United States Navy–Marine Corps Court of Criminal Appeals

RULES OF APPELLATE PROCEDURE

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For Courts of Criminal Appeals

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United States Navy-Marine Corps Court of Criminal Appeals

Rules of Appellate Procedure (2020)

*Together with the Joint Rules of Appellate Procedure for Courts of Criminal Appeals (in **Bold Type**)*

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I. GENERAL.

Rule 1. COURTS OF CRIMINAL APPEALS.

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

(1) "United States Army Court of Criminal Appeals."

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

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

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

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

~~**(c) Consistent with Article 66(a), Uniform Code of Military Justice (UCMJ), and Rule for Courts-Martial (R.C.M.) 1203(a), the Judge Advocate General of each service shall certify individuals as qualified for duty as appellate military judges and assign them to the Court for a minimum of three years, except under any of the following circumstances:**~~

~~**(1) The appellate military judge voluntarily requests to be reassigned to other duties, and the Judge Advocate General approves such reassignment;**~~

~~**(2) The appellate military judge is selected for promotion to the next higher grade and is reassigned to duties commensurate with that grade by the Judge Advocate General or the Commandant of the Marine Corps;**~~

~~**(3) The appellate military judge retires or otherwise separates from military or federal civil service;**~~

~~**(4) The Judge Advocate General grants a written exception to this policy and the appellate military judge is reassigned to other duties based on compelling needs of the service; or**~~

~~**(5) The Judge Advocate General revokes the appellate military judge's certification for good cause.**~~ ***(See NMRAP Rule 1.5(b)).***

Rule 1.1. United States Navy-Marine Corps Court of Criminal Appeals.

The Judge Advocate General of the Navy has set forth the name, mission, and function of the United States Navy-Marine Corps Court of Criminal Appeals (NMCCA) in Judge Advocate General Instruction (JAGINST) 5814.2 (series), pursuant to the authority of Article 66(a), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(a).

Rule 1.2. Seal of the Court.

(a) *Purpose.* The official seal of the Court is used on decisions and orders of the Court and on other official documents and records that are executed and issued by the Clerk of

Court. The seal operates to authenticate documents as official documents of the NMCCA. The Clerk of Court is the custodian of the seal of the Court. Permission to use the seal must be first obtained from the Clerk of Court.

(b) *Description.* In front of crossed Navy and Marine Corps officer swords pointing downward, a bronze trident, spear tips up, balancing a pair of bronze scales; all on a light blue starburst gradient background and within a dark blue band edged in scarlet on the interior and a bronze rope on the exterior and inscribed "U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS" in white Garamond Premier Pro Bold Caption font.

(c) *Symbolic Meaning.*

(1) The Navy officer sword and Marine Corps officer (Mameluke) sword represent the uniformed judge advocates who serve on the Court and appear before it.

(2) The bronze trident represents the mission of the naval services to protect the nation from the sea.

(3) The bronze scales of justice represent the Court's mission to weigh and resolve legal and factual issues and are modeled in part on the scales in the official seal of the United States Court of Appeals for the Armed Forces.

(4) The light blue starburst gradient background represents a fair sky and the calm reflection in which the Court conducts judicial review.

(5) The dark blue band represents one of the official colors of the United States Navy.

(6) The scarlet inner border represents one of the official colors of the United States Marine Corps.

(7) The bronze rope outer border is a traditional symbol of the naval services.

Rule 1.3. Administrative Matters.

(a) *Court Hours.* The Court's business hours are from 0800 to 1630 on weekdays, except Federal holidays, or when secured by direction of the Chief Judge.

(b) *Restricted Areas.* Sensitive material and conversations about pending cases are easily seen and heard while in the chambers of the Court. To preserve the confidentiality of Court communications, visitor access to the Court's chambers is restricted to the reception area in Suite 320 except by invitation. Visitors, including counsel, desiring to see judges or law clerks about any matter shall make this desire known to a panel secretary, the Clerk of Court, or a law clerk. Counsel will announce their presence when entering chambers and, in the event they overhear a conversation about a case pending before the Court, will announce their presence to the parties.

(c) *Requests for Information.* All requests for information on the status of cases from a party or from within the Office of the Judge Advocate General (OJAG) shall be referred

to the Clerk of Court. Press inquiries and other inquiries from outside OJAG shall be directed to the Public Affairs Office or the Criminal Law Division (Code 20) of OJAG.

(d) *Cases Before the United States Court of Appeals for the Armed Forces or other Court.* Appellate counsel shall promptly inform the Clerk of Court if a case that is presently before the Court is also being heard by the United States Court of Appeals for the Armed Forces [CAAF] or other Court.

Rule 1.4. Docketing Cases.

The Navy-Marine Corps Appellate Review Activity (NAMARA) is responsible for ensuring that original records of trial referred to the Court under Articles 66 or 69, UCMJ, 10 U.S.C. §§ 866 or 869, are complete records of the proceedings prepared in accordance with Article 54, UCMJ, and Rules for Courts-Martial (R.C.M.) 1112-1114, Manual for Courts-Martial, United States (current ed.). *See* Appendix A. NAMARA will not refer to the Court, and the Court will not docket, any case in which the original record of trial is not a complete record of the proceedings unless NAMARA first attaches a memorandum to the original record of trial identifying the missing document(s) or other deficiency and setting forth the actions taken to produce the missing documents or resolve any other deficiency.

Rule 1.5. Appellate Military Judges.

(a) *Assignment to the Court.* The Judge Advocate General of the Navy certifies each judge as an appellate military judge of the NMCCA and also appoints one judge to serve as Chief Judge.

(b) *Minimum Tour Lengths.* The Judge Advocate General shall certify individuals as qualified for duty as appellate military judges and they shall be assigned to the Court for a minimum of three years, except under any of the following circumstances:

(1) The appellate military judge voluntarily requests in writing to be reassigned to other duties and the detailing authority receives approval for such reassignment from the Judge Advocate General;

(2) The appellate military judge retires or otherwise voluntarily separates from military or federal civil service;

(3) The appellate military judge is reassigned to other duties by the Judge Advocate General or the Commandant of the Marine Corps (after formal coordination with the Judge Advocate General) to meet exceptional needs of the service (an example would include, but is not limited to, Marine Corps appellate judges who are selected for command and receive orders from the Commandant of the Marine Corps); or

(4) The officer's certification as an appellate military judge is withdrawn by the Judge Advocate General for good cause.

(c) *Court Precedence.* The Chief Judge has the highest precedence on the Court. For all other judges, seniority shall be based first on status as a senior judge or judge and

then on tenure, with the longest serving judge in each group having the highest seniority. In the case of interrupted service, total service on the Court will determine seniority.

(d) *Acting Chief Judge.* In any case in which the Chief Judge is disqualified from participating, unless the Judge Advocate General of the Navy has designated an acting Chief Judge, the most senior appellate military judge who is not also disqualified from participating will perform the duties of Chief Judge.

(e) *Panel Assignments.* The Chief Judge determines the number of Court fixed panels, designates the fixed panels on which each appellate judge will serve, and designates appellate judges who will be assigned cases on an ad hoc basis. The Clerk of Court or designee, on behalf of the Chief Judge, shall determine to which panel cases are assigned. The Clerk of Court, on behalf of the Chief Judge, may designate special panels as necessary, including when one or more appellate judges have been recused from consideration of a case, when an appellate judge assigned cases on an ad hoc basis is participating on the panel, or when a reserve component alternate judge is participating on the panel.

(f) *Designation of Senior Judges.* The Chief Judge designates senior judges. A senior judge ordinarily presides over a designated panel of the Court and is responsible for performing the administrative duties necessary for the conduct of the panel in completing its statutory responsibilities and for maintaining official liaison between that panel and the Chief Judge.

(g) *Oath or Affirmation.* Prior to performing duties as an appellate military judge, an oath or affirmation must be administered. The Judge Advocate General of the Navy, Chief Judge of the Department of the Navy, Chief Judge of the NMCCA, or another representative of the Judge Advocate General will administer the following oath or affirmation:

> I,_____, having been appointed (the Chief) (an) appellate military judge, United States Navy Marine Corps Court of Criminal Appeals, do solemnly (swear) (affirm) that I take this obligation freely, without any mental reservation or purpose of evasion; that I will faithfully and impartially administer justice and, to the best of my ability and understanding, I will well and faithfully perform all the duties incumbent upon me as an appellate military judge, in accordance with the Constitution of the United States and the Uniform Code of Military Justice, (so help me God).

Rule 1.6. The Clerk of Court.

(a) *Custodian of Records.* The Clerk of Court 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 Court's chambers—which includes the designated area to view sealed materials—except by order of the Court.

(b) *Disposition of Procedural Matters.* The Clerk of Court or designee, on behalf of the Court, may entertain and act on any unopposed motion for enlargement, motion to attach documents, motion to cite supplemental authorities, motion to examine sealed materials released by the military judge to trial counsel and trial defense counsel, motion to withdraw as counsel, or motion to withdraw a case from appellate review, provided such action—other than withdrawing the case from appellate review—does not substantially affect the rights of the parties or the ultimate decision of the case. The order of the Clerk shall be deemed the order of the Court.

Rule 1.7. Conduct of Court Personnel.

(a) Court personnel will maintain confidentiality of the Court's proceedings and avoid ex parte communication with litigants and favoritism, or the appearance of favoritism, toward any party or counsel.

(b) Former Court personnel who materially participated in a matter before the Court shall not thereafter represent another person or the U.S. Government in a substantially related matter. Former Court personnel who materially participated in a matter before the Court shall not thereafter use information relating to the matter to his or her advantage, except when the information has become generally known; or reveal information relating to the matter except as may be otherwise required under the applicable rules of professional responsibility or judicial canons. Material participation may include occasions in which Court personnel were present for discussions which included confidential communications related to the matter.

(c) Personnel who are reassigned from the Court to the Appellate Government or Appellate Defense divisions shall compile and provide to the Chief Judge and the directors of both divisions a list of cases in which they materially participated as defined in subparagraph (b) above.

(d) The Chief Judge, senior judges, Clerk of Court, and Chief Commissioner are responsible for informing Reservists and employees, including interns and temporary employees, of these obligations.

Rule 2. SCOPE OF RULES; TITLE.

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

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

Rule 3. SERVICE COURT RULES.

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

Rule 3.1. Implementation of Rules.

These United States Navy-Marine Corps Court of Criminal Appeals Rules of Appellate Procedure or "NMRAP" [hereinafter Rules], and the accompanying Appendices, implement and supplement the JRAP and those provisions of the Manual for Courts-Martial, United States (current ed.), that apply to the operations of the Court.

Rule 4. EFFECTIVE DATE

These rules shall apply to any case docketed with the Court on or after 1 January 2019 and shall not be construed to diminish the substantive rights of any party to a court-martial referred to trial prior to that date.

Rule 5. JURISDICTION.

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

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

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

(A) Death;

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

(C) Confinement for two years or more.

(2) *Appeal by the Accused.* Pursuant to Article 66, UCMJ, in cases not subject to automatic review under paragraph (1), upon timely appeal by the accused, Courts-martial in which:

(A) The sentence as entered in the judgment under Article 60c, UCMJ, includes confinement for more than six months;

(B) The United States previously filed an appeal under Article 62, UCMJ; or

(C) The Judge Advocate General has sent the case to the Court for review of the sentence under Article 56(d), UCMJ.

(3) *Application by the Accused.* Pursuant to Article 66, UCMJ, cases in which the Judge Advocate General has taken action and the Court has granted an accused's timely application for review under Article 69(d)(1)(b), UCMJ.

(4) Review by Order of the Judge Advocate General. Courts-martial in which:

(A) There has been a finding of guilty and a sentence that is not reviewed under Article 66, UCMJ;

(B) The Judge Advocate General has taken action under Article 69, UCMJ; and

(C) The Judge Advocate General orders the case sent to the Court for review pursuant to Article 69(d), UCMJ.

(5) *Appeal by the United States Under Article 62, UCMJ.* In all general or special Courts-martial or pretrial proceedings under Article 30a, UCMJ, cases in which the United States, after providing timely written notice, appeals in accordance with R.C.M. 908:

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

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

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

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

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

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

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

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

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

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

(9) *Extraordinary Writs.* The Court may, in its discretion, entertain petitions for extraordinary relief including, but not limited to, writs of *mandamus*, prohibition, habeas corpus, and error *coram nobis.* The Court shall, to the extent practicable, give priority to the consideration of writs of *mandamus* filed by crime victims under Article 6b, UCMJ.

(c) *Waiver and Withdrawal.* In all Courts-martial other than those that include a sentence of death, the Court shall not have jurisdiction to hear an appeal in which appellate review was properly waived or withdrawn. The Court shall have jurisdiction to determine the threshold issue of whether the appeal was properly waived or withdrawn pursuant to Rule 16.

Rule 5.1. Continuing Jurisdiction.

The Court retains jurisdiction over cases initially reviewed under Article 66, UCMJ, which are remanded for further proceedings, notwithstanding any subsequent reduction of the sentence below the level establishing Court jurisdiction pursuant to Article 66(b), UCMJ.

Rule 6. Composition of the Record on Appeal.

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

(1) In any case which is reviewed under Rule 5(b)(1) or (2), the record shall be the contents described in R.C.M. 1112(b) and as certified under R.C.M. 1112(c).

(2) In any case reviewed under Rule 5(b)(3) or (4), the record shall be the contents described in R.C.M. 1112(b) and as certified under R.C.M. 1112(c) as well as any action of the Judge Advocate General in the case.

(3) In any case in which the United States filed an appeal under Rule 5(b)(5), the record shall be that described in R.C.M. 908(b)(5).

(4) In any case in which the accused files a petition for a new trial under Rule 5(b)(6), the record shall be those portions of the record as described in

R.C.M. 1112(b) that the parties submit as necessary for the Court's review as well as any new matter submitted under subsection (c) of this Rule.

(5) In any case in which the United States filed an appeal under Rule 5(b)(7), the record shall be that described in R.C.M. 1117.

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

(7) In the case of a petition for extraordinary relief, the record shall be as described in Rule 19(b).

(8) In any case in which the record of trial was created and authenticated under R.C.M. 1104(a) of the 2016 edition of the manual for Courts-martial, the record of trial shall be the contents described in R.C.M. 1103(b)(2).

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

(1) By agreement or stipulation of the parties;

(2) Upon taking judicial notice;

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

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

(c) *Correction of the Record.* Any party may move the Court to correct any substantial error in the record of trial, to include correcting a transcription of a court-martial proceeding that is attached to the record of trial. When necessary, the Court may order an Article 66(f) proceeding to resolve questions regarding the correctness of the record of trial.

