



## Definitions

*The new Definitions section will read:*

### DEFINITIONS

**UCMJ**.....Uniform Code of Military Justice

**U.S.C.**.....United States Code

**Rule**.....Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces

**Court**.....United States Court of Appeals for the Armed Forces

**Filings**.....Documents, including Pleadings, Briefs, Certificates of Review, Joint Appendix, Petitions, Motions, and Letters from the Judge Advocate General in Mandatory Review Cases.

**Victim**.....Victim includes a person found by a court to have been harmed by a crime, whether represented by counsel or pro se.

**Complainant**.....Complainant includes a person alleging victim status, whether represented by counsel or pro se.

## Rule 3:

*Rule 3 – Oath of Judges – currently reads:*

Before undertaking the performance of the duties of his office, each Judge appointed to this Court shall take the oath or affirmation prescribed in § 453 of Title 28, United States Code (USC).

*The proposed change to Rule 3 would read:*

Before undertaking the performance of judicial duties, each Judge appointed to this Court takes the oath or affirmation prescribed in 28 U.S.C. § 453.

## Rule 3A:

*Rule 3A – Senior Judges – currently reads:*

(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 recused, 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. The periods of performance of judicial duties shall be certified by the Chief Judge and reported to the Clerk of the Court who shall take appropriate steps so that the Senior Judge is paid in accordance with Article 142(e)(2), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 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 may 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) 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.

(d) 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 UCMJ or appellate review of any courtmartial 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.

(e) 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).

*The proposed change to Rule 3A would read:*

(a) These rules apply to “Senior Judges” as defined by Article 142(e)(1), UCMJ, 10 U.S.C. § 942(e)(1), and are promulgated pursuant to Article 142(e)(5), UCMJ.

(b) 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 recused, 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 receives the same pay, per diem, and travel allowances as an active Judge. The periods of performance of judicial duties are certified by the Chief Judge and reported to the Clerk of the Court, who takes appropriate steps so that the Senior Judge is paid in accordance with Article 142(e)(2), UCMJ.

(c) In addition to the performance of judicial duties with the Court, a Senior Judge may, at the Chief Judge’s request 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 conducted by the Court; and assistance in the compilation of the history or archives of the Court. A Senior Judge may 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.

(d) The title 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 Senior Judge may be used 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 may engage in the practice of law in connection with any matter that involves an investigation, a preliminary hearing, or trial for any matter arising under the UCMJ 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.

## Rule 4:

*Rule 4 – Jurisdiction – currently reads:*

(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, 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, 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 the 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.

*The proposed change to Rule 4 would read:*

(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);*

(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 U.S.C. § 862, or on application for extraordinary relief filed therein, which a Judge Advocate General forwards by certificate for review to the Court. *See Rule 18(b); and*

(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, in which, upon petition of the accused and on good cause shown, the Court grants review. *See Rule 18(c).*

(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 U.S.C. § 1651(a); Rules 18(d), 27(a), 28.* Ordinarily, the Court will not accept the filing of a petition that does not set forth what relief was sought in the appropriate Court of Criminal Appeals. If the petitioner did not seek relief from a Court of Criminal Appeals, the petitioner must file a motion to show good cause to excuse the failure to do so.

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

(c) Rules Not to Affect Jurisdiction. These rules do not extend or limit the jurisdiction of this Court as established by law.

**Rule 5:**

*Rule 5 – Authority to Review – currently reads:*

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, or to grant extraordinary relief in aid of its jurisdiction. The Court may specify or act on any issue concerning a matter of law which materially affects the rights of the parties.

*The proposed change to Rule 5 would read:*

(a) The Court has authority to review the findings and sentence as approved by reviewing authorities or as set forth in the entry of judgment, as affirmed or set aside as incorrect in law by a Court of Criminal Appeals, as well as decisions, judgments, or orders by a military judge, as affirmed or set aside as incorrect in law by a Court of Criminal Appeals. *See Article 66(d)(1)(A), UCMJ, 10 U.S.C. § 866(d)(1)(A).*

(b) The Court has the authority to review the findings set forth in the entry of judgment, as affirmed, dismissed, set aside, or modified by a Court of Criminal Appeals as incorrect in fact under Article 66(d)(1)(B), UCMJ.

**Rule 6:**

*Rule 6 – Quorum – currently reads:*

(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 a majority of such judges, whether present and voting or voting telephonically or electronically, shall be required for a final resolution of any matter before the Court, subject to subsections (b), (c), and (d). In the event there are fewer than 3 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.

(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

*The proposed change to Rule 6 would read:*

(a) A majority of the judges in regular active service on the Court constitutes a quorum. The concurrence of a majority of such judges, whether present and voting or voting telephonically or electronically, is required for a final resolution of any matter before the Court, subject to subsections (b), (c), and (d) of this Rule. *See Article 144, UCMJ, 10 U.S.C. § 944.*

(b) The Chief Judge, or the judge performing the Chief Judge's duties, may issue temporary orders or stays pending the convening of a quorum.

(c) If no judge is available, 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, or an Article III judge is designated under Article 142(f), UCMJ, to sit on the Court, such judge is 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), UCMJ, that judge is not included for reaching a quorum under this Rule.

#### **Rule 7:**

*Rule 7 – Process – currently reads:*

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

*The proposed change to Rule 7 would read:*

All process of the Court, except mandates, are in the name of the United States and must contain the names and the military grade or civilian office, if any, of the parties.

#### **Rule 8:**

*Rule 8 – Parties – currently reads:*

(a) The title of any case filed with the Court shall contain the name and military rank 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, 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, 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 the 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. All parties to the proceeding below other than the petitioner or petitioners will be deemed to be the respondents for all purposes.

*The proposed change to Rule 8 would read:*

(a) The title of any case filed with the Court must contain the name and military grade 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 U.S.C. § 862, the Court docketts the appeal 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, or from a decision affecting the findings or sentence or both of a court-martial, or from a decision on application for extraordinary relief, is the appellant. Other named parties are the appellees.

(c) Absent statutory authority, victims and complainants are not recognized as parties before the Court. However, the Court may afford either a victim or a

complainant, whether represented by counsel or not, the rights of service of a party and the right to file an amicus curiae brief. *See* Rules 26, 39. A victim or a complainant must promptly serve, upon filing with the Court, the filing on all parties, including amici.

(d) When a Judge Advocate General files a certificate for review, the party prevailing below on the certified issues is the appellee. The other party is the appellant.

(e) When a mandatory review case is filed, the accused is the appellant. The other party is the appellee.

(f) 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 is the appellant or cross-appellant, depending on whether such party is the appellant or appellee in the first action. The other party in the second action is the appellee or cross-appellee as determined in a similar manner.

(g) All parties filing a petition for extraordinary relief with the Court are petitioners. All parties to the proceeding below other than petitioners are respondents.

#### **Rule 9:**

*Rule 9 – Clerk – currently reads:*

(a) Location of Office. The Clerk's office shall be located at the courthouse at 450 E Street, Northwest, Washington, D.C. 20442-0001

(b) Oath of Office. Before entering upon the execution of his office, the Clerk shall take the oath or affirmation prescribed in § 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.

(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 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 maintain regular operating hours every day except Saturdays, Sundays, and legal holidays, or as otherwise ordered by the Court. *See Rule 36(a).* A pleading or other paper may be filed at any time by delivery to Court security personnel on duty in the front lobby of the courthouse or by electronically filing in accordance with the "Guidelines for Electronic Filings of Pleadings" available on the Court's website. Pleadings will be deemed filed on the date and time delivered to Court security personnel or filed electronically. Court security personnel will notify the Clerk of the filing in accordance with procedures established by the Clerk.

*The proposed change to Rule 9 would read:*

- (a) Location of Office. The Clerk's office is located at 450 E Street, Northwest, Washington, D.C. 20442-0001.
- (b) Oath of Office. Before entering this office, the Clerk takes the oath or affirmation prescribed in 28 U.S.C. § 951.
- (c) Court Records. The Clerk is the Court's custodian of records and safeguards the Court's original records.

(d) Disposition of Procedural Matters. Notwithstanding the provisions of Rule 6, the Clerk, on the Court's behalf, may entertain and act on any motion seeking an extension of time not to exceed thirty days, leave to withdraw as counsel, or permission to file 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.

(e) Hours. The Clerk's office maintains regular operating hours every day except Saturdays, Sundays, and federal holidays, or as the Court otherwise orders. *See Rule 36(a).* A pleading or other paper may be filed in person at any time by delivery to Court security personnel on duty in the front lobby of the courthouse.

## **Rule 10:**

*Rule 10 – Docket – currently reads:*

- (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, 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, and petitions and other correspondence that are not docketed on another docket, and that are returned to the sender.

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 taken 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 Judgment. The Clerk shall prepare, sign, date, and enter the judgment immediately upon the filing of the opinion of the Court. If a judgment is rendered without an opinion, the Clerk shall prepare, sign, date, and enter such judgment in an order following instruction from the Court. The Clerk shall, on the date a judgment is entered, distribute to all parties and the Judge Advocate General of the service in which the case arose a copy of the judgment and opinion, if any, or of the order if no opinion was written. *See Rule 43.*

*The proposed change to Rule 10 would read:*

(a) Maintenance of Docket. The Clerk maintains:

(1) a regular docket for cases subject to mandatory review, petitions to review convictions or sentences affirmed or set aside by a Court of Criminal Appeals, and certificates for review of final decisions by 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, 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, and petitions and other correspondence that are not docketed on another docket, or that are returned to the sender.

(4) The receipt of all pleadings or other papers filed, and any action by the Court relative to a case, must be entered in the appropriate docket. Entries in each docket must show the date, the nature of each pleading or other paper filed, and the substance of any action the Court took.

(b) Docket Number. In all cases, the Clerk assigns a docket number on receipt of the initial filing. All pleadings or other papers subsequently filed in the case must include the assigned docket number.

(c) Notice of Docketing. The Clerk notifies 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 also notifies all respondents of the petition's receipt and docketing.

(d) Entry of Judgment. The Clerk enters the judgment pursuant to Rule 43.

## **Rule 11:**

*Rule 11 – Calendar – currently reads:*

(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 there of, 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.

*The proposed change to Rule 11 would read:*

(a) The Clerk prepares a calendar, consisting of the cases that are or will be available for hearing, arranged in the chronological order in which petitions for grant of review have been granted or certified issues and mandatory appeals have been filed with the Court. The arrangement of cases on the calendar is subject to modification based on the availability of pleadings, extensions of time to file briefs, and orders to advance or specially set cases for hearing.

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

(c) The Clerk advises counsel when they must physically appear in Court. *See Rule 40(b).*

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

(e) The Court may, on its own motion or by special permission, hear together as one case, or on such terms as may be prescribed, two or more cases involving the same question.

## **Rule 12:**

*Rule 12 – Cases Involving Classified Information – currently reads:*

(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. No. 96-456, 94 Stat. 2025, as appropriate. *See* Rules 9(c) and 35A.

(c) Security Clearances. Security clearances for personnel on the staff of the Court will be obtained by the Court Security Officer in accordance with DoD Regulation 5200.1-R.

*The proposed change to Rule 12 would read:*

(a) Court Security Officer. The Clerk serves as the Court Security Officer for the purpose of providing for the protection of classified information and may designate assistants with the appropriate security clearance.

(b) Classified Documents. The Court Security Officer will store and safeguard documents containing classified information 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. No. 96-456, 94 Stat. 2025, as appropriate. *See* Rules 9(c), 35A.

(c) Security Clearances. The Court Security Officer will obtain security clearances for personnel on the Court's staff in accordance with DoD Regulation 5200.1-R.

## **Rule 13:**

*Rule 13 – Qualifications to Practice – currently reads:*

(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 in good standing of the Bar of the highest court of a State, the District of Columbia, Territory, Commonwealth, or Possession of the United States.

(c) Each applicant shall file with the Clerk an application for admission on the form prescribed by the Court, together with an application fee in an amount prescribed by Court order 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.

*The proposed change to Rule 13 would read:*

(a) No attorney may practice before the Court unless the attorney is admitted to the Bar of the Court or appears pro hac vice by leave of the Court. *See Rule 38(b).*

(b) To be admitted to the Bar of the Court, an attorney must be a member in good standing of the Bar of the highest court of a State, the District of Columbia, or a Territory, Commonwealth, or Possession of the United States.

(c) Each applicant must file an application for admission on the form prescribed by the Court. The application must include an application fee in an amount prescribed by Court order and a certificate of good standing from the presiding judge, clerk, or other appropriate officer of the court specified in (b) above, or the Bar of such court. The certificate of good standing must be an original, unless the jurisdiction only issues electronic certificates, and must be dated within ninety days of the date of the application.

(d) If the documents submitted demonstrate that the applicant possesses the necessary qualifications and that such applicant's private and professional character appear to be good, the Clerk notifies the applicant and he or she may be admitted without appearing in Court by subscribing a written oath or affirmation. If the applicant so elects, a member of the Bar of the Court may make an oral motion for admission in open court. Upon admission, the Clerk issues a wallet-size admission card and a large certificate of admission suitable for framing to the attorney.

