If the counsel signing a pleading or paper presented to the Clerk’s office for filing is not a member of the Bar of this Court, the pleading or paper shall nonetheless be received as if such counsel were a member. However, within 30 days of the filing of a pleading, such counsel shall, as a prerequisite to continuing in the case as counsel of record, apply for admission to the Bar of this Court or move to appear *pro hac vice* under Rule 13.

(As amended Oct. 1, 1987.)

Rule 39. Service of Pleadings

(a) *In general.* At or before the filing of any pleading or other paper relative to a case in the Clerk’s office, service of a copy of the same will be made on all counsel of record, including *amicus curiae* counsel, in person or by mail.

(b) *Certificate for review.* In the case of a certificate for review, service of a copy thereof will be made on appellate defense counsel and appellate government counsel as prescribed in Rule 22(a).

(c) *Form of certificate of filing and service.* A certificate of filing and service will be included in any pleading or other paper substantially in the following form:

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [delivered] [mailed] to the Court and was [delivered] [mailed] to (enter name of each counsel of record) on _____. (Date)

(Typed name and signature)

(Address and telephone no.)

HEARINGS

Rule 40. Hearings

(a) *Motions, petitions for grant of review, petitions for extraordinary relief, writ appeal petitions, petitions for new trial, and petitions for reconsideration.* Except when ordered by the Court, hearings will not be permitted on motions, petitions for grant of review, petitions for extraordinary relief, writ appeal petitions, petitions for new trial, or petitions for reconsideration.

(b) *When and how heard.* After the case is calendared as provided in Rule 11 and all required briefs have been filed, a hearing may be ordered by the Court.

(1) *Notice of hearing.* The Clerk will give at least 20 days notice in writing to counsel for the parties of the time and place for the hearing, unless ordered otherwise by the Court. Upon receipt of such notice, counsel will notify the Clerk’s office of the identity of the counsel who will present oral argument.

(2) *Presentation.* Unless directed otherwise by the Clerk, counsel for the appellant or petitioner will open and close the argument. When the subject of a hearing is a motion, counsel for

the moving party will be entitled to open and close. When both parties seek review in this Court, the accused shall be deemed the appellant for the purpose of this rule. Argument by counsel for an *amicus curiae* will be allowed on motion filed under Rule 30.

(3) *Time allowed.* Each side will normally be allotted 30 minutes to present oral argument.

Rule 41. Photographing, Televising, or Broadcasting of Hearings

(a) The photographing, broadcasting, or televising of any session of the Court or other activity relating thereto is prohibited within the confines of the courthouse unless authorized by the Court.

(b) Any violation of this rule will be deemed a contempt of this Court and, after due notice and hearing, may be punished accordingly. See 18 USC § 401.

OPINIONS

Rule 42. Filing, Reproduction, and Distribution

All opinions of the Court will be filed with the Clerk for preservation. The reproduction, printing, and distribution of all opinions will be under the supervision of the Clerk.

Rule 43. Issuance of Mandates

(a) Mandates implementing opinions of the Court will issue as a matter of course after the expiration of the time for filing a petition for reconsideration under Rule 31(a). In the event such a petition for reconsideration is filed, the mandate shall not issue until the Court takes action on the petition. In any case, the Court may order the mandate to issue forthwith.

(b) The effective date of any order shall be the date of that order, and no mandate will issue. The Clerk will furnish copies of all such orders to counsel of record and to the Judge Advocate General of the service in which the case arose.

JUDICIAL CONFERENCE

Rule 44. Judicial Conference

(a) *Purpose.* There shall be held annually, at such time and place as shall be designated by the Court, a conference for the purpose of considering the state of business of the Court and advising on ways and means of improving the administration of military justice. The conference shall be called “The Judicial Conference of the United States Court of Appeals for the Armed Forces,” and may be held in conjunction with the Homer Ferguson Conference or otherwise.