Rule 6.1. Consideration of Matters Outside the Record of Trial.

(a) The Court shall not consider any matters outside the record of trial except upon a motion to attach or upon its own motion.

(b) Notwithstanding Rule18(e), motions—other than motions to attach—and pleadings, including briefs, answers, replies, and petitions, shall not include any enclosures or attachments thereto. Any document from outside the record below, including affidavits and declarations, that counsel desires to reference in any pleading, may be submitted to

the Court only pursuant to a motion to attach. Motions to attach may be filed contemporaneous with other motions and pleadings. Motions and pleadings may thereupon and thereafter refer to such documents by reference to the motion to attach and its filing date.

Rule 6.2. Requests for Access to the Record of Trial.

(a) *Definitions*. "Examination" includes reading, inspecting, and viewing. "Reproduction" includes photocopying and photographing. "Disclosure" includes disseminating, releasing, or communicating the contents of sealed materials in any way.

(b) *Unsealed Portions of Unclassified Records of Trial.* Examination, reproduction, and disclosure of unsealed portions of unclassified records of trial by counsel are authorized upon verbal request to a member of the Office of the Clerk of Court.

(c) *Sealed Portions of Unclassified Records of Trial.* Counsel may, by written motion, request to examine, copy, or disclose sealed portions of unclassified records docketed with the Court subject to the below rules. *See* Appendix F. In cases in which a counsel representing a victim is participating before the Court, similar rules shall apply corresponding to whether the materials were released to victim legal counsel by the military judge.

(1) *Sealed Materials Released to Trial Counsel or Trial Defense Counsel*. Sealed materials in a record of trial, including the transcript of closed hearings and exhibits reviewed at trial by trial counsel or trial defense counsel may be examined by or disclosed to 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.

(2) *Sealed Materials Not Released to Trial Counsel or Trial Defense Counsel.* Sealed exhibits not released to trial counsel or trial defense counsel may be examined by or disclosed to appellate counsel only 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.

(3) *Privileged Sealed Materials Not Released to Trial Counsel or Trial Defense Counsel.* A motion seeking to examine sealed exhibits not released to trial counsel or trial defense counsel that are colorably privileged under the Military Rules of Evidence (e.g. matters sealed under Military Mil. R. Evid. 513 and 514), must further include either a certification in subsection (A) or an explanation in subsection (B) below:

(A) A certification that:

(i) The privilege holder, or the guardian or authorized representative of the privilege holder, has been provided notice and a copy of the motion to examine the sealed privileged materials. In such an instance, the response, if any, received by counsel within seven days of providing the notice.

or

(ii) That counsel has taken reasonable steps to provide notice to the privilege holder, or the guardian or authorized representative of the privilege holder but has been unable to locate or provide notice to such person. In such an instance, counsel shall detail the efforts undertaken to contact the privilege holder.

(B) An explanation, with supporting affidavits or references to the record as may be necessary, as to why the privilege:

(i) Has been waived;

(ii) Does not exist; or

(iii) Does not apply because of a recognized exception to the privilege.

(4) *Destruction of Copies of Accessed Sealed Materials.* The granting of a motion to access sealed materials shall constitute an Order of the Court binding upon any party granted access to such materials, as follows—

(A) Counsel shall not make any additional copies of the materials beyond that requested and approved by the Court or divulge any of the sealed materials except as is necessary to prepare and present this appeal.

(B) If the Court authorizes undersigned counsel to disclose the materials to a third person, counsel shall do so either directly or, if mailed, delivered in a double envelope or other container appropriate for sensitive materials via overnight carrier or other appropriate mail carrier with delivery tracking.

(C) Within 14 days of this Court completing its Article 66, UCMJ, review, appellate defense counsel will provide appellate government counsel with notice as to whether Appellant intends to file a petition for review with the Court of Appeals for the Armed Forces for review under Article 67, UCMJ.

(D) Absent further Order from this Court, within 14 days of the earliest of:

(i) Appellate government counsel receiving notice that Appellant has decided not to file a petition for review with the Court of Appeals for the Armed Forces under Article 67, UCMJ;

(ii). The expiring of the time within which to file a petition for review with the Court of Appeals for the Armed Forces under Article 67, UCMJ, without the filing of such a petition;

(iii). The Court of Appeals for the Armed Forces declining review under Article 67, UCMJ;

(iv). The Court of Appeals for the Armed Forces completing review under Article 67, UCMJ;

(v). Appellate government counsel receiving notice that the Appellant has decided not to file a petition for a writ of certiorari with the Supreme Court;

(vi). The expiring of the time within which to file a petition with the Supreme Court;

(vii). The Supreme Court denying certiorari; or

(viii). The Supreme Court finally deciding the Appellant's appeal,

all appellate counsel will destroy by shredding or other secure means all copies of the sealed materials made pursuant to this motion and will each sign and deliver to the Court a declaration certifying both that no other copies of the sealed materials were made except as authorized by the Court, and that all copies of the sealed materials were destroyed.

(5) *Effect on Other Rules.* This Rule shall be implemented in a manner consistent with Executive Order 13526 and Department of the Navy directives 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.

(6) *See* Rule 17.6. Pleadings Including Matters Sealed by the Military Judge.

Rule 6.3. Classified Records.

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

(b) *Security Clearances.* The Court Security Officer shall facilitate the process of requesting appropriate clearances for personnel on the staff of the Court, as necessary, in accordance with DoD Regulation 5200.1-R.

(c) *Classified Documents and Controlled Materials.* Classified and controlled documents or materials will be stored by the Security Officer with the National Security Litigation Division (Code 30) of OJAG. Attorneys of record in appellate cases that deal with classified information must provide proof of an appropriate security clearance to the Chief Commissioner to review the classified information. Classified information will remain secured throughout the proceedings. Attorneys will coordinate review of classified records with the Clerk of Court during duty hours in a secure place. Attorneys of record are responsible to return classified information to the Clerk of Court's possession. Written products encompassing use of classified information must be created solely on a properly classified portable laptop computer or desktop computer with a removable hard drive. Both the computer and hard-drive must be secured when not in use. Briefs and orders from the Court will be assigned the appropriate security classification. Asterisks will be substituted for classified information in all copies of the order except for the original record of trial copy.

Rule 6.4. Presumption Against Ex Parte Examinations of Sealed Materials.

(a) *Except as provided in (b) below*, a motion to examine sealed materials, if granted, will constitute approval for both parties to review the sealed materials. When the Court has granted one party's motion to review sealed matter, a motion seeking to review the same matter filed by the other party is redundant and unnecessary.

(b) A party may seek to review sealed matter without presumptively providing access to the other party. (E.g., such a motion may be appropriate when a privilege applies to one party but not the other). A motion under this exception shall *clearly and specifically* state that it is filed under this exception and will include the basis for seeking ex parte examination.

Rule 7. QUORUM.

(a) When sitting in panel, a majority of the judges assigned to that panel shall constitute a quorum. When sitting en banc, a majority of the judges in regular active service with the Court shall constitute a quorum.

(b) The concurrence of a majority of such judges, whether present and voting or voting telephonically or electronically, shall be required for a final resolution of any matter before the panel or Court en banc, subject to subsections (c), (d), and (e).

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

(d) Each service may establish its own definition of "regular active service" in its Service Court rules even if inconsistent with Rule 7(c).

(e) Notwithstanding Rule 7(b), a judge on the panel or Court considering a matter may, acting alone, issue all necessary orders, to include temporary orders or stays, provided the orders do not finally dispose of a petition, appeal, or case. A Court may delegate to its Clerk of the Court or other designated staff the authority to act on motions regarding procedural matters.

Rule 7.1. Terminating Regular Active Service.

Any judge who is reassigned from the Court is no longer in regular active service with the Court upon departure due to (1) termination of assignment orders; (2) permanent

change of assignment; (3) permanent change of station; or (4) retirement or separation from the active or reserve component or federal service.

Rule 7.2. Quorum of the Court En Banc.

When sitting en banc, a majority of the judges in regular active service with the Court who are not recused or otherwise disqualified from the matter shall constitute a quorum.

Rule 8. AMENDMENTS.

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

Rule 8.1. Questions, General Waiver Requests, and Suggested Changes.

Questions regarding the JRAP and NMCCA Rules should be addressed to the Clerk of Court. Requests for a general waiver of any provision and suggested changes to these Rules will be forwarded to the Chief Judge through the Clerk of Court.

Rule 8.2. Rules Advisory Committee.

(a) *Membership*. A Rules Advisory Committee may be formed by the Chief Judge as a temporary or standing committee. When formed, the Rules Advisory Committee shall consist of not less than 7 members and shall be selected by the Chief Judge. The Committee shall be chaired by the Clerk of Court and shall generally also consist of a representative of the Appellate Defense Division (Code 45); a representative of the Appellate Government Division (Code 46); a representative of the Navy-Marine Corps Trial Judiciary (Code 52); a representative of the Victims' Legal Counsel Program (VLCP); a representative of the Criminal Law Division (Code 20); and, when practicable, at least one representative of a law school, public interest group, or the civilian Bar. A commissioner from the Court shall serve as the Committee's non-voting Reporter.

(b) *Terms of Members*. With the exception of the Clerk of Court, the members of the Committee shall serve 3-year staggered terms and may be reappointed to serve additional terms. To establish staggered membership going forward, the initial appointment of the Code 45 and Code 46 members shall be for two years and the initial appointment of the Code 52 and DCOS-VLCP members shall be for one year. Individual members may be replaced from time-to-time, as military assignments dictate or otherwise, in which case a replacement shall fill the unexpired term of the predecessor.

(c) *Duties*. The Rules Advisory Committee 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 upon 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.

II. ATTORNEYS.

Rule 9. QUALIFICATION OF COUNSEL.

(a) *All Counsel.* Counsel in any case before the Court shall be a member in good standing of the bar of a federal Court or the highest Court of a state, territory, commonwealth, or possession of the United States.

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

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

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

Rule 9.1. Administrative Requirements.

(a) *Admission to the Court's Bar*. Attorneys seeking admission to the Court's Bar must complete the written application for admission, Appendix B. Mail the completed application, a legible copy of a certificate of good standing in a qualifying bar dated within one year of the application, and a signed oath or affirmation to the Clerk of Court at:

Clerk of Court
Navy-Marine Corps Court of Criminal Appeals
1254 Charles Morris Street SE, Suite 320
Washington Navy Yard, DC 20374-5124
Telephone: (202) 685-7700 DSN: 325-7700

(b) *Fee*. There is no fee for admission to the Bar.

(c) *Register*. The Clerk of Court will maintain a Roll of Attorneys admitted to practice before the Court and issue Certificates of Good Standing to qualifying members upon request.

(d) *Certificate of Admission*. Upon admission, the Clerk of Court shall issue a Certificate of Admission.

Rule 10. CONDUCT OF COUNSEL.

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

Rule 10.1. Conduct of Counsel.

Counsel appearing before the Court shall conduct himself or herself in accordance with JAGINST 5803.1 (Series), Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General. In addition to exercising its inherent power to regulate counsel appearing before it, the Court may refer allegations of professional misconduct, including a finding of ineffective assistance of counsel or prosecutorial misconduct, to the Judge Advocate General for investigation and appropriate action.

Rule 10.2. Reporting Requirements.

Any member of the Bar of this Court who is subjected to discipline that results in disbarment, suspension, or other loss of good standing in the bar of any court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth, or possession of the United States, shall notify the Clerk of Court within 14 days of such action. Likewise, any member of the Bar who is suspended from practice in courts-martial or another service Court of Criminal Appeals, or whose certification pursuant to Article 26(b) or 27(b), UCMJ, is withdrawn for cause, shall notify the Clerk of Court within 14 days of such action.

Rule 10.3. Allegations of Professional Misconduct.

In addition to other actions that may be taken by the Court, allegations of professional misconduct, as defined by Rule 8.4 of the Department of the Navy Rules of Professional Conduct (DONRPC), may be referred to appropriate professional authority in accordance with Rule 8.3 of the DONRPC.

Rule 10.4. Disciplinary Action.

If it appears that any counsel admitted to practice before this Court has engaged in conduct unbecoming a member of the Bar, has persistently or deliberately failed to comply with these rules or any other rule or order of the Court, or has engaged in misconduct as defined by Rule 8.4 of the DONRPC, the Court may enter an order affording the attorney an opportunity to show cause why the matter should not be referred to the appropriate professional authority.

Rule 10.5. Notice to Other Military Appellate Courts.

Any counsel who is disbarred, suspended from practice, or otherwise loses good standing with the Court shall be reported to the Court of Appeals for the Armed Forces and to the other service Courts of Criminal Appeals for action as they deem appropriate.

Rule 10.6. Action Upon Notice from Other Military Appellate Courts.

(a) Upon receipt of notice that any counsel admitted to practice before this Court has been disbarred, suspended from practice, or has otherwise lost good standing with the Court of Appeals for the Armed Forces or another service Court of Criminal Appeals, the Clerk of Court will notify the counsel at the last address the counsel provided to the Court of the following:

(1) That the Court is in receipt of the notice from the other military court;

(2) That the counsel has 30 days from the date of the Clerk of the Court's notice to respond addressing why the Court should not take the same or similar action as the other military appellate court; and

(3) That failure to respond will result in the Court immediately taking action to disbar or suspend counsel from practice before the Court.

(b) If counsel fails to respond or responds but does not dispute the merits of the other military court decision, the Clerk of Court, on behalf of the Court, shall immediately take the same or similar action as the other military court.

(c) If counsel timely responds and disputes the merits of the other military court decision, the Clerk of the Court shall forward the matter to the appropriate professional authority in accordance with Rule 8.3 of the DONRPC.

Rule 10.7. Action Upon Notice from the Judge Advocate General.

The Court shall act to disbar, suspend from practice, or take other appropriate action with regard to a member of the Bar of this Court, in accordance with the action of the Judge Advocate General, pursuant to JAGINST 5803.1E.

Rule 11. ASSIGNMENT OF COUNSEL.

(a) Upon receipt of a notice that an appeal pursuant to Article 48, 56(d), 62, 66, 69(d), or 73, UCMJ, has been docketed with the Court, the appropriate Judge Advocate General or designee shall, unless already done, designate appellate military counsel to represent the parties and, as appropriate, victims as defined by Article 6b, UCMJ. In a case involving a petition for extraordinary relief when the United States is represented by counsel or when an accused has been denominated as the real party in interest by a filing party or by the Court, the Judge Advocate General or designee shall also designate appellate military counsel to represent such accused. Nothing in this Rule creates a right to counsel beyond that required by regulation or law.