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

“I, [NAME], 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) To receive a certificate of good standing from the Court, attorneys must submit a certificate of good standing, dated within ninety days, from the jurisdiction under which they were originally admitted to the bar of this Court, or another jurisdiction if they are no longer an active member of the Bar of the jurisdiction from which they were originally admitted. The certificate must be an original, unless the jurisdiction only issues electronic certificates, and the attorneys must certify that they have no pending disciplinary actions.

**Rule 13A:**

*Rule 13A – Student Practice Rule – currently reads:*

(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 4 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 UCMJ 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 2 years and have argued in at least 1 case before this Court or argued at least 3 cases before state or federal appellate courts;

(4) approve in writing the appearance by the law student and agree to supervise the student;

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

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

(7) read, approve, and sign all documents filed with this Court; assume personal professional responsibility for the student's work in matters before this Court;

(8) be available to consult with the client, if applicable; and

(9) 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) Before commencing student representation in any case under this rule, the prospective supervising attorney must file a motion for leave to allow student representation in such case. The motion must affirm that the provisions of this rule have been met and that, in the prospective 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. 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; and

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

(f) Exceptions.

(1) 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.

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

*The proposed change to Rule 13A would read:*

(a) Appearance by Law Student. With the Court's leave, an eligible law student acting under a supervising attorney may appear in a particular case on any party's behalf, except a case in which any party is under or is potentially subject to a sentence of death. This Rule does not apply to students assisting privately retained counsel.

(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;

(2) have completed legal studies amounting to at least four semesters, or the equivalent if the school is on some basis other than a three-year, six-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 UCMJ and the rules of the 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 the Court;

(3) have been admitted to practice for a minimum of two years and have argued in at least one case before the Court or argued at least three cases before state courts, federal appellate courts, or a Court of Criminal Appeals;

(4) approve in writing the appearance by the law student and agree to supervise the student;

(5) not supervise more than five students in cases before the Court at any one time;

- (6) appear with the student in any oral presentations before the Court;
- (7) assume personal professional responsibility for the student's work in matters before the Court, including reading, approving, and signing all documents filed with the Court;
- (8) if representing the accused, be available to consult with the client; and
- (9) neither ask for nor receive any compensation or remuneration of any kind from the party 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) Before commencing student representation in any case under this Rule, the prospective supervising attorney must file a motion for leave to allow student representation in that case. The motion must affirm 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 must be attached to the motion. No answer will be allowed except with leave of the Court. 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 with the Court; and
- (2) participate in oral argument, but only in the presence of the supervising attorney.

(f) Exceptions. Nothing in this Rule precludes the Government or any agency, firm, or organization from compensating a law student for services rendered under this Rule.

**Rule 15:**

*Rule 15 – Disbarment and Disciplinary Action – currently reads:*

- (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. To the extent that these rules are inconsistent with applicable service rules of professional conduct, the conduct of judge advocates will be reviewed under the rules of their service. To the extent that these rules are inconsistent with the rules of professional conduct which apply in the location where a civilian member of the bar maintains a principal office, the conduct of civilian counsel will be reviewed under the rules of their licensing jurisdiction.

(b) Attorneys must report suspension, disbarment, or final disciplinary action in the bars of other courts to the Bar of this Court within 30 days following said action. Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, the Court must enter an order temporarily suspending that member from practice before this Court and affording the member an opportunity to show cause, within 30 days, why a disbarment order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

(c) If it appears that a member of the Bar of this Court has engaged in conduct unbecoming a member of the Bar, or failed to comply with this Rule or any other Rule or order of the Court, the Court may enter an order affording the member an opportunity to show cause, within 30 days, why disciplinary action should not be taken. If the member, in responding to the show cause order, raises material questions of fact, the Court may appoint a special master who shall hold a hearing and prepare proposed findings of fact and recommendations. After affording the member of the Bar a reasonable opportunity to prepare written objections to the proposed findings of fact and recommendations, the proposed findings and recommendations, together with any written objections thereto, shall be submitted to the Court. Upon due consideration thereof, the Court may take such disciplinary action as it deems appropriate against the member of the Bar.

*The proposed change to Rule 15 would read:*

(a) The conduct of judge advocates will be reviewed under the rules of their service. To the extent that those rules are inconsistent with the rules of professional conduct which apply in the location where a civilian member of the bar maintains a principal office, the conduct of civilian counsel will be reviewed under the rules of their licensing jurisdiction. To the extent that the applicable professional responsibility rules of the Judge Advocate's service or civilian jurisdiction rules do

not cover a subject, the then-current American Bar Association Model Rules of Professional Conduct will apply.

(b) Attorneys must report any suspension, disbarment, or final disciplinary action in the bars of other courts to the Court within thirty days following said action. Whenever a member of the Bar of the Court has been disbarred or suspended from practice in any court of record, the Court must enter an order temporarily suspending that member from practice before the Court and affording the member an opportunity to show cause, within thirty days, why a disbarment or suspension order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

(c) If it appears that a member of the Bar of the Court has engaged in conduct unbecoming a member of the Bar, or failed to comply with this Rule or any other rule or order of the Court, the Court may enter an order affording the member an opportunity to show cause, within thirty days, why disciplinary action should not be taken. If the member, in responding to the show cause order, raises material questions of fact, the Court may appoint a special master who must make further investigation, take evidence, and make recommendations. After affording the member of the Bar a reasonable opportunity to prepare written objections to the proposed findings of fact and recommendations, the proposed findings and recommendations, together with any written objections thereto, must be submitted to the Court. Upon due consideration thereof, the Court may take such disciplinary action as it determines appropriate against the member of the Bar.

#### **Rule 16:**

*Rule 16 – Entry of Appearance and Withdrawal by Counsel – currently reads:*

(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.

*The proposed change to Rule 16 would read:*

(a) Counsel must enter an appearance in writing before participating in the representation of a party before the Court. The filing of any pleading or other paper relative to a case that contains the signature of counsel constitutes an entry of appearance. *See* Rules 13(a), 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 that have been made for continued representation of the accused. Prior to filing, counsel for an accused must serve and/or make other reasonable efforts to notify the accused of counsel's intention to withdraw. Counsel must state in the motion that they made reasonable efforts to notify the accused. A copy of the withdrawal motion filed by an appellate defense counsel must be delivered or mailed to the accused.

### **Rule 17:**

*Rule 17 – Assignment of Counsel – currently reads:*

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.

*The proposed change to Rule 17 would read:*

Upon receipt of a notice of the docketing of a case issued under Rule 10(c), the appropriate Judge Advocate General designates 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 must also designate appellate military counsel to represent such accused.

**Rule 18:**

*Rule 18 – Methods of Appeal – currently reads:*

(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), including decisions by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 USC § 862, 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), including decisions by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 USC § 862, 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), 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 in accordance with Rules 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.

*The proposed change to Rule 18 would read:*

(a) In cases appealed under Article 67(a)(1), UCMJ, 10 U.S.C. § 867(a)(1), the record must be forwarded to the Court by a Judge Advocate General with the form prescribed by Rule 23(a).

(b) In cases appealed under Article 67(a)(2), UCMJ, including decisions by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, the Judge Advocate General must file a certificate for review, substantially in the form provided in Rule 22(a).

(c) In cases appealed under Article 67(a)(3), UCMJ, including decisions by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, review may be sought by the filing of a petition for grant of review, substantially in the form provided in Rule 20(a) or (b).

(d) A petition for extraordinary relief of a decision of a Court of Criminal Appeals may be sought by filing a writ-appeal petition in accordance with Rules 27(b) and 28.

**Rule 19:**

*Rule 19 – Time Limits – currently reads:*

(a) Petition for Grant of Review / Supplement / Answer / Reply

(1) The 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).*

(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, or with the Court's Rules, the United States may move to dismiss such petition.

(5) Filing of Petitions.

(A) Petition Filed by Counsel. In all cases where the petitions filed by counsel, a supplement to the petition establishing good cause in accordance with Rule 21 shall be filed contemporaneously with the petition. A motion for leave to file the supplement separately from the petition will be considered under Rule 30. If granted, the supplement shall be filed within 20 days of the order. Any further motion for enlargement of time to file the supplement, while disfavored, will be granted for good cause shown. An appellee's answer to the supplement to the petition, except for cases on appeal by the United States under Article 62, UCMJ, 10 USC § 862, may be filed no later than 20 days after the filing of the supplement. *See* Rule 21(e). A reply may be filed by the appellant no later than 5 days after the filing of appellee's answer. An appellee's answer to the supplement in a case under appeal by the United States under Article 62, UCMJ, may be filed no later than 10 days after the filing of the supplement; an appellant may file a reply no later than 5 days after the filing of appellee's answer.

(B) Petition Filed by Appellant. In all cases where the petition is filed by the appellant, a supplement to the petition shall be filed by counsel no later than 20 days after the issuance by the Clerk of a notice of docketing of the petition. *See* Rule 10(c). An appellee's answer to the supplement to the petition and an appellant's reply may be filed in accordance with the time limits contained in Rule 19(a)(5)(A).

(C) *Grostefon* Issues. Issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), if not raised earlier, may be presented to the Court by motion filed pursuant to Rule 30(a) no later than 30 days following the filing of the supplement to the petition.

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

(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, 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, to include cases returned by mandate from the United States Supreme Court, the Clerk of Court will issue a briefing order within 30 days to provide the appropriate timing and sequence of filings.

(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, 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 60 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 60 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 either (a) no later than 60 days after the date of the decision of the Court of Criminal Appeals (*see* Rules 22 and 34(a)), or (b) no later than 30 days after a petition for grant of review is granted. In cases that involve both granted and certified issues, the Clerk may establish a consolidated briefing schedule for all issues. In cases that involve only certified issue(s), 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 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. The Court will, whenever practicable, give priority to such cases.

(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 no later than 20 days after the date the decision of the Court of Criminal Appeals is served on the appellant or the appellant's counsel. An appellee's answer shall be filed no later than 10 days after the filing of the writ-appeal petition. A reply may be filed by an appellant no later than 5 days after the filing of the appellee's answer. *See* Rules 27(b) and 28. The Court will, whenever practicable, give priority to such cases.

(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 appellee's answer. *See Rule 29.*

(g) **Timely Motion for Reconsideration Before the Court of Criminal Appeals.** If an appeal is filed in this Court before the expiration of time to file a motion for reconsideration in a Court of Criminal Appeals, this Court, upon the prompt filing of a motion to dismiss by a party stating that a timely motion for reconsideration is pending in a Court of Criminal Appeals, may dismiss the appeal without prejudice and remand the case to the Court of Criminal Appeals for resolution of the motion for reconsideration. Following a decision by the Court of Criminal Appeals on the motion for reconsideration, review may be sought in this Court under Article 67, UCMJ.

*The proposed change to Rule 19 would read:*

(a) **Petition for Grant of Review/Supplement/Answer/Reply:**

(1) The appellant must file a petition for grant of review no later than sixty days from the earlier of:

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

(B) The date on which a copy of the Court of Criminal Appeals' decision, after being served on appellate counsel of record for the appellant (if any), is deposited in the United States mail 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 in the appellant's official service record. Under circumstances where certified mail is not available, registered mail may be used. *See Article 67(b), UCMJ.*

(2) A certificate of notification is placed in the appellant's record of trial setting forth the manner and date that the appellant was notified of the Court of Criminal Appeals' decision 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 is filed on the date when the petition was mailed or delivered by an appellant or by counsel on behalf of an appellant directly to the Court.

(4) The Clerk will, upon receipt of a petition for grant of review, docket the petition. If it appears that such petition is not in accord with Article 67, UCMJ, or with the Court's rules, the United States may move to dismiss such petition.

(5) Filing of Petitions.

(A) Petition Filed by Counsel. In all cases where counsel files the petition, counsel will file contemporaneously with the petition a supplement to the petition establishing good cause in accordance with Rule 21. A motion for leave to file the supplement subsequent to the filing of the petition will be considered under Rule 30. If granted, the supplement must be filed within twenty-one days of the order. Any further motion for extension of time to file the supplement, while disfavored, may be granted for good cause shown.

(B) Petition Filed by Appellant. In all cases where the petition is filed by the appellant, any supplement to the petition must be filed no later than twenty-one days after the Clerk issues a notice that the petition was docketed. *See* Rule 10(c). An appellee's answer to the supplement to the petition and an appellant's reply may be filed in accordance with the time limits contained in Rule 19(a)(5)(A).

(C) *Grostefon* Issues. Issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), if not raised earlier, may be presented to the Court by motion filed pursuant to Rule 30(a) no later than thirty days following the filing of the supplement to the petition.

(6) 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, no further pleadings may be filed, and the Court will, whenever practicable, give priority to such cases.

(B) Other Appeals. In all cases not covered by the foregoing rules, including cases returned by mandate from the Supreme Court of the United States, the Clerk will issue a briefing order promptly to provide the appropriate timing and sequence of filings.