(b) *Composition.* In addition to the Judges, the following shall be invited to participate in the Conference:

- (1) The Senior Judges of the Court;
- (2) The Judge Advocates General;
- (3) The Director, Judge Advocate Division, U.S. Marine Corps;
- (4) The Chief Counsel, U.S. Coast Guard;
- (5) The General Counsel, Department of Defense;
- (6) The General Counsel, Committees on Armed Services, United States Senate and House of Representatives;

(7) The Chiefs, Military Justice Divisions, of each Armed Force;

(8) The Chiefs, Appellate Defense and Appellate Government Divisions, of each Armed Force;

(9) The Chief Judge of each Court of Criminal Appeals;

(10) The Chief of the Trial Judiciary of each Armed Force, or his designee;

(11) The Clerk of the Court;

(12) The Central Legal Staff Director of the Court;

(13) The Chairman, Rules Advisory Committee;

(14) The deans of one or more approved law schools, or their designees; and

(15) Members of the Bar of the Court invited by the Court.

(As amended Oct. 12, 1994.)

CHANGE OF NAME

Committee on Armed Services of House of Representatives treated as referring to Committee on National Security of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

REVISION OF RULES

Rule 45. Rules Advisory Committee

(a) *Establishment of committee; membership.* A Rules Advisory Committee is hereby created for this Court. The Committee shall consist of not less than 9 members of the Bar of this Court and shall be selected by the Court, in such a way as

to represent a broad cross-section of the legal profession. Representatives from government, the law schools, and public interest groups shall, when practicable, be included on the Committee, as shall private practitioners. The Clerk of the Court shall be a member of the Committee and shall serve as its Reporter.

(b) *Duties of committee.* The Rules Advisory Committee appointed by this Court shall have an advisory role concerning practice and procedure before the Court. The Committee shall, among other things, (1) provide a forum for continuous study of the operating procedures and published rules of the Court; (2) serve as a conduit between the Bar, the public, and the Court regarding the Rules of the Court, procedural matters, and suggestions for changes; (3) draft, consider and recommend rules and amendments to the Court for adoption; and (4) render reports from time to time, on its own initiative and on request, to the Court on the activities and recommendations of the Committee. The Committee shall prepare appropriate explanatory materials with respect to any rule change or other recommendation it submits to the Court.

(c) *Terms of members; chairman.* With the exception of the Clerk of the Court, the members of the Committee shall serve three-year terms, which will be staggered in such a way as to enable the Court to appoint or reappoint one-third of the Committee each year. The Court shall appoint one of the members of the Committee to serve as chairman.

COURTS OF MILITARY REVIEW

RULES OF PRACTICE AND PROCEDURE

(Effective March 1, 1985, as amended to January 16, 1996)

- 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.
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 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.
- Attachments
1. Formats for Direction for Review.
 2. Format for Assignment of Errors and Brief on Behalf of Accused (Rule 1).

This regulation publishes the rules of practice and procedure for courts of military review, pursuant to the Uniform Code of Military Justice, Article 66(f) (10 U.S.C. 866). When the title "The Judge Advocate General" is used in a rule, it includes the General Counsel of the Department of Transportation when the Coast Guard is not operating as a service in the Navy. This regulation applies to the Judge Advocates General of the Departments of the Air Force, the Army, and the Navy and the General Counsel of the Department of Transportation.

CHANGE OF NAME

Pub. L. 103-337, div. A, title IX, §924(b)(1), Oct. 5, 1994, 108 Stat. 2831, provided that: "Each Court of Military Review shall hereafter be known and designated as a Court of Criminal Appeals."

Rule 1. Name and seal

(a) The titles of the Courts of Military Review of the respective services are:

- (1) "United States Army Court of Military Review."

- (2) "United States Navy-Marine Court of Military Review."

- (3) "United States Air Force Court of Military Review."

- (4) "United States Coast Guard Court of Military Review."

(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 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 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 general 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, and

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

- (3) Review Under Article 62. All cases of trial by court-martial in which a punitive discharge may be adjudged and a military judge presides, and in which the Government appeals an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification or excludes evidence that is substantial proof of a fact material to the proceedings.

- (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 Military Review as established by law.

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 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 [in] 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 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. If transmitted by mail or other means, they are not filed until received in such office.