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

Rule 12. NOTICE OF APPEARANCE AND WITHDRAWAL OF COUNSEL.

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

(b) Leave to withdraw by any counsel who has entered an appearance under subsection (a) must be requested by motion in accordance with Rule 23. A motion by an appellate defense counsel must indicate whether the accused consents or objects to the withdrawal, the reasons for the withdrawal, and the provisions that have been made for continued representation of the accused. A copy of a motion filed by an appellate defense counsel shall be delivered or mailed to the accused by the moving counsel.

Rule 12.1. Entry of Appearance of Counsel.

(a) *Detailed Appellate Military Counsel.* Entry of a military appellate counsel's name into the electronic case management system as counsel in a case constitutes a Notice of Appearance.

(b) *All Other Counsel.* All other counsel representing a party in interest must file a written notice of appearance with the Clerk of Court that contains counsel's name, mailing address, phone number, business email address, and a statement whether counsel is

a member of this Court's Bar or desires to appear pro hac vice, in which case counsel must declare his/her professional qualifications in the Notice of Appearance and file a motion to appear pro hac vice. Counsel may also seek to become a member of the Court's Bar by complying with Rule 9.1.

(c) *Signed Pleadings*. Additionally, any filing relative to a case that contains the signature of counsel constitutes an appearance but does not relieve counsel of their obligation to submit a Notice of Appearance in compliance with this Rule.

Rule 12.2. Withdrawal of Appellate Defense Counsel.

Any appellate defense counsel who has entered an appearance in a case and wishes to withdraw as appellate defense counsel must request leave to withdraw by motion to the Court. Such motion must 1) indicate the reasons for withdrawal; 2) identify by name the successor appellate defense counsel; 3) affirm that a thorough turnover of the record between counsel has been completed; 4) affirm that the Appellant has been informed of the proposed change in representation; and, 5) state whether the Appellant concurs with or opposes the motion to withdraw. Replacement counsel shall file an entry of appearance as required by Rule 12.1 within 10 days following retention.

Rule 12.3. Counsel Appearing Pro Hac Vice.

Prior to or at the time of filing any pleading with the Court, attorneys desiring to appear pro hac vice shall file a motion to appear pro hac vice, along with a legible copy of a certificate of good standing from a qualified bar dated within one year of the appearance and an affidavit or declaration stating whether the attorney is presently under investigation or has ever been disciplined for a violation of any licensing authority's disciplinary / ethical rules. Counsel making oral argument *may not* appear pro hac vice and must be formally admitted to the Court's Bar prior to the scheduled date of oral argument.

III. PRACTICE BEFORE THE COURT.

Rule 13. FILING AND SERVICE.

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

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

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

Rule 13.1. Place for Filing.

All pleadings and other papers relative to a case are not filed until received at the address below. However, the date for electronic filing shall be the date on which the filing was transmitted (with reference to the physical location of the filer if different from that of the Court)

Clerk of Court
Navy-Marine Corps Court of Criminal Appeals
1254 Charles Morris Street SE, Suite 320
Washington Navy Yard, DC 20374-5124
Telephone: (202) 685-7700 DSN: 325-7700

Rule 13.2. General Guidance for Filing.

(a) *Hours of Filing*. Petitions for Extraordinary Relief and Government Appeals should ordinarily be filed during the Court's business hours (*see* NMCCA Rule 1.3(a)), but may be filed electronically outside business hours. All other filings shall be filed with the Clerk of Court during the Court's normal business hours. (*See* Rule 15.1 concerning the effect of the Court's closure on filing deadlines.).

(b) *Filing Procedure.*

(1) *Electronic Filing***.** In addition to requirements for hard copy filing detailed below, *with the exception of classified material and material under seal*, all briefs, motions, notices, opposition filings, and all other pleadings must be filed electronically into the Court's case management system. Counsel assigned to Appellate Defense (Code 45) and Appellate Government (Code 46) and any other counsel with access to the case management system shall electronically file by uploading pleadings into the Document tab of the case management system. Any counsel not having access to the case management system may either have a Code 45 or Code 46 counsel upload the document into the case management system or electronically file the document by emailing the pleading in accordance with the procedures in subsection (4) below. However, unless authorized by the Clerk of Court, the original paper filing must still be mailed or otherwise delivered to the Court. If the case management system is unavailable at the time of the filing deadline, documents should be similarly emailed.

(2) *Format for Electronically Filed Documents***.** All documents filed electronically shall be converted to Adobe Acrobat (pdf) file format. Whenever possible, Acrobat files should be directly exported from Microsoft Word or other word processing software, rather than printed and scanned. *Prior to converting to Acrobat format and before submitting a document to the Court, counsel must first remove any "Track Changes," electronic notes, or other metadata counsel does not intend to file with the Court and opposing counsel.* Documents should be digitally signed using Adobe Acrobat or a word processor plug-in embedding a digital certificate from a Common Access Card (CAC) or another digital certificate repository. If counsel does not have access to a version of Adobe Acrobat that can digitally sign documents or any other software that can do so,

then the document shall be signed with the following typed statement in Bold-Italic typestyle above the counsel's signature block: "*Electronic original certified as true and correct by the undersigned.*" Counsel *shall not* electronically file pleadings with a scanned "wet signature," as these must be redacted before the document is made publicly available in accordance with 10 U.S.C. § 940a. Counsel may optionally choose to leave space to physically sign the printed copy filed with the Court in accordance with subparagraph (6) below.

(3) *Naming Convention for Electronically Filed Documents.* All documents uploaded to CMITS or emailed to the Court shall be named as follows: [NMCCA#]-[party/filing entity, d/g/v/a]-[abbreviated document type]-[date, yyyymmdd]. Examples:

(A) 201900123-D-AOE Brief-20190315

(B) 201900045-G-Opp to 2nd Enl-20191018

(C) XXXX-V-Pet Ext Relief-20190710 {trial level interlocutory petition; NMCCA # not yet assigned}

(D) 201900123-A-Amicus Brief in Supp of Appellant-20190320

(4) *Email Filing When Authorized by the Clerk of Court.* If due to extraordinary circumstances in an individual case or generally, the Clerk of Court may authorize filing by email. In such an instance, the requirement for paper filings is waived. The filing shall comply with the format and naming convention in subparagraphs (3) and (4) above.

(A) Filers shall email the filing to the Clerk of Court and Assistant Clerks of Court at the following email addresses:

Rodger.Drew@navy.mil
Carol.R.Harris@navy.mil
Joshua.J.Heidel@navy.mil

(B) Filers shall copy all counsel of record and the Director and Deputy Director of both Code 45 and Code 46.

(C) Filers shall use the following format for the subject of the email:

FILING – Panel [#] – [U.S. v. Smith] [In Re Jones / Smith RPI] – NMCCA [202000###] – [Very Brief Description, e.g. G1EOT / D Brief / G Answer / D Mtn Recon] (Counsel's Last Name)

(D) Where possible, to reduce file size, documents should be directly converted to Adobe Acrobat (pdf) files, rather than scanned. However, files too large to be emailed may be sent via DOD SAFE (Secure Access File Exchange) at:

https://safe.apps.mil/

(5) *Paper Filings*. In addition to electronic filing, counsel shall file an original pleading in hard copy, along with the specified number of any copies as noted in the table below:

Pleading	**Copies**
Appearances	*None*
Article 66 Appeals	
Merit Submission	*None*
Brief and Summary AOEs	*None*
Brief and AOEs	*None*
Government Answers	*None*
Defense Reply	*None*
Supplemental Brief Plus Motion for Leave to File	3 Copies
Government Answer to Supp. Brief	*None*
Motion to Withdraw Appeal	*None*
Response to Court Order	*None*
Motion to Attach (Motion & attachments)	1 Complete Copy (Motion & attachments) *plus 2 Copies of the Motion only*
All other Motions (including EOTs)	3 Copies
Responsive Pleadings (Oppositions; Replies)	*None – unless Leave of the Court to File is required*, then 3 Copies of Motion
Petition for New Trial	*None*
Brief in Support	*None*
Government Response	*None*
Petition for Extraordinary Relief	1 Copy
Brief in Support	*None*
Response to Show Cause Order	*None*
Government Appeal	1 Copy
Defense Reply	*None*
Suggestion for En banc consideration	3 Copies
Request for Publication	*None*

(c) *Noncompliance with Court Rules*. Failure to comply with Court rules may result in the rejection and return of the offered filing by the Clerk of Court. Returned filings will not be attached to the record of trial, and do not serve to toll the filing deadline. Pleadings returned for errors may be corrected and re-filed within 48 hours of the email notification from the Court—if timely corrected *to address those errors only*, such pleadings will not be considered out of time.

(d) *Filings by Attorneys Not Admitted*. If the counsel signing a filing or paper presented to the Clerk of Court for filing is not a member of the Court's Bar, the filing or paper shall nonetheless be received as if such counsel were a member, provided that such counsel shall, at the time of submission of the filing, as a prerequisite to continuing in the

case as counsel of record, apply for admission to the Court's Bar or move to appear pro hac vice.

(e) *Motion for Leave to File Out-of-Time*. Any filing that is submitted out-of-time shall be submitted to the Court with a motion to file out-of-time, exhibiting good cause for why the Court should accept the out-of-time filing. Except for motions for enlargement, a filing is out-of-time when it is made after the due date. (*See* Rule 23.2(c)(3) concerning Motions for Enlargement of Time). The Clerk of Court may reject and return filings that are not filed in accordance with this provision to the party without attachment to the record of trial.

Rule 13.3. Service of Pleadings.

(a) *In General*. At or before the filing of any pleading or other paper relative to a case in the Clerk of Court's office, a copy thereof shall be served on all counsel of record, including amicus curiae counsel and victims' counsel, in person, by mail, by third–party commercial carrier, or by electronic means, if the party being served consents. 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.

(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, in the case of military counsel, when served upon the Appellate Government or Appellate Defense Division Director or designee. 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 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 cases referred to the Court pursuant to Article 69(d), UCMJ, the Clerk of Court shall cause a copy of the record and certificate for review to be served upon the Appellate Government and Appellate Defense Divisions Directors or designees.

(g) *Form of Certificate of Filing and Service*. A certificate indicating the specific manner of filing and the specific manner of service 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 required number of 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), that a copy was uploaded into the Court's case management system 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).

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

_____
Counsel's Name
Grade (if military)
Capacity
Address
Telephone number
Email address

Rule 13.4. Cases with Classified or Sealed Materials.

(a) *Mandatory Security Review in Cases with Classified Materials.* Other than pleadings that do not make specific reference to the record below, such as a motion for an enlargement, or to cite supplemental legal authority, all pleadings in a case with classified evidence, hearings, or other materials must undergo a security review prior to filing the pleading with the Court or serving on opposing counsel.

(1) *Notice of Submission for Security Review.* On or before the filing deadline for a pleading subject to a mandatory security review, the party submitting the pleading shall file with the Court and serve on opposing counsel notice that the pleading has been submitted for the security review.

(2) *Procedure for Security Review.* Pleadings subject to a mandatory security review will be submitted to OJAG Code 30 for review on or before the filing deadline established by the Court or by these Rules, to include any granted enlargements thereto. [*Any time standards or other guidance to Code 30 regarding the processing of the security review.*]

(3) *Time to File Following Security Review.* Counsel shall file and serve the pleading (or modified pleading if necessary) cleared by Code 30 to file as an unclassified document within one business day after receiving such clearance.

(b) *Referencing Classified or Sealed Materials.*

(1) When classified material or materials under seal must be referenced in a pleading, a redacted pleading omitting the classified or sealed materials must be filed with the court electronically and in writing in accordance with the normal procedures for pleadings not containing sensitive information. A separate document containing the classified or sealed materials will be filed according to specialized instructions provided by the Clerk of Court. Counsel needing to file such a pleading must contact the Clerk of Court sufficiently in advance of the filing deadline to receive and comply with specific instructions from the Clerk of Court.

(2) If a party believes it is necessary to reference classified or sealed materials during an oral argument, the party shall provide notice of such intention in any motion for oral argument, filing the motion in redacted form if necessary. If oral argument is ordered by the Court on its own motion or on the motion of opposing counsel, counsel proposing to reference classified or sealed materials shall promptly file a motion to reference the materials during oral argument, filing the motion in redacted form if necessary.

(3) If the Court determines that referencing classified or sealed materials during oral argument is appropriate, the Court shall close the oral argument and/or designate a suitable location to hear oral argument depending on the level of classified information involved.

Rule 14. Signing of Papers.

All formal papers shall be signed, either by hand or electronically, and shall include, at a minimum, the signer's name, military grade (if applicable), email address, and the capacity in which the paper is signed. Such signature constitutes a certification that the statements made therein are true and correct to the best of

the knowledge, information, and belief of the person or persons signing the paper and that the paper is filed in good faith and not for purposes of unnecessary delay.

Rule 14.1. Supervised Interns.

Interns assigned to the Appellate Government or Appellate Defense divisions may sign original filings below the signature of the counsel of record, with their typed name and the capacity as "Counsel Under Supervision."

Rule 14.2. Counsel Signing for Another Counsel.

One counsel may sign a filing or paper, hard copy or electronic, "for" another counsel provided the following format is followed below their wet or digital signature:

J.P. Jones
J. P. Jones
LT, JAGC, USN
Appellate Defense Counsel

Signing For

C. W. Nimitz
LCDR, JAGC, USN
Appellate Defense Counsel
Address
Telephone #
Email Address

Rule 15. COMPUTATION OF TIME.

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

Rule 15.1. Effect of Court Closure.

If a filing would be otherwise due on a date in which the Court is closed the entire day, such as on a weekend, federal holiday, or other day in which the Court offices are closed the entire day, the filing is due by 1630 on the next day that the Court is not closed. In the event the Court offices close early on a day when the

Court is otherwise open for business, the pleading may be filed by 0900 the next day the Court is once again open for business.

Rule 16. WAIVER OR WITHDRAWAL OF APPELLATE REVIEW.

Once a case has been received by the Court for appellate review, a waiver or withdrawal of appellate review filed in accordance with R.C.M. 1115 will be referred to the Court for consideration. At its discretion, the Court may require the filing of a motion for waiver or withdrawal, issue a show-cause order, or grant or deny the waiver or withdrawal without any further action. Once a waiver or withdrawal is granted, the Court will return the record of trial to the Judge Advocate General.

Rule 16.1. Withdrawal from Appellate Review.

(a) The Appellant may file a withdrawal from appellate review at any time before the Court completes its review.