(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, a certificate for review, together with a supporting brief in accordance with Rule 24

on the appellant's behalf, must be filed with the Court by the Judge Advocate General no later than sixty days after the date of the Court of Criminal Appeals' decision. *See* Rules 22, 34(a). An appellee may file an answer no later than fourteen days after such certificate for review and supporting brief is filed. An appellant may file a reply no later than seven days after appellee files its 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 the appellant's behalf, must be filed with the Court no later than sixty days after the date of the Court of Criminal Appeals' decision. *See* Rules 22, 34(a). An appellee may file an answer no later than fourteen days after such certificate for review and supporting brief is filed. The appellant may file a reply no later than seven days after the appellee files its 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 must be filed either: (a) no later than sixty days after the date of the Court of Criminal Appeals' decision (*see* Rules 22, 34(a)); or (b) no later than thirty days after a petition for grant of review is granted. In cases that involve both granted and certified issues, the Clerk may establish a consolidated briefing schedule for all issues. In cases that involve only certified issue(s), an appellant's brief must be filed in accordance with Rule 24 no later than thirty days after the Clerk issues a notice that the certificate for review was docketed. An appellee's answer must be filed no later than thirty days after an appellant's brief is filed. The appellant may file a reply no later than fourteen days after the appellee's answer is filed.

(c) Mandatory Review Case. The Judge Advocate General must file the record in a mandatory review case, utilizing the form prescribed by Rule 23(a). The record must be filed within thirty-five days of the expiration of the time for filing a petition for reconsideration of the Court of Criminal Appeals' decision or, in the event of the filing of such petition, upon the final disposition thereof. The appellant must file a brief setting forth assigned errors in accordance with Rule 24 no later than sixty days after the Clerk issues a notice that the case was docketed. An appellee may file an answer no later than sixty days after the appellant's brief is filed. The appellant may file a reply no later than twenty-one days after appellee's answer is filed.

(d) Petition for Extraordinary Relief. A petition for extraordinary relief under Rule 4(b)(1) will be filed as soon as possible but, in any event, no later than twenty-one days after the petitioner learns of the action that is the basis of the petition. A petition for a writ of habeas corpus or writ of error coram nobis may be filed at any time. *See* Rules 27(a), 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 must be filed no later than twenty-one days after the date the decision of the Court of Criminal Appeals is served on the appellant. An appellee may file an answer no later than fourteen days after the writ-appeal petition is filed. The appellant may file a reply no later than seven days after the appellee's answer is filed. *See* Rules 27(b), 28.

(f) Petition for New Trial. When a petition for new trial is filed with the Court in a case pending before the Court, a brief in support thereof, unless expressly incorporated in the petition, must be filed no later than thirty days after the Clerk issues a notice that the petition was filed. The appellee may file an answer no later than thirty days after the appellant's brief is filed. The appellant may file a reply no later than fourteen days after the appellee's answer is filed. *See* Rule 29.

(g) Timely Motion for Reconsideration Before the Court of Criminal Appeals. If an appeal is filed in this Court before the expiration of time to file a motion for reconsideration in a Court of Criminal Appeals, this Court, upon the prompt filing of a motion to dismiss by a party stating that a timely motion for reconsideration is pending in a Court of Criminal Appeals, may dismiss the appeal without prejudice and remand the case to the Court of Criminal Appeals for resolution of the motion for reconsideration. Following a decision by the Court of Criminal Appeals on the motion for reconsideration, review may be sought in the Court under Article 67, UCMJ.

(h) Unless otherwise prohibited by statute or these rules, a motion for extension of time may be sought within the time for filing the applicable pleading or brief.

## **Rule 20:**

*Rule 20 – Form of Petition for Grant of Review – currently reads:*

(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

PETITION FOR GRANT  
OF REVIEW

v.

---

(Full typed name, rank,  
& service of appellant)

Appellant

Crim.App. 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] [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, NW  
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

PETITION FOR GRANT  
OF REVIEW

v.

(Full typed name, rank,  
& service of appellant)

Crim.App. Dkt. No. \_\_\_\_\_

Appellant

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] [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).

---

(Signature of counsel)

(Typed name of counsel)

(Address of counsel)

(Telephone no. of counsel)

(E-mail address of counsel)

(Date and manner of filing—

*See Rules 36 and 39*

(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). Upon receipt, the Clerk shall stamp the petition indicating the date it was received and, if filed by mail under Rule 36(c), shall retain the envelope showing the postmark thereon.

(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 filed personally by an appellant, 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)(B), and the provisions of Rule 21.

*The proposed change to Rule 20 would read:*

(a) Form to be Used by an Appellant. A petition for grant of review under Rule 18(c) filed personally by an appellant must be substantially in the following form:

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

UNITED STATES,

Appellee

v.

PETITION FOR  
GRANT OF REVIEW

Crim. App. Dkt. No. \_\_\_\_\_

(Full typed name, grade  
& service of appellant),

USCA Dkt. No. \_\_\_\_\_  
[For Court use only]

Appellant

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 U.S.C. § 862] [on appeal under Article 66, Uniform Code of  
Military Justice, 10 U.S.C. § 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 United States Court of Appeals for the Armed Forces.

SIGNED: \_\_\_\_\_  
(Put your signature here)

DATED: \_\_\_\_\_  
(Put mailing date here)

MAIL TO:

United States Court of Appeals for the  
Armed Forces  
450 E Street, NW

Washington, D.C. 20442-0001

(b) Form to be Used by an Appellant's Counsel. A petition for grant of review under Rule 18(c) 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.

PETITION FOR  
GRANT OF REVIEW

Crim. App. Dkt. No. \_\_\_\_\_

---

(Full typed name, grade  
& service of appellant),

USCA Dkt. No. \_\_\_\_\_  
[For Court use only]

Appellant

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

---

(Signature of counsel)

---

(Typed name of counsel)

---

(Address of counsel)

---

(Telephone no. of  
counsel)

---

(E-mail address of  
counsel)

---

(Date and manner of filing  
*See Rules 36 and 39*)

(c) An appellant must file a petition for grant of review in the manner and within the time limits set forth in Rule 19(a). Upon receipt, the Clerk stamps the petition indicating the date it was received and, if filed by mail under Rule 36(d), retains the envelope showing the postmark thereon.

(d) When a petition for grant of review is filed with the Court, the Clerk will ensure a copy thereof is 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 designates counsel to represent the parties unless counsel already represents such parties. *See Rule 17.*

(e) Upon the Clerk docketing a petition for grant of review under Rule 10(c) filed personally by an appellant, counsel for the appellant must file a supplement to the petition within the applicable time limit set forth in Rule 19(a)(5)(B) and Rule 21.

**Rule 21:**

*Rule 21 – Supplement to Petition for Grant of Review – currently reads:*

(a) Review on petition for grant of review requires a showing of good cause. Good cause should 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 USC § 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) and shall include an Appendix containing a copy of the decision of the Court of Criminal Appeals, unpublished opinions cited in the brief, relevant extracts of rules and regulations, and shall conform to the provisions of Rules 35A and 37. Unless authorized by Order of the Court or by motion of a party granted by the Court, the supplement and any answer thereto may not exceed 9,000 words. Any reply to the answer may not exceed 4,500 words. The supplement shall contain:

(1) A statement of the errors assigned for review by the Court, expressed concisely in relation to the circumstances of the case, without unnecessary detail. The assigned errors should be short and should not be argumentative or repetitive;

(2) A statement of statutory jurisdiction, including:

(A) The statutory basis of the Court of Criminal Appeals jurisdiction;

(B) The statutory basis upon which this Court's jurisdiction is invoked;

(3) A statement of the case setting forth a concise chronology, including all relevant dates. The chronology shall specify: (A) the results of the trial; (B) the actions of the intermediate reviewing authorities and the Court of Criminal Appeals; (C) the disposition of a petition for reconsideration or rehearing, if filed; and (D) any other pertinent information regarding the proceedings, including, if set forth in the record, the date when service upon the accused of the decision of the Court of Criminal Appeals was effected;

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

(5) 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 UCMJ 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 courtmartial or other person acting under the authority of the UCMJ, as to warrant review by the Court; 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 specifying the issue or issues on which certiorari review would be sought, whether related to the remand or to the original decision by this Court; and

(6) A certificate of filing and service in accordance with Rule 39(g).

(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, 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 20 days after the filing of such supplement (*see* Rule 21(e)); as a discretionary alternative in the event a formal answer is deemed unwarranted, an 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 5 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.

(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 may move to withdraw a petition at any time by filing a motion pursuant to Rule 30. Such a motion must be accompanied by a written request for withdrawal that includes the following:

(1) A statement that the appellant and counsel for the appellant have discussed the appellant's right to appellate review, the effect of the withdrawal, and that the appellant understands these matters;

(2) A statement that the motion to withdraw the petition is submitted voluntarily and cannot be revoked;

(3) The signatures of the appellant and counsel for the appellant.

*The proposed change to Rule 21 would read:*

(a) Review on petition for grant of review requires a showing of good cause. Good cause should be shown by the appellant in the supplement to the petition, which must 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 must be filed in accordance with the applicable time limit set forth in Rule 19(a)(5), must include an Appendix containing an official copy of the decision of the Court of Criminal Appeals, and must conform to the provisions of Rules 35A and 37. Unless authorized by Order of the Court or by motion of a party granted by the Court, the supplement and any answer thereto may not exceed 9,000 words. Any reply to the answer may not exceed 4,500 words. The supplement must contain:

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

(2) A statement of statutory jurisdiction, including:

(A) The statutory basis of the Court of Criminal Appeals' jurisdiction;

(B) The statutory basis upon which the Court's jurisdiction is invoked;

(3) A statement of the case setting forth a concise chronology, including all relevant dates. The chronology must specify: (A) the results of the trial; (B) the actions of the intermediate reviewing authorities and the Court of Criminal Appeals; (C) the disposition of a petition for reconsideration or rehearing, if filed; and (D) any other pertinent information regarding the proceedings, including, if set forth in the record, the date when service upon the accused of the decision of the Court of Criminal Appeals was effected;

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

(5) 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 must indicate whether the court below has:

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

(B) decided a question of law in a way that conflicts with applicable decisions of (i) the Court, (ii) the Supreme Court of the United States, (iii) another Court of Criminal Appeals, (iv) another panel of the same Court of Criminal Appeals, or (v) a United States Circuit Court of 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 UCMJ or other act of Congress, the Manual for Courts-Martial, United States, 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 UCMJ, as to warrant review by the Court; 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 specifying the issue or issues on which certiorari review would be sought, whether related to the remand or to the original decision by this Court. [Effective Dec. 22, 2024, pursuant to National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, § 533(a)(1), (b), 137 Stat. 136, 261 (2023), Rule 21(b)(5)(G) is amended to: “(G) taken inadequate corrective action after remand by the Court subsequent to grant of an earlier petition in the same case.”]

(6) A supplement submitted under this Rule must include a certificate stating that the number of words in the supplement complies with the applicable type-volume limitations of this Rule and Rule 37. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the supplement. The certificate must state the number of words in the supplement.

(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, case must be filed no later than fourteen days after the filing of such supplement. An appellant may file a reply no later than seven 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 twenty-one days after the filing of such supplement (*see* Rule 21(e)). As a discretionary alternative if a formal answer is waived, an appellee may file with the Clerk a short letter, within seven days after the filing of the appellant’s supplement to the petition, 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). An appellant may file a reply no later than seven days after the filing of the appellee’s answer or answer letter.

(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 that merit review.

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

(f) An appellant may move to withdraw a petition at any time by filing a motion pursuant to Rule 30. Such a motion must be accompanied by a written request for withdrawal that includes the following:

(1) A statement that the appellant and counsel for the appellant have discussed the appellant's right to appellate review, the effect of the withdrawal, and that the appellant understands these matters;

(2) A statement that the motion to withdraw the petition is submitted voluntarily and cannot be revoked;

(3) The signatures of the appellant and counsel for the appellant.

#### **Rule 21A:**

*Rule 21A – Submissions under *United States v. Grostefon* – currently reads:*

(a) Issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), shall be presented in a separate Appendix to the supplement not to exceed 15 pages.

(b) *Grostefon* issues shall be identified by counsel with particularity and, where pertinent, references to the record of trial must be to the specific page in the record. *Grostefon* issues shall be presented substantially in the following form:

#### **APPENDIX**

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

[List issues and any argument for each issue.]

(c) *Grostefon* issues raised within 30 days of the filing of the supplement under Rule 19(a)(5)(c) are subject to and included within the 15-page limit in Rule

21A(a). An appellee's answer to *Grostefon* issues may be filed no later than 20 days after the filing of such issues.

*The proposed change to Rule 21A would read:*

**Rule 22:**

*Rule 22 – Certificate for Review – currently reads:*

(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)

CERTIFICATE FOR REVIEW

v.

---

(Full typed name, grade  
& service of accused),

(Appellant)  
(Appellee)

Crim. App. 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), 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 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 or an appeal by the United States under Article 62, UCMJ, 10 USC § 862.]

