



DEPARTMENT OF THE NAVY
U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
OFFICE OF THE JUDGE ADVOCATE GENERAL
1254 CHARLES MORRIS STREET SE, SUITE 320
WASHINGTON NAVY YARD, DC 20374-5124

IN REPLY REFER TO:
5800
Ser 51/0019
23 May 2018

From: Chief Judge, Navy-Marine Corps Court of Criminal Appeals

Subj: CHANGE 1 TO RULES OF PRACTICE AND PROCEDURE

Encl: (1) Change to Rule 1.3(c)
(2) Changes to Rule 15.1
(3) Change to Rule 20.1

1. Rules 1.3(c), 15.1, and 20.1 of the Court's Rules of Practice and Procedure dated 27 February 2018 are hereby amended as reflected in enclosures (1) through (3).

2. Change 1 is effective immediately.

A handwritten signature in black ink, appearing to read "C. M. Glaser-AlLEN", is positioned above the printed name.

C. M. GLASER-ALLEN

Change to Rule 1.3 (c)

Rule 1.3(c) is hereby amended to read as follows:

(c) Requests for Examination and or Disclosure of Original Records of Trial

(1) Unsealed portions of unclassified records of trial. Examination and disclosure of unsealed portions of unclassified records of trial by counsel are authorized upon verbal request to the responsible Panel Secretary or the Clerk of Court. "Examination" includes reading, inspecting, and viewing. "Disclosure" includes photocopying, photographing, disseminating, releasing, manipulating, or communicating the contents of sealed materials in any way.

(2) Sealed portions of unclassified records of trial. Counsel may, by written motion, request to examine or disclose sealed portions of unclassified records docketed with the court subject to the below rules.

(a) Sealed materials released to trial or defense counsel. Subject to paragraph (c) below, sealed materials in a record of trial reviewed at trial by trial or defense counsel may be examined or disclosed by appellate counsel upon a colorable showing to the court that examination is reasonably necessary to a proper fulfillment of counsel's responsibilities under the UCMJ, Manual for Courts-Martial, governing directives, instructions, regulations, these rules, or rules of professional conduct.

(b) Sealed materials reviewed in camera but not released to trial or defense counsel. Subject to paragraph (c) below, sealed materials reviewed in camera by a military judge and not released to trial or defense counsel may be examined or disclosed by appellate counsel upon a showing of good cause. The motion must concisely identify the counsel's need for the sealed portion of the record to perform his or her official duties as well as the specific legal authority authorizing his or her access to that portion of the record.

(c) Effect on other rules. This Rule shall be implemented in a manner consistent with Executive Order 13526, concerning classified national security information. Nothing in this Rule shall be construed to impair any privilege provided by law or regulation or any notice requirement imposed by law or regulation.

(3) Notice to privilege holder. Prior to authorizing the examination or disclosure of any material for which a claim of privilege under Mil. R. Evid. 501 through Mil. R. Evid. 514 has been recognized on the record, this court will issue an order directing that the privilege-holder, guardian, or authorized representative of the privilege-holder be notified of the pending authorization. The privilege-holder, guardian, or authorized representative of the privilege-holder will have seven (7) days from the date of the notification to inform this court of their opposition to the pending authorization and five (5) days from the date of their response to the notification to file an opposition brief in accordance with Rule 23 of these rules. If the privilege-holder, guardian, or authorized representative of the privilege-holder

is unable to be notified or is non-responsive to the notification, the appellate government counsel must be file with this court an affidavit with supporting records asserting the reasonable steps taken to provide notice to the privilege-holder, guardian, or authorized representative of the privilege-holder.

Change to Rule 15.1

Rule 15.1(b)(10) is hereby amended to read as follows:

(10) Appendix. Either party may file an appendix, per CCA Rule 15(c), as necessary. However, counsel need not include unpublished opinions cited in the brief if the case is available on either LEXIS or the web site of the Judge Advocate General of the Navy. Appendices may not be used to submit extra-record factual matters, which must instead be submitted to the Court by separate motion.

Rule 15.1(h) is hereby amended to read as follows:

(h) *Length.* Except by permission of the Court, principal briefs shall not exceed the greater of 50 pages or 20,000 words and reply briefs shall not exceed the greater of 25 pages or 10,000 words, exclusive of indexes and appendices. Requests to file briefs in excess of specified limits will be granted only in the most extraordinary cases.