(b) The withdrawal must be in writing and personally signed by the Appellant and defense counsel using:

(1) DD Form 2330 (for cases referred to court-martial on or after 1 January 2019),

(2) DD Form 2330-1 (for cases referred to court-martial before 1 January 2019), or

(3) In a declaration signed by the Appellant attached to a motion to withdraw from appellate review signed by defense counsel in the format provided in Appendix G. The declaration shall state that

(A) The Appellant and defense counsel have discussed the Appellant's rights to appellate review and the effect of waiver or withdrawal of appellate review and that the Appellant understands these matters; and

(B) The Appellant is submitting the withdrawal voluntarily.

(c) The Clerk of Court or designee is authorized to act on withdrawals from appellate review.

Rule 16.2. Appellate Defense Counsel to Assist with All Withdrawals from Appellate Review.

If the Appellant previously waived appellate defense counsel or counsel has otherwise not been assigned, counsel shall be detailed to the Appellant for purposes of advising the Appellant of his appellate rights and the effects of withdrawing from appellate review.

Rule 17. PLEADINGS AND BRIEFS.

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

Rule 17.1. Format.

(a) Except for the record of trial, all pleadings or other papers relative to a case shall be typewritten and double-spaced, printed on white paper, 8.5 by 11 inches in size, securely fastened in the top left corner. If a filing is too large to be stapled, it will be two hole-punched at the top center of the pages and bound by metal fasteners with compressors. Filings may be printed on one side only or on both sides, in which case, they shall be printed "head-to-foot" (flip pages on short side). The first page of all pleadings shall have at least a 2-inch bottom margin on the bottom to accommodate filing stamps. All remaining pages shall have a 1-inch bottom margin. Page numbers may be placed in the margin but no text—including footnotes—may appear in the bottom margin. A single annotation or stamp (such as "ORIGINAL" or "FILE COPY") may be placed at the center of the bottom margin.

(b) Each pleading shall include the case caption (including the NMCCA # and assigned panel). Other than the caption, headers, and signature blocks, the text of all pleadings will be double-spaced. All pages except the first will be numbered. All printed matter, including footnotes, must appear in 14-point proportional type, e.g., Times New Roman, Century Schoolbook, etc. *Courier, Courier New, and similar non-proportional fonts are not acceptable.*

Rule 17.2. Citation Form and Writing Style.

Citation form and writing style for appellate filings shall conform to the current edition of the Uniform System of Citation ("Bluebook"), U.S. Government Publishing Office Style Manual, and The Chicago Manual of Style, in that order of precedence. Once available, the citation form and writing style prescribed in the Manual of Uniform Citation and Legal Style for the Military Courts ("PurpleBook")—which is based on the foregoing—shall take precedence over all other citation and style guides.

Rule 17.3. Length.

Except by permission of the Court, principal briefs shall not contain more than 15,000 words and reply briefs shall not exceed 8,000 words, exclusive of the case caption, indexes, certificates, and appendices. Requests to file briefs in excess of specified limits will be granted only in the most extraordinary cases.

Rule 17.4. Personally Identifiable and Sensitive Information.

(a) Counsel are *required* to redact private and sensitive information from all pleadings.

(b) The following specific information shall be removed from any unsealed filing:

(1) *Names of complainants, victims, or witnesses.* The names of all complainants, victims, and witnesses, other than the Accused, shall be replaced with a pseudonym, following the procedure set out in Rule 17.5.

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

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

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

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

(6) *Dates of birth.* If an individual's date of birth is relevant, use only the year.

(7) *Sealed Records.* Pleadings not filed under seal shall not include any information derived solely from sealed portions of the record of trial.

(c) If it is necessary in a particular case to include personal or sensitive information in a pleading, the document must be filed with a motion to file it under seal along with a redacted version that can be filed and made available to the public.

(d) The Clerk of Court will not review any documents for redaction. Parties shall exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, individual financial information, employment history, information regarding an individual's cooperation with the Government, and national security-related information. Particular attention should be focused on attachments and appendices to ensure appropriate redaction.

(e) Motions to Strike a Brief or to request other relief for violation of this rule must be filed within 7 days.

Rule 17.5. Table of Pseudonyms.

(a) With the exception of merits briefs, all initial briefs in support of an appeal or petition shall include a separate table of pseudonyms filed with the Court under seal. *See* Appendix K. Notwithstanding the fact that the table is filed under seal, the party filing the table will serve an unredacted copy of the table upon all other parties to the appellate litigation. Absent Order of the Court, all parties and the Court shall use the assigned pseudonyms in all filings, orders, and opinions.

(b) The table of pseudonyms shall include the name of, and a pseudonym for, every complainant, victim, and witness that testified at trial and any other person, living or deceased—other than the Accused, counsel, and the military judge(s)—that the party references in the brief. The table shall also indicate the relationship the individual has to the case.

(c) Parties desiring to reference individuals not listed in the table of pseudonyms in responsive pleadings shall file along with such pleading a supplemental table of pseudonyms under seal.

(d) The pseudonyms shall be constructed using the same first and last initials of the individual's actual name, replacing the first name with a gender-corresponding different name and replacing the last name with a generic name using the phonetic alphabet, Greek alphabet, or similar generic common name. Each individual should be given a unique first and last pseudo name, except that related individuals sharing the same actual last name should be given the same pseudo last name. Counsel should not attempt to use pseudonyms that necessarily correspond to the individual's racial or ethnic background.

(e) In filings, counsel may for clarity sake refer to persons—in addition to by their pseudonym—by their relationship to the case, e.g., "Appellant's roommate," "Appellant's mother," "the Defense consulting psychologist," etc.

Rule 17.6. Pleadings Including Matters Sealed by the Military Judge.

(a) 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 be sealed.

(b) *See* Rule 1.3.(c) Requests for Examination and or Disclosure of Original Records of Trial.

Rule 18. APPEALS BY THE ACCUSED.

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

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

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

(1) *In General.* All litigants are expected to follow the rules that govern the practice of law and be familiar with these rules and any Service Court rules established under Rule 3.

(2) An accused who is represented by counsel who has made an appearance in a matter before the Court may not file pro se submissions.

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

(e) ~~*Appendix.* The brief of either party may include an appendix. If an unpublished opinion is cited in the brief, a copy may be attached in an appendix. The appendix may also include extracts of statutes, rules, or regulations. A motion must be filed under Rule 23 to attach any other matter~~. *(To comply with SECDEF implementation of Article 140a, UCMJ.)*

Rule 18.1. Assignments of Error.

(a) *Format.* An Assignment of Error is a succinct statement, in the form of a question, raising an error that the Appellant asserts occurred below. An Assignment of Error may cite a controlling precedent but should not be argumentative or conclusory. Proper examples include:

(1) "***Did the military judge abuse his discretion when he admitted Prosecution Exhibit 5 over the timely objection of trial defense counsel that it constituted testimonial hearsay?***"

(2) "***Did the military judge commit plain error by not sua sponte taking corrective action when the trial counsel made a findings argument that shifted the burden of proof to the Defense?***"

(3) "***Did the military judge abuse her discretion when she denied the Defense motion to suppress, premised on* Daubert v. Merrell Dow Pharms., Inc., *509 U.S. 579 (1993), the opinion of prosecution expert witness Dr. Frank N. Stein that the hairs collected from the trunk in Appellant's vehicle were a match for the decedent?***"

(4) "***Did the military judge err in denying a Defense request to instruct the court members on the defense of mistake of fact as to consent?***"

(b) *Brief.* Any Assignments of Error shall be included in a Brief on behalf of the Appellant substantially as illustrated in Appendix I. The Brief shall include:

(1) *An Index of Brief.* All briefs that contain more than 10,000 words, exclusive of the case caption, indexes, certificates, and appendices, shall 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, with references to the pages where cited.

(2) *Issue(s) Presented.* Set forth each alleged error in the form of a question in bold, italicized, sentence case letters. If asserting more than one error, number each alleged error with consecutive Roman numerals. *See* Rule 18.3 regarding issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

(3) *Statement of Statutory Jurisdiction.* Set forth the statutory basis for the Court's jurisdiction.

(4) *Statement of the Case.* This is a concise chronology, including all relevant dates, to include the results of trial, the action of the convening authority, and any other pertinent information regarding the proceedings.

(5) *Statement of Facts.* Concisely state the facts of the case material to the errors assigned or specified, including specific page and exhibit references to each relevant portion of the record of trial. A statement of facts shall not contain argument, nor shall it mislead the Court through misstatement or omission of facts material to the errors assigned or specified. Individual facts shall not be stated out-of-context in a manner that may mislead the Court.

(6) *Summary of Argument.* This should be 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.

(7) *Argument.* The argument should briefly discuss 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, and a direct and concise argument as to each issue of fact or law presented, and demonstrating with particularity why the error assigned is materially prejudicial to the substantial rights of the Appellant or why relief is otherwise warranted. The tone and tenor of argument shall be professional and founded in law and fact.

(8) *Conclusion.* State with specificity the relief sought as to each issue presented. No particular form of language is required so long as the brief concludes with a clear prayer for specific Court action.

(9) *Certificate of Service.* The Certificate of Service on counsel for each opposing party, real party in interest or Appellant or Petitioner not represented by counsel, and on counsel amicus curiae, if any. When civilian and military counsel are associated in a case, the civilian counsel will be served separately and as soon as practicable, in

addition to the required service on military counsel, which is accomplished by service on the Appellate Government or Appellate Defense Division Director or designee. Such certificate of service shall be in the form illustrated in Appendix I.

(c) *Summary Assignments of Error; Format (when brief contains ONLY Summary Assignments of Error).* A brief containing only Summary Assignments of Error on behalf of an Appellant shall include:

(1) List of the Summary Assigned Errors in the form of a question in bold, italicized, sentence case letters.

(2) Statement of statutory jurisdiction of this Court.

(3) Statement of the Case, to include a concise chronology, including all relevant dates, to include the results of trial, the action of the convening authority, and any other pertinent information regarding the proceedings.

(4) Statement of Facts, concisely stating the facts of the case material to the summary errors assigned, including specific page references to each relevant portion of the record of trial. A statement of facts shall not contain argument, nor shall it mislead the Court through misstatement or omission of facts material to the errors assigned or specified. Individual facts shall not be stated out-of-context in a manner that may mislead the Court.

(5) Citation to authority providing a legal basis for the Summary Assignment of Error, including argument, if pertinent, discussing briefly and succinctly the point of law presented. Additionally, citing and quoting such authorities as are deemed pertinent including authorities that are contrary to the argument in the Summary Assignment of Error. The tone and tenor of argument shall be professional and founded in law and fact.

(6) Conclusion stating with specificity the relief sought as to each issue presented. No particular form of language is required so long as the brief concludes with a clear prayer for specific Court action.

(7) The Certificate of Service on counsel for each opposing party, real party in interest, or Appellant or Petitioner not represented by counsel, and on counsel amicus curiae, if any. When civilian and military counsel are associated in a case, the civilian counsel will be served separately and as soon as practicable, in addition to the required service on military counsel, which is accomplished by service on the Appellate Government or Appellate Defense Division Director of designee. Such certificate of service shall be in the form illustrated in Appendix I.

(d) *Summary Assignments of Error; Format* (*when brief contains Summary Assignments of Error ALONG WITH OTHER Assignments of Error*). A brief containing Summary Assignments of Error along with other Assignments of Error on behalf of an Appellant shall be filed in compliance with Rule 18.1(b) and for the section of the brief addressing the Summary Assignments of Error, the brief shall include:

(1) List of the Summary Assigned Errors in the form of a question in bold, italicized, sentence case letters.

(2) Citation to authority providing a legal basis for the Summary Assignment of Error, including argument, if pertinent, discussing briefly and succinctly the point of law presented. Additionally, citing and quoting such authorities as are deemed pertinent including authorities that are contrary to the argument in the Summary Assignment of Error. The tone and tenor of argument shall be professional and founded in law and fact.

(3) Conclusion stating with specificity the relief sought as to each issue presented. No particular form of language is required so long as the brief concludes with a clear prayer for specific Court action.

(e) *Supplemental Assignments of Error*. Supplemental Assignments of Error may be filed only upon leave of the Court. Motions to file Supplemental Assignments of Error shall be filed in accordance with Rule 23.11. If the Court grants the Appellant leave to file a Supplemental Brief and Assignments of Error, the Appellee's Answer to the Supplemental Assignments of Error must be filed within 30 days after the Court grants the motion for leave to file.

Rule 18.2. Merits Briefs.

(a) In cases referred to the Court for review pursuant to Article 66, UCMJ, the Appellant, without conceding the legal or factual correctness of the findings of guilty or the sentence, may file a pleading that does not assign error, does not raise error asserted personally by the Appellant, and does not request specific relief. Such pleadings shall substantially follow the format set forth in Appendix G. In such cases, the Clerk will deliver the original record of trial to the Court without delay.

(b) The Court may proceed with its review and may issue a decision unless notified within 7 days that the Appellee intends to file a brief pursuant to the last sentence of Rule 18(d).

Rule 18.3. Grostefon Issues.

(a) Counsel shall notify the Court citing *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982) of any errors raised personally by the Appellant.

(b) *Grostefon* issues are not *pro se* pleadings, since the Appellant is represented by appellate defense counsel. All pleadings must be prepared and signed by the counsel representing the Appellant. Counsel are responsible for formulating issues raised personally by an Appellant into appropriate assignments of error and submitting the assignments of error to the Court in the proper format. Counsel shall note the evidence that supports the Appellant's *Grostefon* complaint and the applicable law.

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

Rule 18.4. Answer and Reply Briefs.

(a) *Answers*. Answer briefs will follow the same format as an Appellant's filing, responding separately to each assigned error. *See* Rule 18.1(b). Answers may adopt the Appellant's or Petitioner's summary of proceedings and statement of facts, and may state additional facts.

(b) *Reply*. The Appellant may file a reply brief within 10 days after the filing of an answer brief on behalf of the Government. The Appellant may, for good cause, move for up to 30 days' enlargement of time to file a reply. Notwithstanding Rule 23.2(c)(3), a motion for enlargement of time to file a reply may be timely filed *up until 1630 on the day before the reply is due*. A motion for enlargement of time filed thereafter will be denied absent extraordinary circumstance. A motion for an enlargement to file a reply must state good cause with particularity, justifying each additional day requested.

Rule 18.5. Appeals by Accused—Article 66(b)(1), UCMJ (2019).