3. It is requested that action be taken with respect to the following issue(s):

[Set out issue(s) here]

---

The Judge Advocate General

Received a copy of the foregoing Certificate for Review this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.  

---

Appellate Government Counsel

Appellate Defense Counsel

---

Address and telephone no.

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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, shall be filed, together with a supporting brief in accordance with Rule 24, on behalf of the appellant no later than 60 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 60 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 either (a) no later than 60 days after the date of the decision of the Court of Criminal Appeals (*see Rule*

34(a)) or (b) no later than 30 days after a petition for grant of review is granted. In case that involve both granted and certified issues, the Clerk may establish a consolidated briefing schedule for all issues. In cases that involve only certified issue(s), 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.

*The proposed change to Rule 22 would read:*

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

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

UNITED STATES,  
(Appellee)  
(Appellant)

CERTIFICATE FOR REVIEW

v.

---

(Full typed name, grade,  
& service of accused),

(Appellant)  
(Appellee)

Crim. App. 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), Uniform Code of Military Justice (UCMJ), 10 U.S.C. 867(a)(2), 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)\_\_\_\_\_, UCMJ, and has been sentenced to (*include entire adjudged sentence*) on the (*insert trial date*). The trial took place at (*location*). Judgment

was entered on the following findings and sentence: \_\_\_\_\_. 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 or an appeal by the United States under Article 62, UCMJ, 10 U.S.C. § 862.]

3. It is requested that action be taken with respect to the following issue(s):

[Set out issue(s) here]

---

The Judge Advocate General

Received a copy of the foregoing Certificate for Review this \_\_\_\_ day of \_\_\_\_,

---

---

Appellate Government Counsel

---

Appellate Defense Counsel

---

Address, email, and telephone no.  
no.

---

Address, email, and telephone

### **Certificate of Filing and Service**

I certify that the foregoing was electronically filed with the Court, and a copy served upon appellate defense counsel on this \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

---

Appellate Counsel

(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, must be filed with a supporting brief in accordance with Rule 24, on behalf of the

appellant no later than sixty days after the date of the decision of the Court of Criminal Appeals. *See Rule 34(a).* An appellee must file its answer no later than fourteen days after the appellant files such certificate for review and supporting brief. The appellant may file a reply no later than seven days after the appellee files its 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 must be filed with a supporting brief in accordance with Rule 24, on behalf of the appellant, no later than sixty days after the date of the decision of the Court of Criminal Appeals. *See Rule 34(a).* An appellee must file its answer no later than fourteen days after the appellant files such certificate for review and supporting brief. The appellant may file a reply no later than seven days after the appellee files its answer.

(3) Other Cases. In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review must be filed either: (a) no later than sixty days after the date of the decision of the Court of Criminal Appeals (*see Rule 34(a))*; or (b) no later than twenty-eight days after a petition for grant of review is granted. In cases that involve both granted and certified issues, the Clerk will establish a consolidated briefing schedule for all issues. In cases that involve only certified issue(s), the appellant must file a brief in support of the certified issues in accordance with Rule 24 no later than twenty-eight days after the Clerk issues a notice of docketing of the certificate for review. An appellee must file its answer no later than twenty-eight days after the appellant files its brief. The appellant must file a reply no later than fourteen days after the appellee files its answer.

### **Rule 23:**

*Rule 23 – Mandatory Review Case – currently reads:*

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

UNITED STATES,  
Appellee

MANDATORY REVIEW CASE

---

(Full typed name, grade,  
& service of accused),

Appellant

Crim. App. Dkt. No. \_\_\_\_\_

USCA Dkt. No. \_\_\_\_\_

[For Court use only]

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

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

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

---

The Judge Advocate General

Received a copy of the foregoing Certificate for Review this \_\_\_\_\_ day of \_\_\_\_\_,

---

Appellate Government Counsel

---

Appellate Defense Counsel

---

Address and telephone no.

---

Address and telephone no.

(b) In a mandatory review case, 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. Such brief shall not incorporate by reference that filed before a Court of Criminal Appeals, the convening authority, or the military judge. An appellee's answer shall be filed no later than 60 days after the filing of the assignment of errors and supporting brief.

A reply may be filed by the appellant no later than 20 days after the filing of the appellee's answer

*The proposed change to Rule 23 would read:*

(a) The record in a mandatory review case under Rule 18(a) must be filed with the following form:

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

UNITED STATES,  
Appellee

MANDATORY REVIEW CASE

v.

---

(Full typed name, grade,  
& service of accused),

Appellant

Crim. App. Dkt. No. \_\_\_\_\_

USCA Dkt. No. \_\_\_\_\_

[For Court use only]

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

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

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

---

The Judge Advocate General

Received a copy of the foregoing this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

---

Appellate Government Counsel

---

Appellate Defense Counsel

---

Address, email, and telephone no.

---

Address, email, and telephone no.

### **Certificate of Filing and Service**

I certify that the foregoing was electronically filed with the Court, and a copy served upon appellate defense counsel on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

---

Appellate Counsel

(b) In a mandatory review case, unless otherwise ordered by the Court, the appellant must file a brief setting forth assigned errors in accordance with Rule 24 no later than sixty days after the issuance by the Clerk of a notice of docketing of the case. Such brief may not incorporate by reference a brief filed before a Court of Criminal Appeals, the convening authority, or the military judge. An appellee's answer must be filed no later than sixty days after the appellant files its assignment of errors and supporting brief. The appellant may file a reply no later than twenty-one days after the appellee files its answer.

### **Rule 24:**

*Rule 24 – Form, Content, and Type-Volume Limitations – currently reads:*

(a) Form and Content. All briefs shall conform to the printing, copying and style requirements of Rule 37, shall be legible, and shall be substantially as follows:

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

UNITED STATES,  
(Appellee)  
(Appellant)  
(Respondent)

BRIEF ON BEHALF OF (APPELLANT,  
APPELLEE, ETC.)

v.

---

(Full typed name, grade,  
& service of accused),

(Appellant)  
(Appellee)  
(Petitioner)

Crim. App. Dkt. No. \_\_\_\_\_

USCA Dkt. No. \_\_\_\_\_  
[For Court use only]

Index of Brief

[See Rule 37(c)(1)]

Table of Cases, Statutes, and Other Authorities

Issue(s) Presented

[Set forth, in a concise statement, each issue granted review by the Court, raised in the certificate for review or mandatory review case, or presented in the petition for extraordinary relief, writ-appeal petition, or petition for new trial. Issues presented will be set forth in upper case letters.]

Statement of Statutory Jurisdiction

[Set forth the statutory basis of the Court of Criminal Appeals jurisdiction and the statutory basis for this Court's jurisdiction.]

Statement of the Case

[Set forth a concise chronology, including all relevant dates, to include: (A) the results of the trial; (B) actions of reviewing authorities and the Court of Criminal Appeals; (C) the disposition of a petition for reconsideration or rehearing, if filed;

and (D) any other pertinent information regarding the proceedings, including where applicable, the date the petition for review was granted.]

#### Statement of Facts

[Set forth a concise statement of the facts of the case material to the issue or issues presented, including references to each relevant portion of the record of trial. Answers may adopt the appellant's or petitioner's statement of facts if there is no dispute, may state additional facts, or if there is a dispute, may restate the facts as they appear from the appellee's or respondent's viewpoint. The repetition of uncontested matters is not desired.]

#### References to the Record

[References to the parts of the record contained in the joint appendix filed with the appellant's brief must be to the pages of the joint appendix.]

#### Summary of Argument

[Each brief and answer shall contain a summary of argument, suitably paragraphed to correspond to each issue presented. The summary should be a succinct but accurate and clear condensation of the arguments made in the body of the brief.]

#### Argument

[Discuss briefly the point of law presented, citing and quoting such authorities as are deemed pertinent. The argument must also include for each issue presented a statement of the applicable standard of review. The standard of review may appear in the discussion of each issue or under a separate heading.]

#### Conclusion

[State the relief sought as to each issue presented, for example, reversal of the Court of Criminal Appeals decision and dismissal of the charges, grant of a new trial, the extraordinary relief sought, etc. No particular form of language is required, so long as the brief concludes with a clear prayer for specific Court action.]

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(Signature of counsel)

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(Typed name of counsel)

---

(Address of counsel)

---

(Telephone no. of counsel)

## CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [delivered] (or) [mailed/specify class] (or) [delivered to-specify the name of the third-party commercial carrier for delivery and within how many days delivery will be effected] to the Court and [delivered] (or) [mailed-specify class] (or) [delivered to-specify the name of the third-party commercial carrier for delivery and within how many days delivery will be effected] (or) [transmitted by electronic means with the consent of the counsel being served] to (email or fax no.) on (date). [Where more than one counsel or party is being served, the certificate should specify how each party or counsel was served.]

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(Typed name and signature)  
(Address and telephone no.)

(b) Type-Volume Limitations. Unless otherwise authorized by order of the Court or by motion of a party granted by the Court (*see* Rule 30), or by Rule 24(c), the type-volume limitations for briefs filed with the Court, not including appendices shall be as follows:

(1) A brief of the appellants/petitioners and an answer of the appellees/respondents may not exceed 14,000 words.

(2) A reply may not exceed more than half of the words (7,000) specified in Rule 24(b)(1).

(3) Headings, footnotes, and quotations count toward the word limitation. The index, table of cases, statutes, and other authorities, the appendix and any certificates of counsel do not count toward the limitation.

(c) Certificate of Compliance. A brief submitted under Rule 24(b) must include a certificate stating that the number of words in the brief complies with the type- volume limitation and Rule 37. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state the number of words in the brief.

(d) Form of Certificate of Compliance

**CERTIFICATE OF COMPLIANCE WITH RULE 24(b)**

This brief complies with the type-volume limitation of Rule 24(b) because:

This brief contains \_\_\_\_\_ [state the number of] words,

This brief complies with the typeface and type style requirements of Rule 37.

/s/ \_\_\_\_\_

Attorney for \_\_\_\_\_

Dated: \_\_\_\_\_

(e) Joint Appendix. The appellant or petitioner shall be responsible for filing eight copies of a joint appendix, which shall be a separate document filed contemporaneously with the brief.

(1) Contents. The joint appendix shall contain:

(A) a copy of the decision of the Court of Criminal Appeals;

(B) copies of unpublished opinions cited in the brief of the appellant or petitioner; the appellee or respondent will include copies of unpublished opinions cited in its brief as an attachment to its brief;

(C) relevant extracts of rules and regulations;

(D) relevant docket entries from the proceeding below;

(E) relevant portions of the pleadings, charges, and findings from the proceeding below;

(F) other parts of the record of trial to which the parties wish to direct the Court's attention set out in chronological order.

(2) Format. The joint appendix will be produced on 8.5 by 11 inch white paper, be bound in a manner that is secure and does not obscure the text, and will permit the contents to lie reasonably flat when open. The cover must be white and contain the caption of the case and docket number. The cover shall be followed by a table of contents. Pages in the joint appendix shall be sequentially numbered in a manner that does not obscure any page numbers reflected in the record of trial. If the joint appendix consists of less than 100 pages, it may be reproduced by single-sided or double-sided copying. If it consists of 100 pages or more, the joint appendix shall use double- sided copying. Audio and video recordings may be filed electronically or produced on a CD or DVD. *See the Guidelines for Electronic Filing of Pleadings § 1(e).* Classified material or matters under seal that are to be included in a joint appendix shall be submitted in a separate volume, clearly designated as containing classified or sealed material. Classified material will be handled in accordance with Rule 12.

(3) Deadline. Unless otherwise ordered by the Court, the joint appendix shall be filed contemporaneously with the brief of the appellant or petitioner. If a cross-appeal is filed, a single joint appendix shall be filed for both appeals subject to a briefing schedule established by the Clerk. The appellant or petitioner shall serve one copy on opposing counsel.

(4) Agreement and Designation. The parties are encouraged to agree on the contents of the joint appendix. In the absence of agreement, the appellant or petitioner must, within 10 days of the order granting the petition, the filing of a certificate for review by a Judge Advocate General, the notice of the docketing of a mandatory review case, or the filing of a petition for new trial, petition for extraordinary relief or a writ-appeal petition, serve on the appellee or respondent a designation of the issues to be raised on appeal and of the parts of the record to be included in the joint appendix. The appellee or respondent may, within 10 days after receiving the designation, serve on the appellant or petitioner a designation of the additional parts of the record to draw to the attention of the Court. The appellant or petitioner must include the parts designated by the appellee or respondent in the joint appendix. The parties must avoid engaging in unnecessary designation of parts of the record because unnecessary designation is wasteful, and the entire record is available to the Court. In the event a cross-appeal is filed, the deadlines for designations shall be established by the Clerk.

(5) Dispensing With Requirement. The Court, on its own motion or that of a party, may dispense with the requirement for a joint appendix and may permit a case to be heard on the original record with any copies of the record or parts thereof that the Court may order the parties to file.