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 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, in which event the period runs

until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

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 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. In addition, the Court may exercise its inherent power to regulate counsel appearing before it, including the power to remove on an ad hoc basis counsel misbehaving before or in relation to their appearance before the Court. Conduct deemed by the Court to warrant consideration of suspension or other professional discipline shall be reported by the Court to the Judge Advocate General concerned.

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), appellate defense counsel will represent the accused when the United States is represented by counsel before the Court.

Rule 12. Retention of civilian counsel

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

Rule 13. Notice of appearance of counsel

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

Rule 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 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 (attachment 2). An original of all assignments of

error and briefs, and as many additional copies as shall be prescribed by each service, shall be submitted. Briefs and assignments of errors shall be typewritten, 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) *Number of Briefs.* Appellate counsel shall be limited to the filing of one brief for each side unless the Court otherwise permits or directs.

(c) *Time for Filing.* Any brief for an accused shall be filed within 30 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. 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.

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 when that party's pleading is filed or within 5 days after the filing of any response thereto permitted under these rules.

Rule 17. En banc proceedings

(a) A majority of the judges present for duty may order that any appeal or other proceeding be considered or reconsidered, except as indicated in section (c) below, by the Court sitting 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.

(b) A party may suggest the appropriateness of consideration or reconsideration by the Court as a whole. If a party desires to suggest in cases being reviewed pursuant to Article 66, that a matter be considered initially by the Court as a whole, the suggestion must be filed with the Court within 5 days after the government files its answer to the assignment of errors, or the accused files a reply if permitted to do so under Rule 15(b). In other proceedings the suggestion must be filed with the party's initial petition or other initial pleading, or within 5 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 the suggestion may be filed unless the Court shall so order.

(c) 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 unless a judge requests a vote on such a suggestion made by a party. En banc reconsideration of an en banc decision will not be held unless one member of the original majority concurs in a vote for reconsideration.

Rule 18. Orders and decisions of the court

The Court shall give notice of its orders and decisions pursuant to Rule for Courts-Martial 1203. The Court shall immediately serve such orders or decisions, when rendered, on appellate defense counsel, government counsel and The Judge Advocate General, or designee, as appropriate.

Rule 19. Reconsideration

(a) The Court may, in its discretion and on its own motion, enter an order to reconsider its decision in any case not later than 30 days after service of such decision on the accused's appellate defense counsel or on the accused, if the accused is not represented by appellate counsel, provided a petition for grant of review or certificate for review has not been filed with the United States Court of Military Appeals, or a record of trial for review under Article 67(b) has not been received by that Court. Copies of such order will be served on appellate defense counsel and appellate government counsel. 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 Military Appeals, or a record of trial for review under Article 67(b) has not been received by the United States Court of Military Appeals, the Court may, in its discretion, reconsider its decision in any case upon motion filed either:

(1) By appellate defense counsel within 20 days after receipt by counsel, or by the accused if the accused is not represented by counsel, of a decision or order, or

(2) By appellate government counsel within 20 days after the decision or order 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 5 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 by the United States Court of Military Appeals, except that the time for filing briefs by either party may be extended for good cause.

(As amended May 29, 1986.)

CHANGE OF NAME

United States Court of Military Appeals changed to United States Court of Appeals for the Armed Forces by section 924(a)(1) of Pub. L. 103-337, set out as a note under section 941 of this title.

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 Message Petitions.* The Court will docket petitions for extraordinary relief submitted by means of an electronic message. The message 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 placed in the mail addressed to the Court and to all named respondents.

(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 5 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 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 of Military Review. 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 three 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 of Military Review 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 of Military Review. Should the Government decide to withdraw the appeal after the record is received by the Court of Military Review, appellate government counsel shall notify in writing the Court of Military Review. 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.

(As amended May 29, 1986.)

Rule 22. Petitions for new trial

(a) *General Provisions.* The Court shall, as soon as practicable after receipt from the Judge Ad-

vocate General of a petition for a new trial in a case pending before the Court, notify appellate counsel of such receipt.

(b) *Additional Investigation.* The Court on considering a petition for a new trial may, when it deems appropriate, refer the matter to the Judge Advocate General who shall cause further investigation to be made and to report the results thereof to the Court.

(c) *Answer.* Appellate Government counsel shall file an answer to a petition for new trial within 10 days after being notified of the receipt thereof by the Court.