(a) *Timeliness*. In accordance with Article 66(c)(1)(B), an appeal by the accused under Article 66(b)(1)(A) or 66(b)(1)(B) is timely filed if a notice of appeal is filed with the Court within 90 days of the date that the Office of the Judge Advocate General places in the mail, addressed to the accused's last known address, the Article 65(c) notice to the accused of the right to file an appeal. The appeal shall be docketed upon receipt by the Court of the notice of appeal.

(b) *Brief and Assignments of Error*. The Appellant's Brief and Assignments of Error shall comply with Rule 18.1 and shall be filed within 60 days after the notice of appeal is received by the Court.

Rule 19. EXTRAORDINARY RELIEF.

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

(b) *Petition for Extraordinary Relief*.

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

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

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

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

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

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

(E) The specific relief sought;

(F) In the case of a petition filed in the course of an ongoing proceeding, a statement of whether a stay of proceedings is requested. A proceeding is considered ongoing until it is docketed for appellate review pursuant to Article 66, UCMJ;

(G) Reasons for granting the relief requested;

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

(I) If necessary and authorized under Article 70, UCMJ, a request for appointment of appellate counsel.

(3) The petition for extraordinary relief shall be captioned "In Re [Name of Petitioner]."

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

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

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

(f) *Answer.*

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

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

(3) The Court may invite or order any military judge whose decision, judgment, or order is the subject of the petition to respond or may invite any amicus

curiae to do so. A military judge may request permission to respond but may not respond unless invited or ordered to do so by the Court.

(g) *Oral Argument and Final Action.* The Court may set the matter for oral argument. However, on the basis of the pleadings alone, the Court may grant or deny the relief sought or make such other order in the case as the circumstances require.

Rule 19.1. 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 13.2(b). 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) *Caption.* Petitions not filed on behalf of the United States shall be captioned "In Re [Name of Petitioner]." The United States shall be named as a respondent below the caption. If the United States is the Petitioner, the petition shall be captioned "United States v. [Accused]." If a victim or other third party is the Petitioner, the accused shall be named as a real party in interest. For an example of a petition for extraordinary relief filed pursuant to Article 6b, UCMJ, *see* Appendix J.

(c) *Format and Content.* Petitions and accompanying briefs must conform with Rule 13.2 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.

(d) *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 6b, 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.

(e) *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.

Rule 20. APPEALS BY THE UNITED STATES.

(a) ***Restricted Filing.***

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

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

(b) ***Form of Appeal.***

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

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

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

(1) ***Appeal Under Article 62, UCMJ.***

(A) The trial counsel shall have 20 days from the date of the notice of appeal to forward the appeal, including the record, to the representative of the United States designated by the Judge Advocate General. The person designated by the Judge Advocate General shall, within 5 days of receipt, file the original record with the Court with a copy to opposing counsel. Appellate government counsel shall have 20 days from the date the appeal is filed with the Court to file a supporting brief. Should the United States decide to withdraw the appeal after it is received by the Court, appellate government counsel shall notify the Court in writing.

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

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

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

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

Rule 20.1. Government Appeals.

(a) *Processing.* Upon filing the Article 62, UCMJ, appeal, the representative designated by the Judge Advocate General shall promptly cause the digital copy of the record to be uploaded to the NAMARA Code 40 SharePoint site and deliver the original record to the Clerk of Court, who will docket the case. One copy of the appeal shall be forwarded by the Government to the Appellate Defense Division. Except upon motion granted for good cause, the appellate government counsel shall have 20 days from the date the original record is deposited with the Court to file an appeal with supporting brief. 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) *Matters to be Included in the Appeal.*

(1) The appeal shall be accompanied by a Brief on Behalf of the United States, which shall include:

(A) A statement of the issues appealed;

(B) A statement of the case setting forth a concise chronology, a statement of facts of the case material to the ruling appealed from, and any other pertinent information regarding the proceedings;

(C) A direct and concise argument showing why relief should be granted and including each issue and point of law presented, citing and quoting such authorities as are deemed pertinent;

(D) A statement showing good cause why the appeal was not filed within the time prescribed by Rule 20, if applicable;

(E) Proof of service on the Director, Appellate Defense Division, and civilian appellate counsel, if any;

(F) An appendix containing a record of proceedings prepared in accordance with R.C.M. 908(b)(5), or, if the record has not been completed when the appeal is filed, a summary of the evidence (R.C.M. 908(b)(6)); and

(G) An appendix including a certificate of notice of appeal showing the date and time of the military judge's ruling and the date and time of service on the military judge.

(2) If the appeal and brief are filed without a verbatim record of proceedings, the Appellant will file the original and a digital copy of the record as soon thereafter as possible.

(c) *Answer.* Appellate defense counsel shall prepare an answer in the manner prescribed by Rules 17 and 18 and shall file such answer within 20 days after the

Government's appeal and brief are filed with the Court. A signed original of the Answer must be filed. Enlargements of time are not favored.

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

(e) *Action Following Decision.* After the Court has issued a decision, that decision along with the original record and any accompanying documents will be released to NAMARA (Code 40).

(f) *Withdrawal of Appeal.* If the Government elects to withdraw an appeal before the Court has issued a decision, appellate government counsel shall file a motion to withdraw the appeal. If the motion is granted, the original record shall be released to NAMARA (Code 40) for proper disposition.

Rule 21. PETITIONS FOR NEW TRIAL.

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

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

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

Rule 21.1. Petitions for New Trial.

(a) *New Trial Petition for Case Before the Court.* If a Petition for New Trial pursuant to Article 73, UCMJ, is received from the Judge Advocate General and the case is pending before the Court, the Clerk of Court will forward the petition to the panel to which the case is assigned. The Clerk of Court will ensure that appellate counsel are notified of such receipt.

(b) *New Trial Petition for Case NOT Before the Court.* If a Petition for New Trial is received on a case not pending before the Court of Criminal Appeals, the petition will be referred directly to the Judge Advocate General (Code 20).

Rule 22. AMICUS CURIAE BRIEFS.

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

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

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

Rule 22.1. Amicus Curiae Briefs.

(a) A brief of an amicus curiae may be filed only by leave of the Court granted on motion. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of amicus curiae is desirable. A motion of amicus curiae to participate in oral argument will be granted only pursuant to Rule 22.1(d)(1) or for extraordinary reasons. Briefs of amicus curiae must be filed in accordance with Court rules and in the format discussed above. Such briefs must indicate service on both the Appellant and the Government.

(b) All motions and briefs filed under Rule 22 must contain a statement of the movant's interest and why the matters asserted are relevant to the disposition of the case. Amicus curiae briefs filed pursuant to Rule 22 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.

(c) *Time for Filing.* 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. If neither party is supported, the brief of an amicus curiae shall be filed no later than 10 days after the filing of the Government's Answer (Article 66, UCMJ, reviews), the Accused's Brief (Article 62, UCMJ, appeals), or the Respondent's Response to Court Order to Show Cause (Extraordinary Writs). In addition, an amicus brief submitted under this Rule must be filed no later than 14 days before the scheduled date of oral argument. Both

the Appellant and the Appellee may file a reply to such brief within 7 days of the filing thereof.

(d) *Student Appearances on behalf of Amici Curiae.*

(1) A member of the Bar of the Court 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 subsection (d)(2) of this rule. The supervising attorney must substantially comply with subsection (d)(3) of this rule. Argument by a law student granted permission to appear on behalf of an amicus curiae may be requested by motion.

(2) *Eligibility of Student.* To be eligible to appear and participate as an amicus curiae in any case, a law student must:

(A) 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;

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

(C) Have completed and received a passing grade in courses in criminal procedure and criminal law;

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

(E) Be familiar with the UCMJ and the Rules of this Court.

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

(A) Be an attorney of record in the case;

(B) Be a member in good standing of the Bar of this Court;

(C) Have been admitted to practice for a minimum of 2 years and;

(i) Have appeared and argued in at least 1 case before an appellate military court;

(ii) Appeared and argued in at least 3 cases before state or federal appellate courts; or,

(iii) Performed duties as a military judge, military appellate judge, or judge on the Court of Appeals for the Armed Forces.

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

(E) Appear with the student in any oral presentations before this Court;

(F) Read, approve, and sign all documents filed with this Court;

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

(H) Be responsible to supplement the oral or written work of the student as necessary to ensure proper representation;

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

(J) Neither ask for nor receive any compensation or remuneration of any kind.

(4) *Authorization and Certification.*

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

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

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

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

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

(B) Participate in oral argument, but only in the presence of the supervising attorney; and

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

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

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

(B) May be withdrawn by the Court at any time; and

(C) May be withdrawn by the dean at any time.

Rule 23. MOTIONS.

(a) *Content.* All motions, unless made during the course of a hearing, shall state with particularity the relief sought and the *grounds* therefor.

(b) *Motions to Attach Documents.* If a party desires to attach a statement of a person to the record for consideration by the Court on any matter, such statement shall be made either as an affidavit or as an unsworn declaration under penalty of perjury pursuant to 28 U.S.C. § 1746. All documents containing language other than English shall have attached a certified English translation.

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

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

Rule 23.1. Motions Generally.

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

(b) *Response to Motions.* Opposition to Motions for Enlargement of Time must be filed within 5 days after receipt by the opposing party. Opposition to all other motions must be filed within 10 days after receipt by the opposing party. The responding party may, for good cause, move for up to 30 days' enlargement of time to file a response. Notwithstanding Rule 23.2(c)(3), a motion for enlargement of time to file a response may be timely filed up until 1630 the day before the response is due. A motion for an enlargement to file a response must state good cause with particularity, justifying each additional day requested.

(c) *Expedited Rulings on Motions.* The Court may, in its discretion, rule on motions before the opposing filing is received. Any party adversely affected by the Court's action may move for reconsideration, vacation, or modification of such action.

Rule 23.2. Motions for Enlargement of Time.

(a) *General.* Counsel must move for enlargement of time to file if they desire to request time beyond the initial filing requirements for briefs, answers, and replies. *Cf.* Rule 18.1. The time prescribed is not tolled simply by the filing of a motion for enlargement or for any other relief; the time for filing continues to run until the motion is granted. The Court may, upon motion and for good cause shown, enlarge the time prescribed by Rules 18(d), 19(b), 20(b), 21(c), and 31(b). All motions for enlargement of time will specify in the caption whether the enlargement sought is the first, second, third, etc., enlargement and

where appropriate, the word "Consent"; and will specify in the first paragraph of text the current due date; the number of days requested; and the requested due date.

(b) *Chambers Conference.* Motions for a third enlargement of time for records of trial less than 1,000 transcribed pages and less than 2,500 total pages usually will be addressed in a chambers conference unless excepted by the senior judge. All motions for a fourth or subsequent enlargement of time will be addressed in a chambers conference unless excepted by the senior judge.

(c) *Form and Content.*

(1) Consent motions for first enlargement that do not exceed 10 days do not require a showing of good cause and may be filed up to the due date of the pleading.

(2) Consent motions for a first enlargement of up to 30 days involving records of trial in excess of 500 pages of transcription do not require a showing of good cause and may be filed up to the due date of the pleading or answer.

(3) All other motions for enlargement of time will be granted only when good cause therefore is shown with particularity, and may be granted only for periods not to exceed 30 days. The motion for enlargement must articulate specific reasons why the enlargement of time should be granted by the Court. *See* Appendix C. Except for enlargements of time to file a reply brief or a response to a motion, all such motions must be filed at least 5 days before the filing is due to permit the opposing party to register opposition and the Court to give timely consideration. If this 5-day period would commence on a day other than a day when the Court's offices are open for business (e.g., Saturday, Sunday, or holiday), the period will commence on the preceding day when the Court was open for business. The following information is required in every motion for enlargement where a showing of good cause is required:

(A) When the record of trial was docketed;

(B) The Moreno III date (18 months since docketing);

(C) Whether the Appellant is confined and, if so, the Appellant's normal release date;

(D) The number of pages in the record of trial;

(E) The status of review of the record of trial;

(F) A statement as to the good cause for granted the enlargement, including a discussion of complexity of the case.

(4) Any motion for enlargement of time to file an Appellant's pleading that requests a filing date more than ninety days from the date of docketing with the Court, in addition to a showing of good cause, will require an affirmation that the Appellant has been consulted and concurs with the enlargement request. Where the Appellant opposes such enlargement request or cannot be contacted for consultation, the requested enlargement for a filing date beyond 90 days from docketing will only be

granted upon a showing of extraordinary circumstances. Additionally, in any motion for enlargement requesting a filing date beyond 90 days from docketing, if counsel cites caseload as a reason for the delay, a detailed explanation of the number and complexity of counsel's pending cases, weekly working hours, and the number and prioritization of other duties, specifically time spent assisting other counsel with their cases, preparing for oral argument, and executing collateral duties is required.

Rule 23.3. Motion for Oral Argument.

(a) *General*. Oral arguments may be heard in the discretion of the Court upon motion by either party. Counsel for either party may move for oral argument no later than 7 days after the filing of an answer to the Appellant's or Petitioner's brief. Such motion shall propose a date and time for the oral argument and identify the issue(s) upon which counsel seek argument. The other party to the action may file a response stating whether it opposes or supports the motion and whether it has any conflict with the proposed date and time. A majority of a panel, or of the Court sitting en banc, may grant a motion for oral argument.

(b) *See* Rule 13.4(b)(2) regarding referencing classified information or sealed materials during oral argument.

Rule 23.4. Motion to Attach Documents.

(a) A motion to attach documents to the record of trial shall include a summary of the proposed items to be attached, a statement as to the relevance to the case, and an explanation as to how the motion is consistent with *United States v. Jessie*, ___ M.J. ___, No. 19-0192, 2020 CAAF LEXIS 188 (C.A.A.F. Apr. 6, 2020). Each document shall be attached as a separate lettered appendix to the motion.

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

(c) Motions to attach may be filed contemporaneous with other motions and pleadings. Motions and pleadings may thereupon and thereafter refer to such documents by reference to the motion to attach, its filing date, and appendix letter.

(d) *See* Rule 6.1(b) regarding referencing consideration of matters outside the record of trial.

Rule 23.5. Motion for Relief from Post-Trial Processing Error.

Any party may move for relief from a post-trial processing error by apprising the Court of an obvious error in the post-trial processing phase and requesting immediate remand to correct it.

Rule 23.6. Motion to Abate Proceedings.

In the event of the death of an Appellant, whose case is pending review before the Court, detailed appellate defense counsel shall continue to represent the best interests of Appellant before the Court. It is the sole responsibility of such counsel to obtain an original death certificate and submit it along with a motion to attach the document to the record of trial and a motion to abate proceedings. The Court will review the document and motions and determine if it is appropriate to abate the proceedings.

Rule 23.7. Motion to Stay Proceedings.