*The proposed change to Rule 24 would read:*

(a) Form and Content. All briefs will conform to the printing, copying, and style requirements of Rule 37, be legible, and be substantially as follows:

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

UNITED STATES,  
(Appellee)  
(Appellant)  
(Respondent)

BRIEF ON BEHALF OF (APPELLANT,  
APPELLEE, ETC.)

v.

---

(Full typed name, grade,  
& service of accused),

(Appellant)  
(Appellee)  
(Petitioner)

Crim. App. Dkt. No. \_\_\_\_\_

USCA Dkt. No. \_\_\_\_\_  
[For Court use only]

Index of Brief

[See Rule 37(c)(1)]

Table of Cases, Statutes, and Other Authorities

Issue(s) Presented

[Set forth, *in a concise statement*, each issue for which the Court granted review; each issue raised in the certificate for review; each issue presented in the petition for extraordinary relief, writ-appeal petition, or petition for new trial; or

each issue raised by a party in a mandatory review case. Issues presented will be set forth in standard bold sentence case.]

#### Statement of Statutory Jurisdiction

[Set forth the statutory basis of the Court of Criminal Appeals' jurisdiction and the statutory basis for this Court's jurisdiction.]

#### Relevant Authorities

[The constitutional provisions, treaties, statutes, rules, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text shall be set out in an addendum to the brief.]

#### Statement of the Case

[Set forth a concise chronology, including all relevant dates, to include: (A) the results of the trial; (B) actions of reviewing authorities and the Court of Criminal Appeals; (C) the disposition of a petition for reconsideration or rehearing, if filed; and (D) any other pertinent information regarding the proceedings, including, where applicable, the date the Court granted the petition for review.]

#### Statement of Facts

[Set forth a concise statement of the facts of the case material to the issues presented, including references to each relevant portion of the record of trial. Answers may adopt the appellant's or petitioner's statement of facts if there is no dispute, state additional facts, or if there is a dispute, restate the facts as they appear from the appellee's or respondent's viewpoint. Avoid reciting uncontested matters.]

#### References to the Record

[References to the parts of the record must be to the pages of the Joint Appendix. All parties must include as an attachment to the brief copies of unpublished opinions cited in that brief, unless such opinions are available online.]

#### Summary of Argument

[Each brief and answer must contain a summary of argument, suitably paragraphed to correspond to each issue presented. The summary should be a succinct but accurate and clear condensation of the arguments made in the body of the brief.]

#### Argument

[Discuss the point(s) of law presented, citing and quoting pertinent authorities. The argument must also include for each issue presented a statement of the applicable standard of review. The standard of review may appear in the discussion of each issue or under a separate heading.]

### Conclusion

[State the relief sought as to each issue presented, for example, reversal of the Court of Criminal Appeals' decision and dismissal of the charges, grant of a new trial, the extraordinary relief sought, etc. No particular form or language is required, so long as the brief concludes with a clear prayer for specific Court action.]

---

(Signature of counsel)

---

(Typed name of counsel)

---

(Address of counsel)

---

(Email address of counsel)

---

(Telephone no. of counsel)

### CERTIFICATE OF FILING AND SERVICE

[Insert the certificate of service located in Rule 39(c)(2).]

---

(Typed name and signature)

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(Address, email address, and telephone no.)

(b) Type-Volume Limitations. Unless otherwise authorized by order of the Court or by motion of a party granted by the Court (*see* Rule 30), or by Rule 23(b), the type-volume limitations for briefs filed with the Court, not including Appendices, are as follows:

(1) A brief of the appellants/petitioners and an answer of the appellees/respondents may not exceed 13,000 words.

(2) A reply may not exceed half of the words (6,500) specified in Rule 24(b)(1).

(3) Headings, footnotes, and quotations count toward the word limitation. The index, table of cases, statutes, and other authorities, the Appendix and any certificates of counsel do not count toward the limitation.

(c) Certificate of Compliance. A brief submitted under Rule 24(b) must include a certificate stating that the number of words in the brief complies with the applicable type-volume limitations of this Rule and Rule 37. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief. The certificate must state the number of words in the brief.

(d) Form of Certificate of Compliance.

**CERTIFICATE OF COMPLIANCE WITH RULE 24(b)**

This brief complies with the type-volume limitation of Rule 24(b) because:

This brief contains \_\_\_\_\_ [state the number of] words.

This brief complies with the typeface and type style requirements of Rule 37.

/s/ \_\_\_\_\_

Attorney for \_\_\_\_\_

Dated: \_\_\_\_\_

(e) Joint Appendix. In addition to electronically filing a Joint Appendix, the appellant or petitioner is responsible for filing eight paper copies of a Joint Appendix, which is a separate document filed contemporaneously with the brief.

(1) Contents. The Joint Appendix must contain:

- (A) a copy of the official decision of the Court of Criminal Appeals;
- (B) copies of unpublished opinions cited in the brief of the appellant or petitioner, unless such opinion is available online;
- (C) relevant docket entries from the proceeding below;
- (D) relevant portions of the pleadings, charges, and findings from the proceeding below;
- (E) other parts of the record of trial, set out in chronological order, to which the parties wish to direct the Court's attention.

(2) Format. The Joint Appendix will be sent electronically in a PDF document and produced on 8.5 by 11-inch white paper. It will be bound in a manner that is secure and does not obscure the text and will permit the contents to lie reasonably flat when open. The cover must be white and contain the caption of the case and docket number. The cover is followed by a table of contents. Pages in the Joint Appendix are sequentially numbered in a manner that does not obscure any page numbers reflected in the record of trial. If the Joint Appendix consists of less than 100 pages, it may be reproduced by single-sided or double-sided copying. If it consists of 100 pages or more, the Joint Appendix will use double-sided copying. Audio and video recordings may be filed electronically or produced on a CD or DVD.

(3) Deadline. Unless the Court otherwise orders, the Joint Appendix must be filed contemporaneously with the brief of the appellant or petitioner. If a cross-appeal is filed, a single Joint Appendix must be filed for both appeals, subject to a briefing schedule the Clerk establishes. The appellant or petitioner must serve one copy on opposing counsel.

(4) Agreement and Designation. The parties are encouraged to agree on the contents of the Joint Appendix. In the absence of agreement, the appellant or petitioner must serve on the appellee or respondent a designation of the issues to be raised on appeal and of the parts of the record to be included in the Joint Appendix. Service must be made within fourteen days of the order granting the petition, the Judge Advocate General filing a certificate for review, the notice of the docketing of a mandatory review case, or the filing of a petition for new trial, petition for extraordinary relief, or a writ-appeal petition. The appellee or respondent may,

within fourteen days after receiving the designation, serve on the appellant or petitioner a designation of the additional parts of the record to draw to the attention of the Court. The appellant or petitioner must include the parts designated by the appellee or respondent in the Joint Appendix. The parties must avoid designating unnecessary parts of the record because the entire record is available to the Court. In the event a cross-appeal is filed, the Clerk will establish deadlines for designations.

(5) Dispensing With Requirement. The Court, on its own motion or that of a party, may dispense with the requirement for a Joint Appendix and may permit a case to be heard on the original record with any copies of the record or parts thereof that the Court may order the parties to file.

**Rule 25:**

*Rule 25 – When Briefs are Required – currently reads:*

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, and petitions for new trial. The appellee's answer and the appellant'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).

*The proposed change to Rule X would read:*

Rule 25. Briefs: Requirements

Unless the Court otherwise orders, briefs must be filed in all mandatory review cases and in support of all granted petitions, certificates for review, and petitions for new trial. The appellee's answer and the appellant's reply in any of the foregoing instances must be in the format specified in Rule 24. The answer and reply to the supplement to a petition for grant of review must be in accordance with Rule 21(c).

**Rule 26:**

*Rule 26 – Amicus Curiae Briefs – currently reads:*

(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) All motions and briefs filed under Rule 26(a)(3) must contain a statement of the movant's interest and why the matters asserted are relevant to the disposition of the case. Amicus curiae briefs filed pursuant to Rule 26(a)(3) that bring relevant matter to the attention of the Court not already brought to its attention by the parties may be of considerable help to the Court. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored. The motion must also provide a statement as to whether the parties consent to the filing of the amicus curiae brief. Only an attorney admitted to practice as a member of the Bar of the Court or an attorney appearing pro hac vice may file an amicus curiae brief.

(c) An amicus curiae brief submitted before the Court's consideration of a petition for grant of review, petition for extraordinary relief, writ-appeal petition, or petition for new trial may be filed under subparagraphs (a)(1) or (a)(2), or if the Court grants leave to file under subparagraph (a)(3) of this rule.

(d) Unless otherwise ordered by the Court, a brief of an amicus curiae in support of a party shall be filed no later than 10 days after that party has filed its brief, supplement to the petition for grant of review, petition for extraordinary relief, writ-appeal petition, or answer. If no party is supported, the brief of an amicus curiae shall be filed no later than 10 days after the first brief, supplement to the petition for grant of review, petition for extraordinary relief, or writappeal petition is filed. In the case of a petition for new trial, the brief of an amicus curiae shall be filed no later than 10 days after the petitioner's brief in support of the petition has been filed with the Court. Motions for leave to file an amicus curiae brief under Rule 26(a)(3) must be filed within the time allowed for the filing of the brief and contemporaneously with the amicus curiae brief itself. Requests for extensions of time to file an amicus curiae brief will be granted for good cause shown. A party may file a motion under Rule 30 for leave to reply to the brief of an amicus curiae.

(e) 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.

(f) Except by the Court's permission, a brief of an amicus curiae may be no more than one-half the maximum length authorized by Rule 24 for a brief for an appellant/petitioner. If the Court grants a party permission to file a longer brief, that extension does not affect the length of an amicus curiae brief.

(g) A member of the Bar of the Court who represents an amicus curiae and is authorized to file a brief under paragraph (a) of this rule may file a motion for leave to have a law student enter an appearance on behalf of an amicus curiae. To be eligible to participate under this rule, a law student must be acting under the attorney's supervision and the attorney and the law student must substantially comply with the requirements of Rule 13A(b)(1)–(5) and (c)(1)–(11). Argument by a law student granted permission to appear on behalf of an amicus curiae may be requested by motion filed under Rule 30.

*The proposed change to Rule 26 would read:*

(a) An amicus curiae brief may be submitted before the Court's consideration of a petition for grant of review, petition for extraordinary relief, writ-appeal petition, petition for new trial, or granted case.

(b) A brief of an amicus curiae may be filed: (1) by an appellate government or defense division of an armed service other than that from which the case has arisen; (2) by invitation of the Court; (3) by any person who filed an amicus curiae brief in the Court of Criminal Appeals in this case; or (4) by any other person, including a victim or complainant, by motion for leave to file granted by the Court.

(c) All motions and briefs filed under Rule 26(b)(4) must contain a statement of the movant's interest and why the matters asserted are relevant to the disposition of the case. Amicus curiae briefs that bring relevant additional matters to the attention of the Court may be of considerable help to the Court. An amicus curiae brief that does not serve this purpose burdens the Court. The motion to file an amicus curiae brief must also provide a statement as to whether the parties consent to the filing. Only an attorney admitted to practice as a member of the Bar of the Court or an attorney admitted pro hac vice in accordance with Rule 13 may file an amicus curiae brief.

(d) An amicus curiae brief in support of a party must be filed no later than seven days after that party has filed its brief, supplement to the petition for grant of review, petition for extraordinary relief, writ-appeal petition, or answer. If no party is supported, the amicus curiae brief must be filed no later than seven days after the

filings of the brief of the appellant/petitioner. In the case of a petition for new trial, the amicus curiae must file its brief no later than fourteen days after the petitioner has filed its brief with the Court. Motions for leave to file an amicus curiae brief under Rule 26(b)(4), together with the proposed brief, must be filed within the time allowed for filing the brief.

(e) The Court will not delay the hearing or the disposition of a case 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.

(f) Except for good cause shown, a brief of an amicus curiae may be no more than one-half the maximum length authorized by Rule 24 for a brief of an appellant/petitioner. If the Court grants a party permission to file a longer brief, that does not affect the maximum length of an amicus curiae brief.

(g) A member of the Bar of the Court who represents an amicus curiae and is authorized to file a brief under paragraph (b) of this Rule may file a motion for leave to have a law student enter an appearance on behalf of an amicus curiae. The supervising attorney and law student must comply with the requirements of Rule 13A. Argument by a law student granted permission to appear on behalf of an amicus curiae may be requested by motion filed under Rule 30.

### **Rule 27:**

*Rule 27 – Petition for Extraordinary Relief, Writ-Appeal Petition,*

*Answer, and Reply – currently reads:*

(a) Petition for Extraordinary Relief.

(1) A petition for extraordinary relief shall be filed within the time prescribed in Rule 19(d), shall conform in length to Rule 24(d), and, in accordance with Rule 39, be accompanied by proof of service on all respondents. The petitioner shall also provide a copy of the petition to any trial or appellate military judge whose decision, judgment, or order is the subject of the petition.

(2)(A) The petition for extraordinary relief shall be captioned “In Re [name of petitioner].”