(d) *Briefs.* Any brief in support of a petition for new trial shall be filed within 10 days of appellate Government counsel's answer. If appellate Government counsel fails to file an answer, accused may file a brief within 10 days after the expiration of the time allowed for the filing of appellate Government counsel's answer. Appellate Government counsel's brief shall be filed within 10 days of the filing of accused's brief. If accused fails to file a brief, appellate Government Counsel may file a brief within 10 days after the expiration of the time allowed for filing of accused's brief.

(e) *Oral Argument.* Except when ordered by the Court, oral argument shall not be permitted on a petition for a new trial.

Rule 23. Motions

(a) *Content.* All motions, unless made during the course of a hearing, shall state with particularity the relief sought and the grounds therefor. Motions, pleadings, and other papers desired to be filed with the Court may be combined in the same document, with the heading indicating, for example, "MOTION TO FILE (SUPPLEMENTAL ASSIGNMENT OF ERRORS) (CERTIFICATE OF CORRECTION) (SUPPLEMENTAL PLEADING)", or "ASSIGNMENT OF ERRORS AND MOTION TO FILE ATTACHED REPORT OF MEDICAL BOARD".

(b) *Opposition.* Any opposition to a motion shall be filed within 5 days after receipt by the opposing party of service of the motion.

(c) *Leave to File.* Any pleading not required by these rules shall be accompanied by a motion for leave to file such pleading.

(d) *Oral Argument.* Except when ordered by the Court, oral argument shall not be permitted on motions.

Rule 24. Continuances and interlocutory matters

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

Rule 25. Suspension of rules

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

Rule 26. Internal rules

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

Rule 27. Recording, photographing, broadcasting, or telecasting of hearings

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

ATTACHMENT 1

FORMAT FOR DIRECTION FOR REVIEW
IN THE UNITED STATES ARMY* COURT OF MILITARY REVIEW
UNITED STATES

v.
Private (E-1) JOHN RICHARD DOE, SSN 000-00-0000, Company, 300th Infantry Division, APO New York 09000.

DIRECTION FOR REVIEW
Case No. _____
Tried at _____, on _____, before a G.C.M. appointed by _____.

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES ARMY* COURT OF MILITARY REVIEW

1. Pursuant to the Uniform Code of Military Justice, Article 69, and the Rules of Practice and Procedure for Courts of Military Review, Rule 2b, the record of trial in the above-entitled case is forwarded for review pursuant to the Uniform Code of Military Justice, Article 66.

2. The accused was found guilty of a violation of the Uniform Code of Military Justice, Article(s) _____, was sentenced to _____ on _____ at _____ by _____. The convening authority (approved the sentence) (approved only so much of the sentence as provided for _____) and the case was received in the United States Army* Judiciary on _____.

3. In review pursuant to Uniform Code of Military Justice, Article 66, it is requested that attention be given to the following issues:

- A. WHETHER THE SPECIFICATION OF CHARGE I FAILS TO STATE AN OFFENSE UNDER THE UNIFORM CODE OF MILITARY JUSTICE IN THAT IT DOES NOT ALLEGE THAT ACCUSED'S ABSENCE WAS WITHOUT AUTHORITY.
- B. WHETHER THE MILITARY JUDGE FAILED TO TAILOR HIS INSTRUCTIONS ON SENTENCE TO THE MATTERS PRESENTED IN EXTENUATION AND MITIGATION.

JOHN H. BROWN
Major General, USA
The Judge Advocate General

Received a copy of the foregoing Direction for Review this ____ day of _____ 19 ____.

ROBERT JONES
Colonel, JAGC
Chief, Government Appellate Division
HARRY ARNOLD
Colonel, JAGC
Chief, Defense Appellate Division
JOHN C. SMITH, Esq.

1 Ace Street
Union, New Jersey 07083

*Use Navy-Marine Corps, Air Force, or Coast Guard as the case may be.