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

Rule 23.8. Motion to Cite Supplemental Authorities.

In the event that relevant new law has been issued or discovered by counsel subsequent to the submission of their brief, answer, or reply, counsel shall supplement their filings by bringing the citation of a relevant authority to the attention of the Court in a motion to cite supplemental authorities. Such motions will briefly explain the relevance of each newly cited authority to the issues before the Court. Absent exceptional circumstances, the Court will not give favorable consideration to a motion to cite supplemental authorities during an oral argument that is filed less than 7 days prior to the scheduled date of the hearing. *See* Rule 25.3.

Rule 23.9. Motion to Compel.

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

Rule 23.10. Motion to Examine Sealed Materials.

See Rule 6.2(c). Motions to Examine Sealed Materials shall generally comply with the sample motion in Appendix F.

Rule 23.11. Motion for Leave to File.

Any filing not authorized or required by these rules or the CCA rules shall be accompanied by a motion for leave to file such filing, setting forth the basis upon which the filing should be permitted.

Rule 23.12. Motion for Reconsideration.

See Rule 31. Motions for Reconsideration and for En Banc Reconsideration shall generally comply with the sample motions in Appendix D. and Appendix E.

IV. PROCEEDINGS OF THE COURT.

Rule 24. EXTENSIONS OF TIME AND INTERLOCUTORY MATTERS.

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

Rule 25. ORAL ARGUMENTS.

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

Rule 25.1. Oral Argument.

(a) *How Ordered. Court Ordered Argument.* A majority of a panel, or of the Court when sitting en banc, may direct oral argument in any case pending before that panel or pending en banc, identifying the issue(s) upon which it wishes to hear argument.

(b) *Purpose.* Oral argument should emphasize and clarify the written arguments in the briefs, but should not merely restate the written submissions. Counsel should assume that all members of the Court have read the briefs before oral argument and counsel should be prepared to respond to questions. A party should not refer to or comment on matters outside the record.

(c) *Location of Oral Argument.* Oral arguments before a panel of the Court or en banc will ordinarily be held in the courtroom in Building 58 at the Washington Navy Yard, Washington, D.C. Project Outreach arguments may be heard elsewhere, including outside the Washington Metropolitan area, and when so scheduled, the Court will notify counsel of the time, date, uniform, and travel schedule.

Rule 25.2. Conduct of Oral Argument.

(a) *Argument Procedure.* The Chief Judge or a senior judge presides at all formal sessions of the Court. Motions for admission and outstanding motions regarding the case set for argument are the first order of business. Argument on the case to be heard for the day will follow. To assist counsel during argument, the Crier of the Court will signal to the counsel making argument when 5 minutes remain by illuminating a yellow signal light. When time has expired, the red light will be illuminated. The red light is the signal for counsel to immediately stop argument. Counsel who believe further argument is critical

to their presentation or to fully answer a question posed by one of the judges, may seek leave of the Court to continue.

(b) *Length and Order of Oral Argument.*

(1) Argument times are set at 30 minutes per party. Advanced leave of the Court for argument exceeding 30 minutes must be sought by written motion.

(2) The Appellant, Petitioner in the case of argument on extraordinary writs, or movant in the case of argument on motions, commences the argument.

(3) Counsel for the Appellant, Petitioner, or movant may request a portion of the allotted time for rebuttal.

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

(d) *Decorum*. Judge advocates appearing before the Court on behalf of litigants shall wear the Service Dress Blue (Navy) or Service "A" (Marine Corps) uniform, or the service equivalent. Civilian attorneys shall wear conservative professional attire.

(e) *Cases with Classified or Sealed Materials*. *See* Rule 13.4(b) regarding referencing classified information or sealed materials during oral argument.

Rule 25.3. Supplemental Citations of Authority.

(a) *Before Oral Argument.* No later than 7 days prior to oral argument, counsel may submit supplemental citations of authority. A supplemental citation of authority lists any legal authority not previously cited that counsel wishes to raise for the Court's consideration in oral argument. A supplemental citation of authority may contain a brief statement as to the relevance of the cited authorities; extensive argument is not appropriate in a supplemental citation of authority. Counsel may also submit a supplemental citation of authority within 7 days following oral argument to cite any legal authority presented in oral argument that was not previously cited. *See also* Rule 23.8.

(b) *Memorandum of Argument.* Within 7 days following oral argument, counsel may submit a motion for leave to file a memorandum of argument, addressing matters arising during the oral argument or correcting any representation by counsel made during oral argument. Any reply to a memorandum of argument will be submitted within 7 days following the submission of the memorandum of argument.

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

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

Rule 26.1. Photographing, Televising, Recording, or Broadcasting of Oral Argument.

(a) An audio recording of all oral arguments before the Court shall ordinarily be produced by Court staff or other personnel working on behalf of the Court. Recording of an oral argument in an individual case may be cancelled by order of the Court for good cause, including unavailability of equipment or personnel. This Rule is not intended to create any right to a recording by any party in a case pending review by this Court.

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

Rule 26.2. Dissemination of Recorded Hearings.

(a) As soon as practical, the recording of oral argument hearings will be made available to the public on the Court's web site.

(b) Prior to posting any recorded hearing, the Court's Chief Commissioner shall review the recording and redact any personally identifying information, including, but not limited to:

(1) Any part of a child victim's name;

(2) The full names of victims;

(3) Social security numbers;

(4) Financial account information;

(5) Addresses and telephone numbers; and

(6) Dates of birth.

(c) Audio recordings of oral arguments shall remain posted on the Court's website for three years from the date of posting.

Rule 27. EN BANC PROCEEDINGS.

(a) A majority of judges who are in regular active service, as defined in Rule 7 or Service Court rules, and not disqualified may, *sua sponte* or in response to a suggestion, order that an appeal or any other proceeding be considered or reconsidered by the Court en banc. En banc consideration or reconsideration is not favored and ordinarily will not be ordered unless: (1) necessary to secure or maintain

uniformity of the Court's decisions; (2) the opinion overrules a binding precedent of the Court; (3) the proceeding involves a question of exceptional importance; or (4) a sentence being reviewed pursuant to Article 66, UCMJ, extends to death.

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

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

(d) Although only the Court en banc may overrule a binding precedent, a party may argue, in its brief and oral argument, to overrule a binding precedent without petitioning for hearing en banc. The panel will decide *whether* to ask the remaining judges to consider hearing the case en banc.

Rule 27.1. Definitions.

Within the meaning of Rule 27(a), "uniformity of the Court's decisions" refers to panels of this Court and of the other service courts of criminal appeals. A "question of exceptional importance" includes a novel question of law not previously considered by a military appellate court, and argument that existing case law should be overruled or modified.

Rule 27.2. Suggestion for En Banc Consideration.

For Article 66, UCMJ, cases, a motion by a party suggesting en banc consideration must be filed within 7 days after the Government files its Answer or the Appellant files a Reply Brief. In all other cases, the motion must be filed within 7 days after the initial pleading and response thereto have been filed. A response to a motion suggesting en banc consideration may be filed. Note that this rule applies to a motion suggesting en banc consideration *before* the Court has issued a panel decision. For a motion for the en banc Court to reconsider a panel decision, *see* Rule 31.2.

Rule 28. CONTEMPT.

(a) *Contempt Proceedings.*

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

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

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

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

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

(b) *Appeals from Contempt Proceedings Below.*

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

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

(B) Specify the person taking the appeal;

(C) List the parties to the proceeding, the name of the judicial officer who made the contempt finding, any alleged victims as defined under Article 6b, UCMJ, and the punishment awarded;

(D) List the names and addresses of counsel for all parties to the proceeding and any alleged victims; and

(E) Indicate whether the contempt-Appellant requests a stay of unexecuted punishment.

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

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

(4) *Resolution of Appeal.*

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

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

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

Rule 29. ARTICLE 66(f) PROCEEDINGS.

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

(1) Inadequate on their face;

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

(3) Uncontested; or

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

(A) The statement is unsworn or not filed in compliance with rule 23(b); or

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

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

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

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

(c) *Remand Impracticable.* The general court-martial convening authority designated to provide support for the proceeding pursuant to R.C.M. 810(f)(1) may determine that the proceeding is impracticable. In such a case, an appellate attorney authorized to act on behalf of the United States shall forward this determination, accompanied by an explanation for the determination, to the Court. The Court may direct that the proceeding continue. If the Court does not direct that the proceeding continue, the Court may take any other action authorized by law that does not materially prejudice the substantial rights of the accused.

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

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

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

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

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

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

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

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

Rule 30. ORDERS AND DECISIONS OF THE COURT.

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

Rule 30.1. Orders of the Court.

An order of the Court is a command or directive issued by the Court and may be either interlocutory or final in nature. An order of the Court may be signed by an appellate judge or it may be authenticated by signature of the Clerk of Court or designee. When an order of the Court is authenticated, the official signature block of the signee will be included in the authentication and the Court seal shall be affixed to the document.

Rule 30.2. Non-Binding Decisions of the Court.

(a) Summary Disposition ("Straight Legal"). The Court issues summary disposition decisions when it affirms cases submitted by an Appellant on its merits, in which the Court has not otherwise specified any issues for briefing by the parties. Summary disposition decisions do not serve as precedent. Copies of all summary dispositions are available in the Opinion Archive of the Court's web site (*http://www.jag.navy.mil/nmcca .htm)*, but are not available in the LEXIS or WESTLAW databases.

(b) *Per Curiam*. The Court issues per curiam decisions to address assignments of error asserted by an Appellant that do not raise any significant issues. Per curiam decisions do not serve as binding precedent but the analysis therein may be cited as persuasive authority. Per curiam decisions are available in the Opinion Archive of the Court's web site (*http://www.jag.navy.mil/nmcca.htm)*, and are available for searching in the LEXIS and WESTLAW databases.

(c) *Unpublished Opinions ("Authored").* Unpublished opinions are full opinions with the author judge identified that address assignments of error asserted by an Appellant. Unpublished opinions are full opinions and typically have more extensive analysis of the issues than per curiam decisions. Unpublished decisions do not serve as binding precedent but the analysis therein may be cited as persuasive authority. Unpublished decisions are available in the Opinion Archive of the Court's web site (*http://www.jag.navy .mil/nmcca.htm)*, and are available for searching in the Lexis and WestLaw databases.

Rule 30.3. Publication of Binding Decisions of the Court.

(a) *Published Opinions of the Court ("Published Opinions").* The Court causes an opinion to be reported (published) in West's Military Justice Reporter at its discretion. Published Opinions of the Court are those that call attention to a rule of law or procedure that appears to be currently overlooked, misinterpreted, or which constitutes a significant contribution to military justice jurisprudence. Published Opinions of the Court serve as binding precedent providing the rationale of the Court's decision to the public, the parties, military practitioners, and judicial authorities. In addition to the official reporter, Published Opinions of the Court are also available in the Opinion Archive of the Court's web site (*http://www.jag.navy .mil/nmcca.htm)* and in the LEXIS and WESTLAW databases.

(b) The Chief Judge, subject to objection by a majority of the judges in regular active service with the Court, as defined in Rule 7(c), who are not recused or otherwise disqualified from the matter, shall decide which opinions of the Court are published.

(c) Any panel of the Court may propose to the Chief Judge that an opinion be published as an Opinion of the Court. The opinion shall be circulated among the judges in regular active service with the Court who are not recused or otherwise disqualified from the matter.

(d) *Requests for Publication.* Upon the written request of the Director, Appellate Defense or Government Division, another Court of Criminal Appeals, or any other source to the Clerk of Court for publication, the Court may authorize publication of a previously unpublished opinion. The Court may also sua sponte authorize the publication of a previously unpublished opinion.

Rule 30.4. Administrative Corrections.

Orders and decisions of the Court are subject to correction to address spelling, grammar, and other non-substantive administrative matters that become apparent after an order or decision is released. Counsel and other interested parties are encouraged to notify the Clerk of Court if they note a matter that may be subject to administrative correction. Suggestions for administrative corrections are not requests for reconsideration and administrative corrections made are not reconsideration by the Court within the meaning of Rule 31.

Rule 31. RECONSIDERATION.

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

(b) Provided a petition for grant of review or certificate for review has not been filed with the United States Court of Appeals for the Armed Forces, and a record of trial for review under Article 67(b) or writ appeal has not been received by the United States Court of Appeals for the Armed Forces, the Court may, in its discretion, reconsider its decision or order in any case upon motion filed either by appellate counsel within 30 days after receipt by counsel, or by the Appellant if the Appellant is not represented by counsel, of a decision or order.

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

(d) The time limitations prescribed by this Rule shall not be extended under the authority of Rule 24 or Rule 32 beyond the *expiration* of the time for filing a petition for review or writ appeal with the United States Court of Appeals for the Armed Forces, except that the time for filing briefs by either party may be extended for good cause.

Rule 31.1. Motion to Reconsider Interlocutory Orders.

Upon motion by a party or on its own motion, the Court may reconsider an interlocutory order previously rendered by it, provided that jurisdiction of the case has not been obtained by CAAF. Jurisdiction vests with CAAF when a petition or certificate has been filed with that Court. A motion for reconsideration must state with particularity the interlocutory order the moving party seeks to have reconsidered and whether any other court has acquired jurisdiction over the case. For example, a party may move to reconsider an order to conduct oral argument, an order to compel production of documents, or an order to conduct an Article 66(f)(3) proceeding. Such a motion must provide a compelling showing of good cause before the Court will reconsider a Court order.

Rule 31.2. Motion to Reconsider Decisions or Orders Terminating Cases.

(a) *General*. Upon its own motion and within 30 days of its decision or order, or upon motion by the Government or the Appellant within 30 days after delivery of the decision to the respective Appellate Divisions or to the place of business of civilian appellate defense counsel, the Court may reconsider a decision or order terminating the case, provided that jurisdiction of the case has not been obtained by CAAF. Jurisdiction vests with CAAF when a petition or certificate has been filed with that Court. A motion for reconsideration must state with particularity the points of law or fact which the moving party believes the Court has overlooked or misapprehended. A motion for reconsideration must contain substantially more than a restatement of arguments previously presented. A motion for reconsideration must state the date on which the Appellate Division or civilian counsel place of business received a copy of the Court's prior decision, which portions of the decision the moving party seeks to have reconsidered, the basis for reconsideration, and whether any other court has acquired jurisdiction over the case. In addition to serving the opposing party, the moving party must also serve a copy of the motion on the Deputy Assistant Judge Advocate General (Military Justice) (Code 02). *See Appendix D.*

(b) *Motion for En Banc Reconsideration of a Panel Decision*. En banc reconsideration of a panel decision or order terminating a case may be granted following a motion by a party or at the request of a judge on the Court. *See Appendix E.* The Clerk of Court will notify appellate counsel concerning briefs or oral argument.