(B) The petition shall contain:

(i) a 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;

(ii) the reasons relief has not been sought from the appropriate Court of Criminal Appeals, if that is the case (*see* Rule 4(b)(1));

(iii) the relief sought;

(iv) the issues presented;

(v) the facts necessary to understand the issues presented by the petition;

(vi) the reasons why the writ should issue; and

(vii) The mailing address, telephone, and facsimile telephone numbers of each respondent.

(C) The petition shall include copies of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(D) 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) Denial; Order Directing Answer; Briefs; Precedence.

(A) The Court may deny the petition without answer. Otherwise, it may order the respondent or respondents to answer within a fixed time. *See* Rule 28(b)(1). The Court may also 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).

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

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

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

(E) If further briefing or oral argument is required, the Clerk shall advise the parties and, when appropriate, any judge or judges or *amicus curiae*.

(b) **Writ-Appeal.**

(1) **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, including the items specified in subsection (a)(2)(C), within the time prescribed by Rule 19(e). The petition must conform in length to Rule 24(b), shall be accompanied by proof of service on the appellee in accordance with Rule 39, and shall contain the information required by subsection (a)(2)(B). The appellee may file an answer no later than 10 days after the filing of the writ-appeal petition. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer. *See* Rules 28(b)(2) and (c)(2).

(2) **Priority Writ-Appeal for Article 6b(e) Writs.** To the extent practicable, review of any decision of the Courts of Criminal Appeals on a petition for mandamus, pursuant to Article 6b(e)(3)(C), UCMJ, 10 USC § 806b(e)(3)(C), will have priority over all other proceedings before this Court.

*The proposed change to Rule 27 would read:*

(a) **Petition for Extraordinary Relief.**

(1) A petition for extraordinary relief must be filed within the time prescribed in Rule 19(d), conform in length to Rule 24(d), and be served in accordance with Rule 39. The petitioner must serve a copy of the petition on any trial or appellate military judge whose decision, judgment, or order is the subject of the petition.

(2)(A) The petition for extraordinary relief must be captioned "In Re [name of petitioner]."

(B) The petition must contain:

(i) a 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;

(ii) the jurisdictional basis for relief sought;

(iii) the reasons relief has not been sought from the appropriate Court of Criminal Appeals, if that is the case (*see* Rule 4(b)(1));

(iv) the relief sought;

(v) the issues presented;

(vi) the facts necessary to understand the issues presented;

(vii) the reasons why the writ should issue; and

(viii) the mailing address, telephone number, and email address of each respondent.

(C) The petition must include copies of any order or opinion and parts of the record that may be essential to understand the matters set forth in the petition.

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

(3) Denial; Order Directing Answer; Briefs; Precedence.

(A) No answer may be filed unless ordered by the Court. The Court may deny the petition without answer, or it may order the respondent to answer within a fixed time. The Court may also take any other action, including referring the matter to a special master to make further investigation, to take evidence, and to make recommendations to the Court. If an answer is filed, a petitioner may file a reply in seven days.

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

(C) The Court may invite or order any trial or appellate military judge whose decision, judgment, or order is the subject of the petition to respond and may invite

an amicus curiae to do so. A trial or appellate military judge may request permission to respond but may not do so unless the request is granted.

(D) The Court may set the matter for hearing, or the Court may grant or deny the relief sought or issue such other order as the circumstances may require on the basis of the pleadings alone.

(b) Writ-Appeal.

(1) Writ-Appeal Petition, Answer, and Reply. An appellant must file a writ-appeal petition for review of a decision by a Court of Criminal Appeals acting on a petition for extraordinary relief, together with any available record, including the items specified in subsection (a)(2)(C), within the time Rule 19 prescribes. The petition must conform in length to Rule 24(b) and contain the information Rule 27(a)(2)(B) requires. The appellee may file an answer no later than fourteen days after the appellant files the writ-appeal petition. The appellant may file a reply no later than seven days after the appellee files an answer.

(2) Priority Writ-Appeal for Article 6b Writs. To the extent practicable, review of any decision of the Courts of Criminal Appeals on a petition for mandamus, pursuant to Article 6b(3), UCMJ, 10 U.S.C. § 806b(3) will have priority over all other proceedings before the Court.

**Rule 28:**

*Rule 28 – Form of Petition for Extraordinary Relief, Writ-Appeal*

*Petition, Answer, and Reply – currently reads:*

(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 order or opinion or parts of the record that may be essential to understanding the matters set forth in the petition, and will be substantially in the following form:

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

In Re [Petition for  
Extraordinary Relief only]

[PETITION FOR  
EXTRAORDINARY RELIEF IN

(or)

\_\_\_\_\_ ,

(Petitioner)  
(Appellant)

v.

\_\_\_\_\_ ,

(Respondent)  
(Appellee)

THE NATURE OF (Type of Writ  
Sought)]

OR

[WRIT-APPEAL PETITION  
FOR REVIEW OF (Name of  
Service) COURT OF  
CRIMINAL APPEALS  
DECISION ON  
APPLICATION FOR  
EXTRAORDINARY RELIEF

Crim. App. Dkt. No. \_\_\_\_\_

USCA Dkt No. \_\_\_\_\_  
[For Court Use Only]

### 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)(2)(B)(i)]

II

Reasons Relief Not Sought Below  
[See Rule 27(a)(2)(B)(ii)]

III

### Relief Sought

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

IV

Issues Presented

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

V

Statement of Facts

[*See Rule 27(a)(2)(B)(v)*]

VI

Reasons Why Writ Should Issue

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

VII

Respondents' Addresses, Telephone, and Facsimile Numbers

[*See Rule 27(a)(2)(B)(vii)*]

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Signature of the  
[petitioner][appellant][counsel]

---

Address and telephone no. of the  
[petitioner][appellant][counsel]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [delivered] (or) [mailed-specify class] (or) [delivered to-specify the name of the third-party commercial carrier – for delivery and specify within how many days delivery will be effected] to the Court, [delivered] (or) [mailed-specify class] (or) [delivered to-specify the name of the third-party commercial carrier-for delivery and specify within how many days delivery will be effected] (or) to the [trial or appellate military judge whose decision, judgment, or order is the subject of the petition] and [delivered] (or) [mailed-specify class] (or) [delivered to-specify the name of the third-party

commercial carrier-for delivery and specify within how many days delivery will be effected] (or) [transmitted by electronic means with the consent of counsel being served-specify the electronic mail address or facsimile number used] to \_\_\_\_\_, [email or facsimile no.] the [respondent] [appellee] on \_\_\_\_\_ [date].

\_\_\_\_\_  
(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 filing of the appellant's writ-appeal petition.

(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.

*The proposed change to Rule 28 would read:*

(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 must

include any order or opinion and parts of the record that may be essential to understanding the matters set forth in the petition, and must be substantially in the following form:

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

In Re [Petition for  
Extraordinary Relief only]

(or)

\_\_\_\_\_ ,

(Petitioner)  
(Appellant)

v.

\_\_\_\_\_ ,

(Respondent)  
(Appellee)

[PETITION FOR  
EXTRAORDINARY RELIEF IN  
THE NATURE OF (Type of Writ  
Sought)]

OR

[WRIT-APPEAL PETITION  
FOR REVIEW OF (Name of  
Service) COURT OF  
CRIMINAL APPEALS  
DECISION ON  
APPLICATION FOR  
EXTRAORDINARY RELIEF

Crim. App. Dkt. No. \_\_\_\_\_

USCA Dkt No. \_\_\_\_\_  
[For Court Use Only]

Preamble

The (petitioner) (appellant) hereby prays for an order directing the (respondent) (appellee) to:

[Briefly state the relief sought.]

I

Issues Presented

[Set forth no more than the full questions of law involved.]

II

Relief Sought

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

III

Reasons Relief Not Sought Below

[*See Rule 27(a)(2)(B)(iii)*]

IV

History of the Case

[*See Rule 27(a)(2)(B)(i)*]

V

Statement of Facts

[*See Rule 27(a)(2)(B)(vi)*]

VI

Reasons Why Writ Should Issue

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

VII

Respondents' Addresses, Telephone Numbers, and Email Addresses

[*See Rule 27(a)(2)(B)(viii)*]

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Signature of the  
[petitioner][appellant][counsel]

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Address, telephone no., and email address of  
the [petitioner][appellant][counsel]

## CERTIFICATE OF FILING AND SERVICE

[Insert the certificate of service located in Rule 39(c)(2).]

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(Typed name and signature)

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(Address, email address, and telephone  
no.)

**(b) Answer.**

(1) The respondent's answer to an order to show cause must 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. The respondent must file an answer to the order to show cause no later than fourteen days after service on the respondent of the order requiring such answer, unless the Court's order specifies a different time.

(2) The appellee must file an answer to a writ-appeal petition no later than fourteen days after the appellant files a writ-appeal petition.

(c) Reply. The petitioner may file a reply no later than seven days after the respondent files an answer. In the case of a writ-appeal petition, an appellant may file a reply no later than seven days after the appellee files an answer.

**Rule 29:**

*Rule 29 – Filing, Notice, Briefs, and Special Master – currently reads:*

### PETITIONS FOR NEW TRIAL

#### Rule 29. Filing, Notice, Briefs, and Special Master

(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 7 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 the 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 recommendations to the Court as are deemed appropriate. *See United States v. DuBay*, 17 USCMA 147 (1967).

*The proposed change to Rule 29 would read:*

#### Rule 29. Petitions for New Trial

(a) Filing. A petition for new trial in a case pending before this Court must be transmitted by the Judge Advocate General of the service concerned. *See Article 73, UCMJ, 10 U.S.C. § 873.*

(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 its filing.

(c) Briefs. A brief in support of a petition for new trial, unless expressly incorporated in the petition, must be filed substantially in the form specified in Rule 24 no later than twenty-eight days after the Clerk issues a notice of the filing of the petition. An appellee may file an answer no later than twenty-eight days after the filing of an appellant's brief. The appellant may file a reply no later than fourteen days after the appellee files its answer.

(d) Special Master. The Court may refer the petition for new trial to a special master to make further investigation, to take evidence, and to make recommendations to the Court.

#### **Rule 30:**

*Rule 30 – Motions – currently reads:*

(a) All motions will be filed in writing and will state with particularity the relief sought and the factual or legal grounds for requesting such relief, and will include a certificate of filing and service in accordance with Rule 39(e). 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 may not be filed with 5 business 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 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.

*The proposed change to Rule X would read:*

(a) All motions must state with particularity the relief sought and the factual or legal grounds for requesting such relief.

(b) An answer to a motion may be filed no later than seven days after the motion is filed.

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

(d) Motions must be separately filed and may not be incorporated in any other pleading.

(e) Once the Court has established a hearing date, no motions may be filed within seven days of that date, except by prior leave of the Court.

(f) Oral motions presented by counsel by leave of the Court during a hearing must be filed with the Court within three 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 reply. Any party adversely affected by such action may request reconsideration, vacation, or modification of such action.

#### **Rule 30A:**

*Rule 30A – Factfinding – currently reads:*

(a) General. The Court will normally not consider any facts outside of the record established at the trial and the Court of Criminal Appeals. Requests to consider factual material that is not contained in the record shall be presented by a motion to supplement the record filed pursuant to Rule 30. The motion shall include statements explaining why the matter was not raised previously at trial or before the Court of Criminal Appeals and why it is appropriate to be considered for the first time in this Court. Motions filed pursuant to this rule will be granted only for good cause shown.

(b) Judicial Notice. In an appropriate case, the Court may take judicial notice of an indisputable adjudicative fact.

(c) Remand for Factfinding. If an issue concerning an unresolved material fact may affect the Court's resolution of the case, a party may request, or the Court may sua sponte order, a remand of the case or the record to the Court of Criminal Appeals. If the record is remanded, the Court retains jurisdiction over the case. *See* Article 66(f)(3), UCMJ, 10 U.S.C. §866(f)(3) (2018). If the case is remanded, the Court does not retain jurisdiction, and a new petition for grant of review or certificate for review will be necessary if a party seeks review of the proceedings conducted on remand.

(d) Stipulation by the Parties. If an issue concerning an unresolved material fact may affect the Court's resolution of the case, the parties may stipulate to a factual matter, subject to the Court's approval.

(e) Other Means. Where it is impracticable to remand a case to the Court of Criminal Appeals, the Court may order other means to develop relevant facts, including the appointment of a special master to hold hearings, if necessary, and to make such recommendations to the Court as are deemed appropriate.

*The proposed change to Rule 30A would read:*

(a) Requests to consider factual material that is not contained in the record must be presented by a motion to supplement the record filed pursuant to Rule 30. The motion must explain why the facts were not established at trial or in the Court of Criminal Appeals and why it is appropriate that they be considered for the first time in the Court.

(b) Judicial Notice. The Court may take judicial notice of an indisputable adjudicative fact.