ATTACHMENT 2

FORMAT FOR ASSIGNMENT OF ERRORS AND BRIEF ON BEHALF OF ACCUSED (RULE 16)

IN THE UNITED STATES ARMY¹ COURT OF MILITARY REVIEW
UNITED STATES

v.
Private (E-1) JOHN RICHARD DOE, SSN 000-00-0000, U.S. Army, Replacement Detachment, 300th Administration Company, 300th Infantry Division, Fort Gordon, Georgia 31093

ASSIGNMENT OF ERRORS AND BRIEF ON BEHALF OF ACCUSED
Case No. _____
Tried at _____, on _____, before a G.C.M. appointed by _____.

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES ARMY¹ COURT OF MILITARY REVIEW

On _____, the accused was tried by general court-martial. The charges and specifications upon which he was arraigned, his pleas, and the court-martial's findings were as follows:

| Chg | Art UCMJ | Specs | Summary of Offenses | Pleas | Findings |
|-----|----------|-------|--|-------|----------|
| I | 86 | 1 | AWOL (28 Jan _____-28 Feb _____) | G | G |
| | | 2 | AWOL (3 Mar _____-3 Apr _____) | | |
| II | 121 | | Larceny of \$100.00, property of U.S. Government | NG | G |

He was sentenced to dishonorable discharge, forfeiture of all pay and allowances, confinement at hard labor for 2 years, and reduction to the lowest enlisted grade. The convening authority approved only so much of the sentence as provides for bad conduct discharge, forfeiture of \$50.00 pay per month for 6 months, and reduction to the lowest enlisted grade.

Statement of Facts

Those facts necessary to a disposition of the assigned errors are set forth in the argument, *infra*.²

Errors and Argument

I

SPECIFICATION 1 OF CHARGE I FAILS TO STATE AN OFFENSE UNDER THE UNIFORM CODE OF MILITARY JUSTICE

The allegation of absence in Specification 1 of Charge I fails to indicate that the absence was "without proper authority." The United States Court of Military Appeals has held that such an omission is fatal to the legal sufficiency of the specification. *United States v. Schultz*, 16 U.S.C.M.A. 488, 37 C.M.R. 108 (1967); *United States v. Fout*, 3 U.S.C.M.A. 565, 13 C.M.R. 121 (1953).

WHEREFORE, the findings as to Specification 1 of Charge I should be set aside and the sentence reassessed on the basis of the remaining charges and specifications.

II

THE MILITARY JUDGE FAILED TO TAILOR HIS INSTRUCTIONS ON SENTENCE TO THE

MATTERS PRESENTED IN MITIGATION AND EXTENUATION

There was extensive evidence presented on behalf of accused to establish his proper exemplary conduct in civilian and military life. (R. 108-133). The military judge limited his instructions on sentence to the maximum authorized punishment and the voting procedure.

In *United States v. Wheeler*, 17 U.S.C.M.A. 274, 38 C.M.R. 72 (1967), the failure of the military judge to tailor the instructions on sentence to the evidence presented in mitigation and extenuation was held to require a rehearing on sentence.

WHEREFORE, the sentence should be set aside and a rehearing authorized thereon.

Sentence Appropriateness

Accused is an 18-year old first time offender (Post-trial Review, p. 3) and has sincerely urged his restoration to duty. (R. 100). His immediate superiors have expressed their willingness to have accused return to his organization. (R. 110).

WHEREFORE, only so much of the sentence as provides for forfeiture of \$50.00 pay per month for 6 months, confinement at hard labor for 6 months, and reduction to the lowest enlisted grade should be approved by this Honorable Court.

Date: _____

JOHN C. SMITH, Esq.
1 Act Street
Union, New Jersey 07083

ALBERT JONES
Captain, JAGC
Appellate Defense Counsel

HARRY ARNOLD
Colonel, JAGC
Appellate Defense Counsel

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed or delivered to appellate Government counsel on the _____ day of _____, 19__.

NAME

ADDRESS

¹ Use Navy-Marine Corps, Air Force, or Coast Guard as the case may be.

² Where a statement of facts generally applies to all of the assigned errors, it may be set forth here.

CHANGE OF NAME

United States Court of Military Appeals changed to United States Court of Appeals for the Armed Forces by section 924(a)(1) of Pub. L. 103-337, set out as a note under section 941 of this title.