Rule 32. SUSPENSION OF RULES.

For good cause shown, the Court acting en banc or in panel may suspend the requirements or provisions of any of these rules in a particular case on a motion of any party or *sua sponte* and may order proceedings in accordance with its direction.

Rule 32.1. Application and Scope.

In the Chief Judge's discretion, the application of the JRAP or NMRAP may be waived. During the review of a specific case pursuant to the Court's statutory responsibilities, a panel may, in its discretion, waive the application of a particular rule. The Court will notify the parties in the event of a waiver.

Appendix A. Appellate Record of Trial

A complete record of trial ready for docketing with the Navy-Marine Corps Court of Criminal Appeals for review pursuant to Article 66, UCMJ, requires:

- Three sets of the complete audio recording of all trial proceedings (one each for the Court, Appellate Government, and Appellate Defense)
- A certified verbatim transcript of all sessions except sessions closed for deliberations and voting;
- The original charge sheet (front and back) or a duplicate;
- A copy of the convening order and any amending orders;
- Any written request for trial or sentencing by judge alone;
- Any written request for trial by a court that includes enlisted members;
- When applicable, any statement by the convening authority that eligible members could not be obtained because of physical conditions or military exigencies;
- The election, if any, for sentencing by members in lieu of sentencing by military judge;
- Exhibits, or with the permission of the military judge, copies, photographs, or descriptions of any exhibits received in evidence and any appellate exhibits;
- The Statement of Trial Results;
- The original dated, signed action by the convening authority; and
- The judgment entered into the record by the military judge.

See Rules for Courts-Martial 503(a)(2), 903, 1002(b), 1109, 1110, 1112(b), 1114, Manual for Courts-Martial, United States (2019 ed.).

Additionally, the following shall be attached to the record:

- Article 32, UCMJ, Investigation;
- Article 34, UCMJ, Advice;
- The record of any former hearings;
- Any written special findings by the military judge;
- Exhibits, or with the permission of the military judge, copies, photographs, or descriptions of any exhibits which were marked for and referred to on the record but not received in evidence;
- Any R.C.M. 1106 matters or waiver submitted by the accused;
- Any R.C.M. 1106A matters or waiver submitted by a crime victim;
- Any deferment request and action on it;
- Explanation for any substitute certification;
- Explanation for any failure to serve the record on the accused or specified victim under R.C.M. 1112(e)(1);
- Any statement as to why it is impracticable for the convening authority to act;
- Any conditions of suspension, if any, and proof of service on probationer;
- Any waiver or withdrawal from appellate review;

- Record of any vacation proceeding;
- A certified substantially verbatim audio recording of all sessions except sessions closed for deliberations and voting; and
- Any redacted materials.

See R.C.M. 1112(f).

If any exhibits on physical media, such as CDs, DVDs, or other digital disks, contained encrypted files, the office transmitting the record of trial must send an encrypted email to the Clerk of Court's official email address with the passwords to all such files. The Clerk of Court's email address is listed on the Court's web site:

http://www.jag.navy.mil/nmcca.htm

Appendix B. Application for Admission to Practice

Please type or print the following:

1. *Full name* (if you are now or have been known by another name, please attach an explanation):

2. *Name as you wish it to appear on your Bar certificate* (including military rank, if desired, understanding that a new certificate will *not* be issued based solely upon future promotions in rank):

3. *Residential address:*

4. *Office address:*

5. *Office telephone:*

6. *Office e-mail address:*

7. *Law school attended and year degree was awarded:*

8. Listing of all federal courts and highest state court to which you have been admitted to *practice law* (attach separate sheet if necessary):

9. *Are you presently under investigation or have you been disciplined for a violation of any licensing authority's disciplinary/ethical rules?* (If so, attach details):

10. Attach a legible copy of a letter of good standing from any bar in which you are currently licensed to practice law.

Oath of Admission

I _____, do solemnly (swear) (affirm) that I will support and defend the Constitution of the United States and that I will conduct myself as an attorney and counselor of the United States Navy-Marine Corps Court of Criminal Appeals uprightly and according to law.

_____

Signature of Applicant

Appendix C. Sample Motion for Enlargement of Time

IN UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS

Before [{Special} Panel No. {#}] [the Court En Banc]

UNITED STATES *Appellee* v. **App L. LANT** Lance Corporal (E-3) U.S. Marine Corps *Appellant*	NMCCA No. 202100118 **[APPELLANT'S] [APPELLEE'S] [CONSENT] MOTION FOR [SECOND] ENLARGEMENT** Tried at [Marine Corps Base Camp Swampy, North Carolina], on [date(s)], before a [General / Special] Court-Martial convened by [position of convening authority], [military judge(s)], Military Judge, presiding

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

COMES NOW the undersigned and respectfully moves for a [second] enlargement of time to file [a brief and assignments of error] [answer] [reply brief]. [Appellee/Appellant consents to Appellant's/Appellee's motion.] The current due date is _____. The number of days requested is _____. The requested due date is _____.

The current status of the case:

1. The Record was docketed on [date].

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2. The Moreno III date* is [date].

3. [A statement as to whether the Appellant is confined and, if so, the Appellant's normal release date.]

4. The Record consists of [number] pages.

5. [The status of counsel's review of the record of trial.]

Good cause exists for granting the requested enlargement because [good cause including a discussion of the complexity of the case].

[Additionally, *any motion for enlargement of time to file an Appellant's pleading that requests a filing date more than ninety days from the date of docketing with the Court*, in addition to a showing of good cause, will require an affirmation that the Appellant has been consulted and concurs with the enlargement request. *Where the Appellant opposes such enlargement request or cannot be contacted for consultation, the requested enlargement for a filing date beyond ninety days from docketing will only be granted upon a showing of extraordinary circumstances.* If counsel cites caseload as a reason for the delay, a detailed explanation of the number and complexity of counsel's pending cases, weekly working hours, and the number and prioritization of other duties, specifically time spent assisting other counsel with their cases, preparing for oral argument, and executing collateral duties is required.]

---

* 18 months from docket date.

Respectfully submitted.

_____
Counsel's Name
Grade (if military)
Capacity
Address
Telephone number
Email address

CERTIFICATE OF FILING AND SERVICE

I certify that the original and three 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), that a copy was uploaded into the Court's case management system on _____ (date), *and* that a copy of the foregoing was (date) [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).

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

_____
Counsel's Name
Grade (if military)
Capacity

Appendix D. Sample Motion for Reconsideration

IN UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

Before [{Special} Panel No. {#}] [the Court En Banc]

UNITED STATES *Appellee* v. **App L. LANT** Lance Corporal (E-3) U.S. Marine Corps *Appellant*	NMCCA No. 202100118 **[APPELLANT'S] [APPELLEE'S] [CONSENT] MOTION FOR RECONSIDERATION** Tried at [Marine Corps Base Camp Swampy, North Carolina], on [date(s)], before a [General / Special] Court-Martial convened by [position of convening authority], [military judge(s)], Military Judge, presiding

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

COMES NOW the undersigned and respectfully moves for reconsideration of [{Special} Panel No. {#}'s] [the En Banc Court's] decision of [date of decision]. The opinion was delivered to the Movant on [the same date] [other date]. Neither the United States Court of Appeals for the Armed Forces nor any other court has acquired jurisdiction over this case.

The bases for reconsideration are as follows: [A motion for reconsideration must state with particularity the points of law or fact which the moving party believes the

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Court has overlooked or misapprehended. A motion for reconsideration must not contain merely a restatement of arguments previously presented.]

Respectfully submitted.

_____
Counsel's Name
Grade (if military)
Capacity
Address
Telephone number
Email address

CERTIFICATE OF FILING AND SERVICE

I certify that the original and three 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), that a copy was uploaded into the Court's case management system on _____ (date), *and* that a copy of the foregoing was (date) [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).

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

_____
Counsel's Name
Grade (if military)
Capacity

Appendix E. Sample Motion for En Banc Reconsideration

IN UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS

Before [Special] Panel No. [#]

UNITED STATES *Appellee* v. **App L. LANT** Lance Corporal (E-3) U.S. Marine Corps *Appellant*	NMCCA No. 202100118 **[APPELLANT'S] [APPELLEE'S] [CONSENT] MOTION FOR EN BANC RECONSIDERATION** Tried at [Marine Corps Base Camp Swampy, North Carolina], on [date(s)], before a [General / Special] Court-Martial convened by [position of convening authority], [military judge(s)], Military Judge, presiding

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

COMES NOW the undersigned and respectfully moves for reconsideration of [Special] Panel No. [#]'s decision of [date of decision] by the En Banc Court.

The opinion was delivered to the Movant on [the same date] [other date]. Neither the United States Court of Appeals for the Armed Forces nor any other court has acquired jurisdiction over this case.

The bases for reconsideration are as follows: [A motion for reconsideration must state with particularity the points of law or fact which the moving party believes the

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Court of Criminal Appeals

Court has overlooked or misapprehended. A motion for reconsideration must not contain merely a restatement of arguments previously presented.]

Respectfully submitted.

_____
Counsel's Name
Grade (if military)
Capacity
Address
Telephone number
Email address

CERTIFICATE OF FILING AND SERVICE

I certify that the original and three 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), that a copy was uploaded into the Court's case management system on _____ (date), *and* that a copy of the foregoing was (date) [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).

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

_____
Counsel's Name
Grade (if military)
Capacity

Appendix F. Sample Motion to Examine Sealed Materials

IN UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

Before [{Special} Panel No. {#}] [the Court En Banc]

UNITED STATES *Appellee* v. **App L. LANT** Lance Corporal (E-3) U.S. Marine Corps *Appellant*	NMCCA No. 201900118 **[APPELLANT'S] [APPELLEE'S] [CONSENT] MOTION TO EXAMINE SEALED MATERIALS IN THE RECORD OF TRIAL** Tried at [Marine Corps Base Camp Swampy, North Carolina], on [date(s)], before a [General / Special] Court-Martial convened by [position of convening authority], [military judge(s)], Military Judge, presiding

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

COMES NOW the undersigned and respectfully moves, pursuant to Rule 6.2(c) of the Navy-Marine Corps Court of Criminal Appeals Rules of Appellate Procedure to examine [and make copies of {and disclose to (…) }] sealed [portions of the transcript] [and] [exhibits] in the record of trial.

1. Specifically, counsel requests to examine the following:

a. [Transcript pages XXX–XXX, closed Mil. R. Evid. 412 hearing.]

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b. [Transcript pages XXX–XXX, closed Mil. R. Evid. 513 hearing.]

c. [Prosecution Exhibit XX, Appellant's medical records.]

d. [Appellate Exhibit XX, VT's mental health records.]

e. […]

2. With regard to sealed portions of the transcript: [N/A.]

[a. Trial and trial defense counsel {were} {were not} present during the closed sessions transcribed on pages XXX-XXX and XXX-XXX in the record of trial.

b. The contents of the sealed portions of the transcript are subject to the following colorable claim of privilege: {None} {M.R.E. 302, mental examination of the Accused} {M.R.E. 502, lawyer-client privilege} {M.R.E. 503, communications to clergy} {M.R.E. 513, psychotherapist-patient privilege} {M.R.E. 514, victim advocate-victim privilege} { … }.

c. Access to the sealed portions of the transcript by appellate {defense} {government} counsel is necessary for the following reason(s): { … }.

d. Undersigned counsel {seeks to copy (and disclose to …) the sealed portions of the transcript for the following reason(s) (…)} {does not seek to copy the sealed portions of the transcript}.]

3. With regard to sealed exhibits: [N/A.]

[a. Prosecution Exhibit(s) XX, XX, XX—

(1) {was/were} {was/were not} released to trial and trial defense counsel.

(2) {was/were} {was/were not} reviewed by the military judge in camera.

(3) is/are subject to the following colorable claim of privilege: {None} {M.R.E. 302, mental examination of the Accused} {M.R.E. 502, lawyer-client privilege} {M.R.E. 503, communications to clergy} {M.R.E. 513, psychotherapist-patient privilege} {M.R.E. 514, victim advocate-victim privilege} { … }.

(4). Access to the sealed exhibit(s) by appellate {defense} {government} counsel is necessary for the following reason(s): { … }.

(5) [Undersigned counsel {seeks to copy (and disclose to …) the sealed exhibit(s) for the following reason(s) (…)} {does not seek to copy the sealed exhibit(s)}.

b. [Prosecution Exhibit(s) ZZ, ZZ, ZZ—

(1) …]

[4. In accordance with Rule 6.2(c)(4)(B), undersigned counsel seeks access to { … } ex parte because {such materials are privileged under M.R.E. […]} {[…]}.]

[4.] [5.] With regard to sealed materials that undersigned counsel seeks to copy [and disclose to { … }]: [N/A.] [The granting of this motion shall constitute an Order of the Court binding upon Appellant and Appellee, as follows—

a. Counsel shall not make any additional copies of the materials beyond that requested and approved by the Court or divulge any of the sealed materials except as is necessary to prepare and present this appeal.

b. If the Court authorizes undersigned counsel to disclose the materials to a third person, {N/A} {counsel shall do so either directly or, if mailed, delivered in a double envelope or other container appropriate for sensitive materials via overnight carrier or other appropriate mail carrier with delivery tracking}.

c. Within 14 days of this Court completing its Article 66, UCMJ, review, appellate defense counsel will provide appellate government counsel with notice as to whether Appellant intends to file a petition for review with the Court of Appeals for the Armed Forces for review under Article 67, UCMJ.

d. Absent further Order from this Court, within 14 days of the earliest of:

(1). Appellate government counsel receiving notice that Appellant has decided not to file a petition for review with the Court of Appeals for the Armed Forces under Article 67, UCMJ;

(2). The expiring of the time within which to file a petition for review with the Court of Appeals for the Armed Forces under Article 67, UCMJ, without the filing of such a petition;

(3). The Court of Appeals for the Armed Forces declining review under Article 67, UCMJ;

(4). The Court of Appeals for the Armed Forces completing review under Article 67, UCMJ;

(5). Appellate government counsel receiving notice that the Appellant has decided not to file a petition for a writ of certiorari with the Supreme Court;

(6). The expiring of the time within which to file a petition with the Supreme Court;

(7). The Supreme Court denying certiorari; or

(8). The Supreme Court finally deciding the Appellant's appeal,

all appellate counsel will destroy by shredding or other secure means all copies of the sealed materials made pursuant to this motion and will each sign and deliver to the Court a declaration certifying both that no other copies of the sealed materials were made except as authorized by the Court, and that all copies of the sealed materials were destroyed.