(c) Remand for Factfinding. If an issue concerning an unresolved material fact may affect the Court's resolution of the case, the Court may remand the case or the record to the Court of Criminal Appeals. If only the record is remanded, the Court retains jurisdiction over the case. *See Article 66(f)(3), UCMJ, 10 U.S.C. § 866(f)(3) (2018).* If the case is remanded, the Court does not retain jurisdiction, and a new petition for grant of review or certificate for review will be necessary if a party seeks review of the proceedings conducted on remand. If the death penalty remains a part of the sentence after remand, a new mandatory review filing in accordance with Rule 23 is required.

(d) Stipulation by the Parties. If an issue concerning an unresolved material fact may affect the Court's resolution of the case, the parties may stipulate to that factual matter, subject to the Court's approval.

(e) Other Means. Where it is impracticable to remand a case to the Court of Criminal Appeals, the Court may order other means to develop relevant facts, including the appointment of a special master to make further investigation, to take evidence, and to make recommendations to the Court.

### **Rule 31:**

*Rule 31 – Petition for Reconsideration – currently reads:*

(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) A petition for reconsideration shall be granted with the concurrence of a majority of the judges who participated in the original decision.

(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.

*The proposed change to Rule 31 would read:*

(a) A petition for reconsideration may be filed no later than fourteen 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 seven days after the petition is filed.

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

(d) The Clerk will not accept a consecutive petition for reconsideration or a petition that is out of time, unless accompanied by a motion for leave to file.

### **Rule 32:**

*Rule 32 – Form of Petition for Reconsideration – currently reads:*

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

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

\_\_\_\_\_ ,

(Appellee)

(Appellant)

(Respondent)

PETITION FOR  
RECONSIDERATION

(Petitioner)

v.

\_\_\_\_\_

Crim. App. Dkt. No. \_\_\_\_\_

(Appellant)

(Appellee)

(Respondent)

(Petitioner)

USCA Dkt. No. \_\_\_\_\_

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 reasons:

[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.]

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(Counsel's typed name and signature)

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(Counsel's address and telephone no.)

#### CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [delivered] (or) [mailed specify class] (or) [delivered to-specify the name of the third-party commercial carrier-for delivery and specify within how many days delivery will be effected] to the Court and [delivered] (or) [mailed specify class] (or) [delivered to-specify the name of the third party commercial carrier-for delivery and specify how many days delivery will be effected] (or) [transmitted by electronic means with the consent of counsel being served] to the [appellant] [appellee] [petitioner] [respondent] on (date) .

---

(Typed name and signature)  
(Address and telephone no.)

*The proposed change to Rule 32 would read:*

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

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

\_\_\_\_\_,

(Appellee)  
(Appellant)  
(Respondent)  
(Petitioner)

PETITION FOR  
RECONSIDERATION

v.

\_\_\_\_\_,

Crim. App. Dkt. No. \_\_\_\_

(Appellant)  
(Appellee)  
(Respondent)  
(Petitioner)

USCA Dkt. No. \_\_\_\_

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 reasons:

[The petition must state with particularity the points of law or fact that, in the  
opinion of the party seeking reconsideration, the Court has overlooked or  
misapprehended and 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.**]

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(Counsel's typed name and signature)

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(Counsel's address, email address, and telephone no.)

## CERTIFICATE OF FILING AND SERVICE

[Insert the certificate of service located in Rule 39(c)(2).]

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(Typed name and signature)  
(Address, email address and telephone no.)

### **Rule 33:**

*Rule 33 – Suspension of Rules – currently reads:*

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.

*The proposed change to Rule 33 would read:*

For good cause shown, the Court may suspend any rule in a particular case, on application of a party or on its own motion.

### **Rule 34:**

*Rule 34 – Computation of Time – currently reads:*

(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 Not Made in Person. 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. If service is made by delivery to a commercial third-party carrier or electronically, an additional 3 days will be added to the prescribed period, regardless of the location where service is made. 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.

*The proposed change to Rule 34 would read:*

(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 included. Unless the Court otherwise orders, the last day of the period so computed is included, unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor federal holiday. When the period of time prescribed or allowed is less than seven days, intervening Saturdays, Sundays and federal holidays are excluded from 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 computed from the date of such decision, unless a petition for reconsideration is timely filed or the Court *sua sponte* reconsiders its decision, in which event the period of time is computed from the date of final action on the petition for reconsideration.

(b) Additional Time When Service Is Not Made Electronically. 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 by mail, seven days are added to the prescribed period if the party upon whom the service is made is within the limits of the

contiguous forty-eight states or the District of Columbia, and fifteen days will be added if the party is located outside these limits, including the states of Alaska and Hawaii. If service is made by delivery to a commercial third-party carrier, an additional three days are added to the prescribed period, regardless of the location where service is made.

**Rule 35:**

*Rule 35 – Filing of Record – currently reads:*

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) and (b).*

*The proposed change to Rule 35 would read:*

The Judge Advocate General must file the record as soon as practicable after the Court docket any action pursuant to Rule 4. *See Rule 27(a) and (b).*

**Rule 35A:**

*Rule 35A – Use of Classified Information – currently reads:*

Classified information shall 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(b)(2) an original and 7 copies of each such document from which the classified information has been deleted or omitted, in such a manner that the pages which contain the deleted or omitted classified information are clearly identified.

*The proposed change to Rule 35A would read:*

Rule 35A. Sealed Material and Classified Information

- (a) Classified material may not be submitted absent an order of the Court.
- (b) Sealed Material.

(1) Classified material or matters under seal that are to be included in any filing, to include a Joint Appendix, must be submitted in a separate volume, clearly designated as containing classified or sealed material. Classified materials, matters under seal, or motions to file thereof may not be filed electronically.

(2) A motion to file material under seal must state whether the material in question was sealed in a lower court and, where applicable, provide a copy of the sealing order.

(3) If the material was filed under seal in a lower court, the motion must identify the reasons that the material was sealed, state whether the seal remains in effect as to each of the relevant documents, and address why it remains necessary to continue to maintain the confidentiality of the information in this Court. If the material was not filed under seal in a lower court, the motion must state with specificity why sealing is necessary by this Court in the first instance.

(4) The motion should address why it is necessary that the material to be sealed be included in the filing.

(5) Where possible, the movant should provide a redacted copy of the material for the public record. If this is not feasible, the motion must state the reasons that it is not.

(6) Where possible, the motion itself should be drafted so that it may be filed in the public record. If this is not feasible, the motion may be filed under seal, preferably with a redacted copy for the public record. The motion should reflect the position of other parties to the case concerning whether sealing the material is appropriate.

(7) Material that is sought to be filed under seal should be marked “Under Seal” on the cover and on every page of the document. The redacted copy for the public record, when provided, should be marked “Public Copy—Sealed Materials Redacted” on the cover page of the document.

(8) The parties must promptly notify the Court if it is no longer necessary for material previously filed under seal to remain under seal.

(9) A motion filed under this Rule shall comply in every respect with the Court’s rules. Where a motion to file under seal is filed, the parties should treat the material as under seal until the Court rules on the motion.

**Rule 36:**

*Rule 36 – Filing of Pleadings – currently reads:*

(a) In General. Pleadings or other papers relative to a case shall be filed in the Clerk’s office, 450 E Street, Northwest, Washington, D.C. 20442-001, either in person, by mail, by third-party commercial carrier, or by electronic filing. *See Rule 37(b)(2).* Documents submitted online must conform to the “Guidelines for Electronic Filings of Pleadings” available on the Court’s website.

(b) Filing in Person. If a pleading or other paper is filed in person, such filing shall consist of delivery pursuant to Rule 9(e).

(c) Filing by Mail. If a pleading or other paper is filed by mail, such filing shall consist of depositing the pleading or other paper with the United States Postal Service, with no less than first-class postage prepaid, properly addressed to the Clerk’s office. If a pleading or other paper is filed through a third-party commercial carrier, such filing shall consist of delivery to the commercial carrier for delivery within 3 calendar days.

(d) Time of Filing. Pleadings or other papers shall be deemed to have been filed on the date they are delivered to the Clerk’s office under subsection (b) or on the date they are mailed or delivered to a commercial carrier under subsection (c). *See Rules 37(b)(1) and 39(e).*

(e) Non-Compliant Pleadings. If any pleading or other 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. *See Rule 37(b)(1).*

(f) Pro Se Filings. A pro se filing is a filing that is made by a person on his or her own behalf and that is not signed by at least one counsel who is participating in the case. *See Rule 38(a).* Pro se filings must include a statement indicating whether the filer is currently represented by designated military or other counsel. A person who is represented by counsel may make a pro se filing only if leave to file is granted by the Court for good cause shown. To establish good cause, a person who is represented by a counsel who has entered a notice of appearance must

explain why representation by that counsel is inadequate. The Court and its employees cannot give legal help or advice to any person. A person making a pro se filing must follow all the Court's Rules of Practice and Procedure.

*The proposed change to Rule 36 would read:*

(a) In General. Parties are expected to file electronically. Pleadings or other papers relative to a case may be filed in the Clerk's office, 450 E Street, Northwest, Washington, D.C. 20442-0001, either in person, by mail, or by third-party commercial carrier. *See Rule 37(b)(2).*

(b) Electronic Filing

(1) If the petition for grant of review and the supplement to the petition for grant of review are filed electronically, an Appendix to the supplement (containing the decision of the Court of Criminal Appeals, matters submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and other required matter) must also be filed electronically. Record matters in the form of video media on CD-ROM or DVD may be submitted in a separate volume of the Appendix that is filed in accordance with Rule 21(b).

(2) The Joint Appendix to the brief, to include copies, must be filed both in paper form and must also be filed electronically. *See Rule 24.* Audio and video recordings are exempt from this paper requirement for the Joint Appendix to the brief. If the appellant or petitioner files the brief electronically, the Joint Appendix must be filed on the same day the brief is filed.

(3) Counsel may electronically file pleadings by emailing them to the following email address:

efiling@armfor.uscourts.gov.

(4) The pleadings are filed as of the date and time of the transmission of the email.

(5) The email must contain the following in the subject block:

(A) the name of the case;

(B) the docket number if a docket number has been assigned; and

(C) the words “electronic filing.”

(6) A description of the nature of the pleading must be included in the body of the email.

(7) The pleading must be attached to the email in PDF format.

(8) Counsel must send an electronic copy of the message and all attachments to opposing counsel to accomplish service of the pleading under Rule 39 by listing opposing counsel as a “cc” recipient of the email.

(9) The brief attached to an electronic filing must contain the conformed signature (“/s/”), electronic signature, or digital signature of the attorney of record. *See Rule 38(c).*

(10) If a pleading is filed electronically, the party filing the pleading is not required to prepare and file printed copies of that pleading under Rules 37(a) and 37(b)(2). The Court will send a reply email to the sender indicating receipt of the electronic filing. Electronic filers are advised that, if they do not receive a reply email by the following business day, they should immediately contact the Clerk’s office.

(11) Classified material and material under seal cannot be filed electronically. Classified material and material under seal may only be filed in accordance with Rule 35A.

(12) Counsel must redact the following personal data identifiers from documents filed with the Court:

(A) Social security numbers;

(B) Dates of birth;

(C) Names of minors;

(D) Names of victims or complainants;

(E) Financial account numbers;

(F) Personal email addresses;

(G) Personal phone numbers; and

(H) Home addresses.

(c) **Filing in Person.** If a pleading or other paper is filed in person, such filing must be delivered pursuant to Rule 9(e).

(d) **Filing by Mail.** If a pleading or other paper is filed by mail, it must be done by depositing it with the United States Postal Service, with no less than first-class postage prepaid, properly addressed to the Clerk's office. If a pleading is filed through a third-party commercial carrier, it must be done by delivery to the commercial carrier for delivery within three calendar days.

(e) **Time of Filing.** Pleadings or other papers are filed on the date they are delivered to the Clerk's office under subsection (c) of this Rule or on the date they are mailed or delivered to a commercial carrier under subsection (d) of this Rule. *See Rules 37(b)(1), 39(b)(5).*

(f) **Non-Compliant Pleadings.** If any pleading or other paper is not filed in compliance with these rules, the Court may issue an order to show cause, dismiss the proceeding, or return the proffered pleading or paper on its own motion or a party's motion. *See Rule 37(b)(1).*

(g) **Pro Se Filings.** A pro se filing is a filing that is made by a person on his or her own behalf and that is not signed by at least one counsel who is participating in the case. *See Rule 38(a).* Pro se filings must include a statement indicating whether the filer is currently represented by designated military or other counsel. A person who is represented by counsel may make a pro se filing only if the Court grants leave to file for good cause shown. To establish good cause, the person must explain why representation by that counsel is inadequate. A person making a pro se filing must follow all the Court's Rules of Practice and Procedure. The Court and its employees may not give legal help or advice to any person.

#### **Rule 36A:**

*Rule 36A – Citations to Supplemental Authorities – currently reads:*

If pertinent and significant authorities come to a party's attention after such party has filed a pleading allowed under these Rules, or after oral argument but before a final decision, the party may promptly advise the Clerk by letter, with a

copy to all parties, setting forth the citations. The letter must state why the supplemental citations are pertinent and significant, referring either to the page of the earlier filed pleading or to a point argued orally. The body of the letter must not exceed 350 words, and copies of the supplemental authorities referenced in the letter shall be attached to the original and each copy of the letter. Any response by other parties must be made promptly and must be similarly limited. *See Rule 37(b)(2).*

If the letter or the response is to be submitted less than 5 business days prior to oral argument, submission and service shall be by overnight mail delivery or by more expeditious means to allow the Court and all parties adequate time to consider the authorities cited before oral argument.