Rule 15.1(m) is hereby renumbered as Rule 15.1(n) and a new Rule 15.1(m) is added as follows:

(m) *Pleadings including matters sealed by the military judge.* If counsel intends to file a pleading or other matter with the court that contains sealed matters, counsel must first, by motion, seek leave of the court to file such pleading or other matter under seal. Such motion must, without revealing the content of the sealed matter, explain why inclusion of sealed matters in a pleading or other matter is necessary. When the court has granted a motion to file pleadings containing sealed material, the court will normally require such pleadings to themselves be sealed.

Change to Rule 20.1

Rule 20.1 is hereby amended to read as follows:

Rule 20.1. *Petitions for Extraordinary Relief*

(a) *Filing the Petition.* Original hard copy Petitions for Extraordinary Relief, including supporting briefs, must be filed with the Clerk of Court, except when the filing is accomplished through electronic means. *See* Rule 5.2(b)(3). Petitions may only be filed by or on behalf of a single petitioner and must include a certificate of service on each named respondent, each real party in interest, and the Director of the Appellate Defense and/or Appellate Government division, as appropriate. All parties to the matter at issue other than the petitioner are respondents for all purposes.

(b) *Format and Content.* Petitions and accompanying briefs shall be captioned [name of petitioner] v. [names of all respondents, and the capacity, if applicable, in which they have acted in the matter] and must conform with Rule 5.2 and shall include:

(1) a full history of the case including whether prior actions have been filed or are pending in this or any other court and the disposition or status of such actions;

(2) the specific relief sought;

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

(4) a statement of the issue;

(5) a concise statement of the facts of the case material to the issue presented and of any pertinent opinion, order, or ruling;

(6) reasons for granting the writ;

(7) a copy of any pertinent parts of the record and all exhibits related to the petition if reasonably available and transmittable at or near the time the petition is filed, attached as appendices; and

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

(c) *Action on Petitions in the Course of an on-going Proceeding*

(1) All writ petitions filed in the course of an on-going proceeding, including those filed pursuant to Article 6(b), UCMJ, will specify whether a stay of proceedings is requested and will be given priority consideration by the Court.

A proceeding will be considered on-going until it is docketed for appellate review pursuant to Article 66, UCMJ, by this Court. The respondent(s) may not file a response to a writ petition unless ordered by the Court, except that the petitioner may file a reply to the response to a show cause order within 7 days of its receipt.

(2) If the Court orders a stay in the trial or other ongoing or prospective proceedings, the Clerk of Court will cause copies of the "stay" order to be expeditiously delivered to NAMARA for immediate transmittal to the convening authority, military judge, and all counsel or unrepresented parties involved.

(3) In the event the Court orders the respondent(s) to show cause and file an answer, Appellate Defense counsel will represent the accused and Appellate Government counsel will represent the United States. To the extent that relief is requested of a particular official, military judge, or convening authority, unless otherwise ordered, the official shall be represented pro forma by counsel for the party opposing the relief, who shall appear in the name of the party and not that of the official, military judge, or convening authority. The Court may direct that other real parties in interest be designated respondents. The Court may invite or order any military judge whose decision, judgment, or order is the subject of the petition to respond or may invite an amicus curia to do so. A military judge may request permission to respond but may not respond unless invited or ordered to do so by the Court.

(4) In view of the time limit for filing a writ appeal with CAAF (*see* CAAF RULE 19(e)), the Clerk of Court will serve counsel and expedite delivery to NAMARA of copies of any order terminating a stay or finally disposing of a petition for extraordinary relief in the course of an on-going proceeding for immediate dissemination and distribution, including service on the parties.

(d) *Action on all other Petitions*

(1) Respondent(s) may not file a response to a writ petition unless ordered by the Court, except that the petitioner may file a reply to the response to a show cause order within 7 days of its receipt.

(2) In the event the Court orders the respondent(s) to show cause and file an answer, Appellate Defense counsel will represent the subject of the court-martial and Appellate Government counsel will represent the United States. To the extent that relief is requested of a particular official, military judge, or convening authority, unless otherwise ordered, the official shall be represented pro forma by counsel for the party opposing the relief, who shall appear in the name of the party and not that of the official, military judge, or convening authority. The Court may direct that other real parties in interest be designated respondents. The Court may invite an amicus curia to respond to the petition.