*The proposed change to Rule 36A would read:*

**Rule 37:**

*Rule 37 – Printing, Copying, and Style Requirements – currently reads:*

(a) Printing. Except for records of trial and as otherwise provided by Rule 24(f) or any order of the Court regarding the electronic filing of pleadings, all pleadings or other papers relative to a case shall be typewritten and double-spaced, printed on one side only on white unglazed paper, 8.5 by 11 inches in size, securely fastened in the top left corner. All printed matter, including footnotes, must appear in proportional type, e.g., Times New Roman. The use of 14-point type is required. Margins must be at least 1 inch on all four sides. Page numbers may be placed in the margin but no text may appear in the margin.

(b) Copying.

(1) 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 36.*

(2) Except for electronically filed pleadings and audio and video recordings, an original and 7 legible copies of all pleadings or other documents relative to a case shall be filed. *See Rule 35A concerning documents which contain classified information.*

(c) Style.

(1) All pleadings that consist of ten or more pages shall 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.

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

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

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

*The proposed change to Rule 37 would read:*

(a) Printing. All pleadings or other papers not filed electronically must be typewritten and double-spaced, printed on one side only on white unglazed paper, 8.5 by 11 inches in size, securely fastened in the top left corner. All printed matter, including footnotes, must appear in proportional type, e.g., Times New Roman, in fourteen-point type. Margins must be at least one inch on all four sides. Page numbers may be placed in the margin, but no text may appear in the margin.

(b) Copying.

(1) Copies of typewritten pleadings and papers may include those produced by any process capable of producing a clearly legible black image on white paper. If papers are filed that do not conform to this Rule, the Clerk will require the substitution of new copies, but such substitution will not affect the filing date of the papers or pleadings involved. *See Rule 36.*

(2) Except for: (i) classified information, (ii) electronically filed pleadings, and (iii) audio and video recordings, an original and seven copies of all pleadings or other documents must be filed.

(c) Style.

(1) All pleadings that consist of ten or more pages must be preceded by a subject index of the matter contained therein, with page references, and a table of

cases (alphabetically arranged with citations), statutes, and other authorities cited, referencing the pages cited.

(2) Citations must conform with the The Bluebook: A Uniform System of Citation.

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

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

**Rule X:**

*Rule 38 – Signatures – currently reads:*

(a) General. Except for documents filed pro se 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, Court Bar 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, Court Bar number, and rank, if any, typed thereunder. An electronic filing shall contain the digital signature of the attorney of record.

(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 the 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.

*The proposed change to Rule 38 would read:*

(a) General. Except for documents filed pro se 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, email address, telephone number, Court Bar number, and grade, if any, of the person signing, together with the capacity in which such counsel signs the paper, will be included. Counsel's 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, email address, telephone number, Court Bar number, and grade, if any, typed thereunder. An electronic filing must contain the electronic, digital, or conformed ("/s/") signature of the attorney of record.

(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 the Court, the Court will accept the pleading or paper as if such counsel were a member. However, within twenty-eight days after pleading is filed, such counsel must, 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.

(c) A person's electronic signature, a digital signature, or a conformed signature ("/s/") authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

### **Rule 39:**

*Rule 39 – Service of Filings – currently reads:*

(a) In General. At or before the filing of any pleading or other paper relative to a case, a copy thereof shall be served on all counsel of record, including amicus curiae counsel, in person, by mail, by third-party commercial carrier, or by electronic means. When a party is not represented by counsel, service shall be made on such party in person, by mail, or by third-party commercial carrier. When reasonable, considering such factors as the immediacy of the relief sought, distance, and cost, service must be at least as expeditious as the manner used to file the pleading or other paper with the Court. *See Rule 36.*

(b) Personal Service. If service is made in person, it shall consist of delivery at the office of the counsel of record, either to counsel or to an employee therein. If the party is not represented, service shall consist of delivery to such party.

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

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

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

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

(g) Form of Certificate of Filing and Service. A certificate indicating the specific manner of filing under Rule 36 and the specific manner of service under this rule shall be included in any pleading or other paper substantially in the following form:

#### CERTIFICATE OF FILING AND SERVICE

I certify that the original and seven copies of the foregoing were [delivered] (or) [mailed—specify class] (or) [delivered to—specify the name of the third party commercial carrier—for delivery—specify within how many days delivery will be effected] to the Court on (date) and that a copy of the foregoing was [delivered] (or) [mailed—specify class] (or) [delivered to—specify the name of the third-party commercial carrier-for delivery—specify within how many days delivery will be effected] (or) [transmitted by electronic means with the consent of the counsel being served-specify the electronic mail address or facsimile number used] to (enter specific name of each counsel of record or party, if not represented) on (date).

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(Typed name and signature of certifying person)

(Address and telephone no.)

*The proposed change to Rule 39 would read:*

(a) Contemporaneous with the initial filing in this Court, a copy of that filing must be served on all counsel of record, to include victim or complainant's counsel and amicus curiae counsel, who entered an appearance at the Court of Criminal Appeals. If the victim or complainant filed pro se, service must be made by appellate government counsel on the victim or complainant. Parties, as well as qualifying victim or complainant's counsel and amicus curiae counsel, are expected to serve all filings electronically. When a party or individual files pro se, service on that party must be made by the same means by which the party or individual filed, except for pleadings filed by hand delivery, in which case service may be made by mail or commercial carrier.

(b) Means of Service:

(1) Electronic Service. If service is made electronically, it consists of sending it to a registered user when filing in accordance with Rule 36(b) or by sending it by other electronic means to which the person to be served has consented.

(2) Personal Service. If service is made in person, it consists of delivery at the office of the counsel of record, either to counsel or to an employee therein. If the party is pro se, service consists of delivery to such party.

(3) Service by Mail. Service made by mail consists of depositing the pleading or other paper with the United States Postal Service, with no less than first-class postage prepaid, addressed to the counsel of record or, if the party is pro se, to such party, at his or her last known address.

(4) Service by Third-Party Commercial Carrier. If service is made by a third-party commercial carrier, it must be for delivery within three calendar days.

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

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

(c) Proof of Service.

(1) A paper presented for filing must contain either of the following if it was not served when filing electronically:

(A) A statement pursuant to 28 U.S.C. § 1746 by the person who made the service certifying:

- (B) the date and manner of service;
- (C) the names of the persons served; and
- (D) the addresses of the persons served.

(2) Proof of service, in substantially the following form, must appear on or be affixed to the filing.

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was [delivered] (or) [means of service] to the Court and [delivered] (or) [means of service] to (party) at (email or mailing address or fax no.) on (date).

[Where more than one counsel or party is being served, the certificate should specify how each party or counsel was served.]

**Rule 40:**

*Rule 40 – Hearings – currently reads:*

(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 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 amicus curiae will be allowed on motion filed under Rule 30.

(3) Time Allowed. Each side will normally be allotted 20 minutes to present oral argument

*The proposed change to Rule 40 would read:*

(a) When and How Heard. After all filings have been received, the Court may order a hearing on the merits of a case.

(b) Notice of Hearing. The Clerk will give at least twenty-one days of notice to counsel for the parties of the time and place for the hearing unless the Court otherwise orders. Upon receipt of such notice, counsel must notify the Clerk's office of the identity of the counsel who will present oral argument. Only one counsel per party may present oral argument.

(c) When Hearings Not Ordinarily Held. Except when ordered by the Court, the Court will not hold hearings on motions, petitions for grant of review, petitions for extraordinary relief, writ-appeal petitions, petitions for new trial, or petitions for reconsideration.

#### **Rule 41:**

*Rule 41 – Photographing, Televising, Recording, or Broadcasting of Hearings – currently reads:*

(a) The photographing, televising, recording, or broadcasting of any session of the Court or other activity relating thereto is prohibited 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 Article 48, UCMJ.*

*The proposed change to Rule 41 would read:*

(a) The photographing, televising, recording, or broadcasting of any session of the Court or other activity relating thereto is prohibited, absent Court authorization.

(b) Any violation of this Rule is a contempt of this Court, and, after due notice and hearing, the Court may discipline the offender accordingly. *See Article 48, UCMJ, 10 U.S.C. § 848.*

**Rule 42:**

*Rule 42 – Filing, Reproduction, and Distribution – currently reads:*

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.

*The proposed change to Rule 42 would read:*

The Court will file all opinions with the Clerk for preservation. The Clerk supervises the reproduction, printing, and distribution of all opinions.

**Rule 43:**

*Rule 43 – Entry of Judgment – currently reads:*

(a) Immediately upon the filing of an opinion of the Court, the Clerk shall prepare, sign, date, and enter the judgment. The notation of a judgment in the docket constitutes entry of the judgment. On the date judgment is entered, the Clerk shall distribute to all parties and the Judge Advocate General of the service in which the case arose a copy of the opinion and judgment. *See Rule 10(d).*

(b) If a judgment is rendered without an opinion, the Clerk shall prepare, sign, date and enter such judgment in an order following instruction from the Court. Notation of such order in the docket constitutes entry of the judgment and the effective date of the judgment is the date of that order. On the date such order is entered, the Clerk shall distribute to all parties and the Judge Advocate General of the service in which the case arose a copy of the order. *See Rule 10(d).*

*The proposed change to Rule 43 would read:*

(a) Immediately upon filing the Court's opinion, the Clerk prepares, signs, dates, and enters the judgment. The notation of a judgment in the docket constitutes entry of the judgment. On the date the Court enters judgment, the Clerk distributes to all parties and the Judge Advocate General of the service in which the case arose a copy of the opinion and judgment. *See Rule 10(d).*

(b) If the Court renders a judgment without an opinion, the Clerk will prepare, sign, date and enter such judgment in an order following the Court's instruction. Notation of such order in the docket constitutes entry of the judgment, and the effective date of the judgment is the date of that order.

**Rule 43A:**

*Rule 43A – Issuance of Mandate – currently reads:*

(a) The mandate of the Court shall issue 7 days after the expiration of the time for filing a petition for reconsideration under Rule 31(a), unless such a petition is filed or the time is shortened or enlarged by order. A certified dated copy of the judgment and a copy of the opinion of the Court, if any, shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for reconsideration shall stay the mandate until disposition of the petition, unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition, unless the time is shortened or enlarged by order. 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 shall issue. The Clerk shall distribute copies of all such orders to all parties and the Judge Advocate General of the service in which the case arose.

*The proposed change to Rule 43A would read:*

(a) The mandate of the Court issues seven days after the expiration of the time for filing a petition for reconsideration under Rule 31(a). A certified copy of the judgment and any opinion of the Court constitute the mandate, unless the Court directs that a mandate issue. A timely filed petition for reconsideration stays the mandate until disposition of the petition, unless the Court otherwise orders. If the Court denies the petition, the mandate issues seven days after the order denying the

petition is entered, unless the time is shortened or extended by order. In any case, the Court may order the mandate to be issued immediately.

(b) The effective date of any order is the date of that order, and no mandate will be issued.

#### **Rule 44:**

*Rule 44 – Judicial Conference – currently reads:*

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 proposed change would rescind Rule 44.*

#### **Rule 45:**

*Rule 45 – Rules Advisory Committee – currently reads:*

(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 crosssection of the legal profession. Representatives from government, 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 the 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 3-year terms, which will be staggered in such a way as to enable the Court to appoint or re-appoint one-third of the Committee each year. The Court shall appoint one of the members of the Committee to serve as chairman.

*The proposed change to Rule 45 would read:*

(a) Establishment of Committee; Membership. The Rules Advisory Committee is hereby created for this Court. The Committee has an advisory role concerning practice and procedure before the Court. The Committee consists of not fewer than nine members of the Bar of this Court and is selected by the Court to represent a broad cross-section of the legal profession. Representatives from government, law schools, public interest groups, and private practice will, when practicable, be included on the Committee. The Clerk of the Court is a member of the Committee and serves as its Reporter.

(b) Duties of the Committee. The Committee (1) provides a forum for continuous study of the operating procedures and published rules of the Court; (2) serves as a conduit between the Bar, the public, and the Court regarding the Court's rules, procedural matters, and suggestions for changes; (3) drafts, considers, and recommends rules and amendments to the Court for adoption; and (4) renders reports from time to time, on its own initiative and on request, to the Court on the Committee's activities and recommendations. The Committee may prepare appropriate explanatory materials with respect to any rule changes or other recommendations it submits to the Court.

(c) Terms of Members; Chair. With the exception of the Clerk of the Court, the members of the Committee serve three-year terms, which are staggered in such a way as to enable the Court to appoint or re-appoint one-third of the Committee each year. The Court appoints one of the members of the Committee to serve as chair.