[5.] [6.] Absent further order of the Court, undersigned counsel will otherwise ensure continued compliance with any protective orders issued by the military judge in this case.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and three 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), that a copy was uploaded into the Court's case management system on _____ (date), *and* that a copy of the foregoing was (date) [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).

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

_____
Counsel's Name
Grade (if military)
Capacity
Address
Telephone number
Email address

Appendix G. Sample Motion to Withdraw Case from Appellate Review

IN UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

Before [{Special} Panel No. {#}] [the Court En Banc]

UNITED STATES *Appellee* v. **App L. LANT** Lance Corporal (E-3) U.S. Marine Corps *Appellant*	NMCCA No. 202100118 **APPELLANT'S MOTION TO WITHDRAW CASE FROM APPELLATE REVIEW AND MOTION TO ATTACH APPELLANT'S DECLARATION** Tried at [Marine Corps Base Camp Swampy, North Carolina], on [date(s)], before a [General / Special] Court-Martial convened by [position of convening authority], [military judge(s)], Military Judge, presiding

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

COMES NOW Appellant, pursuant to Rule 16 of the Navy-Marine Corps Court of Criminal Appeals Rules of Appellate Procedure, and respectfully moves to withdraw this case from appellate review. Appellant's declaration requesting withdrawal and acknowledging the consequences thereof is attached as Appendix A.

MOTION GRANTED
JUL 16 2021
United States Navy-Marine Corps
Court of Criminal Appeals

ORIGINAL

RECEIVED
JUL 15 2021
United States Navy-Marine Corps
Court of Criminal Appeals

Respectfully submitted.

_____
Counsel's Name
Grade (if military)
Capacity
Address
Telephone number
Email address

CERTIFICATE OF FILING AND SERVICE

I certify that the original and three 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), that a copy was uploaded into the Court's case management system on _____ (date), *and* that a copy of the foregoing was (date) [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).

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

_____
Counsel's Name
Grade (if military)
Capacity

DECLARATION OF LCPL APP L. LANT, USMC

I, App L. Lant, declare that:

1. Colonel Ches T. Puller, USMC, is my detailed military appellate defense counsel. [Mr. Civ L. Ian is my civilian appellate defense counsel]. [Colonel Puller is an] [Both are] attorney[s], qualified and certified by the Judge Advocate General of the Navy to practice before military courts and admitted to the Bar of the Navy-Marine Corps Court of Criminal Appeals.

2. [Colonel Puller has] [Both have] advised me of my right to appellate review and the effect of withdrawal of appellate review at this time. I understand that:

a. If I *do not* withdraw my case from appellate review:

(1) My court-martial will be reviewed by the Navy-Marine Corps Court of Criminal Appeals.

(2) The Navy-Marine Corps Court of Criminal Appeals will review my case to determine whether the findings and sentence are correct in law and fact and whether the sentence is appropriate.

(3) After review by the Navy-Marine Corps Court of Criminal Appeals, my case could be further reviewed for legal error by the United States Court of Appeals

for the Armed Forces, on petition by me or on request of the Judge Advocate General.

(4) If the United States Court of Appeals for the Armed Forces reviews my case, my case could be further reviewed for legal error by the United States Supreme Court on petition by me or the Government.

(5) I have the right to be represented by military counsel—at no cost to me, or by civilian counsel—at no expense to the Government, or both, before the Navy-Marine Corps Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the United States Supreme Court.

b. If I *do* withdraw my case from appellate review:

(1) My court-martial will not be reviewed by the Navy-Marine Corps Court of Criminal Appeals, or be subject to further review by the Court of Appeals for the Armed Forces, or the United States Supreme Court.

(2) My withdrawal will prevent the Navy-Marine Corps Court of Criminal Appeals and any other appellate court from reviewing my case.

(3) Once I submit this withdrawal, I cannot revoke it, even if I later change my mind.

(4) If my sentence included a punitive discharge from the military:

(a) My withdrawal from appellate review will likely result in the expedited approval of my discharge and corresponding termination of my benefits administered by the Department of Defense, the Department of Veterans Affairs, and State and local veterans agencies.

(b) These include benefits I currently retain, as well as those of any dependents I may have. The termination of military and veterans benefits may include the loss of access to medical care, commissary and military exchanges, loans, job placement services, and other benefits that require a discharge from the military under honorable conditions.

(c) However, if I have a prior period of honorable military service, I may still retain some of my benefits that are linked to my prior service.

(d) My discharge paperwork, including my DD 214, will reflect that I was discharged from the military pursuant to a court-martial.

3. I voluntarily submit this withdrawal from appellate review. No one has made any promises that I would receive any benefits from this withdrawal, and no one has forced me to make it.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing information is true and correct.

_____
App L. Lant
Lance Corporal, USMC

_____
(Date)

I have advised LCpl App L. Lant concerning [his] [her] right to appellate review and the effects withdrawal from appellate review.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing information is true and correct.

_____
Counsel's Name
Grade (if military)
Capacity

_____
(Date)

Appendix H. Format for Merits Brief

IN UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

Before [{Special} Panel No. {#}] [the Court En Banc]

UNITED STATES *Appellee* v. **App L. LANT** Lance Corporal (E-3) U.S. Marine Corps *Appellant*	NMCCA No. 202100118 **SUBMISSION OF CASE WITHOUT SPECIFIC ASSIGNMENTS OF ERROR** Tried at [Marine Corps Base Camp Swampy, North Carolina], on [date(s)], before a [General / Special] Court-Martial convened by [position of convening authority], [military judge(s)], Military Judge, presiding

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

COMES NOW Appellant, by and through counsel, and states that I have carefully examined the record of trial in the case, that I do not admit that the findings and sentence are correct in law and fact, and that I submit the case on its merits to this Honorable Court without specific assignments of error or brief.

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JUL 15 2021
United States Navy-Marine Corps
Court of Criminal Appeals

ORIGINAL

Respectfully submitted.

_____
Counsel's Name
Grade (if military)
Capacity
Address
Telephone number
Email address

CERTIFICATE OF FILING AND SERVICE

I certify that the original 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*] to the Court on _____ (date), that a copy was uploaded into the Court's case management system on _____ (date), *and* that a copy of the foregoing was (date) [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 the Director, Appellate Government Division on _____ (date).

_____
Counsel's Name
Grade (if military)
Capacity

Appendix I. Format for AOE Brief on Behalf of Appellant

IN UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

Before [{Special} Panel No. {#}] [the Court En Banc]

UNITED STATES *Appellee* v. **App L. LANT** Lance Corporal (E-3) U.S. Marine Corps *Appellant*	NMCCA No. 202100118 **APPELLANT'S BRIEF AND ASSIGNMENTS OF ERROR** Tried at [Marine Corps Base Camp Swampy, North Carolina], on [date(s)], before a [General / Special] Court-Martial convened by [position of convening authority], [military judge(s)], Military Judge, presiding

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

COMES NOW Appellant, by and through counsel, and assigns the following issues as error in the proceedings below.

Index of Brief

[*See* Rule 18.1(b)(1)]

Table of Cases, Statutes, and Other Authorities

[*See* Rule 18.1(b)(1)]

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Court of Criminal Appeals

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Issue(s) Presented

I. [Set forth each alleged error in the form of a question in in bold, italicized, sentence case letters. An issue may cite a controlling precedent but should not be argumentative or conclusory. If asserting more than one error, number each alleged error with consecutive Roman numerals.

II.* See *Rule 18.3 re issues raised pursuant to* United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).]

Statement of Statutory Jurisdiction

[Set forth the statutory basis for this Court's jurisdiction.]

Statement of the Case

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

Statement of Facts

[Set forth accurately all facts pertinent to the issues raised, including specific page references and exhibit designations. Answers may adopt Appellant's statement

of facts if there is no dispute, may state additional facts, or, if there is a dispute, may restate the facts as they appear from Appellee's viewpoint. The repetition of uncontroverted matters is not desired. Assertions of fact should be supported by specific citations to the record of trial, exhibits, or allied papers, as appropriate. *See* Rule 18.1(b)(5).]

Summary of Argument

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

Argument

[Set forth each error alleged in bold, italicized, sentence case letters, followed by separate argument for each error. Arguments shall discuss briefly the question presented, citing and quoting such authorities as are deemed pertinent. Each argument shall include a statement of the applicable standard of review, and must be followed by a prayer for the specified relief requested.]

Conclusion

WHEREFORE, the Appellant respectfully requests that this Honorable Court [relief sought].

Respectfully submitted.

_____
Counsel's Name
Grade (if military)
Capacity
Address
Telephone number
Email address

CERTIFICATE OF FILING AND SERVICE

I certify that the original 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*] to the Court on _____ (date), that a copy was uploaded into the Court's case management system on _____ (date), *and* that a copy of the foregoing was (date) [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).

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

_____
Counsel's Name
Grade (if military)
Capacity

Appendix J. Format for Article 6b Extraordinary Writ Petition

IN UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS

Before Panel No. ___

In Re **A.B.C.** *Petitioner*	NMCCA No. _____
UNITED STATES *Respondent*	**PETITION FOR EXTRAORDINARY RELIEF IN THE NATURE OF A WRIT OF MANDAMUS TO ENFORCE ARTICLE 6B, UCMJ and APPLICATION FOR A STAY OF PROCEEDINGS**
Acc U. SED Lance Corporal (E-3) U.S. Marine Corps *Real Party in Interest*	Tried at [Marine Corps Base Camp Swampy, North Carolina], on [date(s)], before a [General / Special] Court-Martial convened by [position of convening authority], [military judge(s)], Military Judge, presiding

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

COMES NOW Petitioner, A.B.C., a named victim in the general court-martial case of *United States v. Lance Corporal Acc U. Sed*, and petitions the Court to enforce [her] [his] rights under Article 6b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 806b (2019) and seeks in the interim an emergency stay of the court-

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Court of Criminal Appeals

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martial proceedings scheduled to reconvene on _____. Specifically, Petitioner moves the Court to order the military judge to conduct an in camera review of the Petitioner's records—which the Petitioner asserts are subject to the Military Rule of Evidence 513 psychotherapist-patient privilege—prior to releasing them to the trial counsel, defense counsel, or the Real Party in Interest.

Issue(s) Presented

I.

Should the Navy-Marine Corps Court of Criminal Appeals enforce Petitioner's rights under Article 6b, UCMJ, and the Military Rules of Evidence by issuing a Writ of Mandamus directing the military judge to conduct an in camera review of Petitioner's mental health records to determine whether they are subject to privilege prior to releasing them?

II.

[Issue II]

Statement of Statutory Jurisdiction

This call falls within this Court's jurisdiction pursuant to Article 6b(e), UCMJ.

Statement of the Case

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

Statement of Facts

[Set forth accurately all facts pertinent to the issues raised, including specific page references and exhibit designations. Answers may adopt 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 Respondent's viewpoint. The repetition of uncontroverted matters is not desired. Assertions of fact should be supported by specific citations to the record of trial, exhibits, or allied papers, as appropriate. *See* Rule 18.1(b)(5).]

Argument

[Set forth each error alleged in bold, italicized, sentence case letters, followed by separate argument for each issue. Arguments shall discuss briefly the question presented, citing and quoting such authorities as are deemed pertinent. Each argument

shall include a statement of the applicable standard of review, and must be followed by a prayer for the specified relief requested.]

I.

Petitioner's mental health records are protected by Military Rule of Evidence 513 and the Navy-Marine Corps Court of Criminal Appeals should enforce Petitioner's rights under Article 6b, UCMJ, by issuing a Writ of Mandamus directing the military judge to conduct an in camera review of Petitioner's mental health records to determine whether they are subject to privilege.

A. *Standard of Review.*

[Set forth Petitioner's position, with citation to any applicable authorities, regarding the standard of review by a Court of Criminal Appeals of a petition for a writ of mandamus to enforce Article 6b, UCMJ.]

B. [*Summary of argument for Issue I.*]

C. [*Summary of alternative argument for Issue I.*]

Conclusion

WHEREFORE, Petitioner respectfully requests that this Honorable Court [relief sought].

Respectfully submitted.

_____
Counsel's Name
Grade (if military)
Capacity
Address
Telephone number
Email address

CERTIFICATE OF FILING AND SERVICE

I certify that the original 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*] to the Court on _____ (date), that a copy was uploaded into the Court's case management system on _____ (date), *and* that a copy of the foregoing was (date) [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).

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

_____
Counsel's Name
Grade (if military)
Capacity

Appendix K. Table of Pseudonyms

IN UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

Before [{Special} Panel No. {#}] [the Court En Banc]

UNITED STATES
Appellee

v.

App L. LANT
Lance Corporal (E-3)
U.S. Marine Corps
Appellant

NMCCA No. 202100118

TABLE OF PSEUDONYMS

Filed Under Seal

Tried at [Marine Corps Base Camp Swampy, North Carolina], on [date(s)], before a [General / Special] Court-Martial convened by [position of convening authority], [military judge(s)], Military Judge, presiding

COMES NOW Appellant, pursuant to Rule 17.5 of the Navy-Marine Corps Court of Criminal Appeals Rules of Appellate Procedure, in conjunction with Appellant's Brief and Assignments of Error, and files the following table of witnesses and any other persons referenced in Appellant's Brief.

Actual Name	Pseudonym	Relationship to Case	Witness?
SA Mary Bradstreet	SA Michelle Bravo	Alleged Victim	Yes
Mrs. Regina Bradstreet	Mrs. Roseanne Bravo	Alleged Victim's Mother	Yes
SN Nancy Ellis	SN Nora Echo	Alleged Victim's Roommate	Yes

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Mr. Thomas Bouvier	Mr. Tracy Baker	Alleged Victim's Boyfriend	Yes
GySgt John Smith	GySgt Jerry Sierra	Appellant's Supervisor	Yes
Dr. Albert Freud	Dr. Alex Foxtrot	Defense-Requested Forensic Psychologist	No

Respectfully submitted.

_____
Counsel's Name
Grade (if military)
Capacity
Address
Telephone number
Email address

CERTIFICATE OF FILING AND SERVICE

I certify that the original 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*] to the Court in a sealed envelope on _____ (date) *and* that a copy of the foregoing was (date) [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)* in a sealed envelope on _____ (date).

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

_____
Counsel's Name
Grade (if military)
Capacity

Appendix L. Summary of Filing Time Standards

Unless specified otherwise, "Days" indicates Calendar Days. (Rule 15)

1.	Assignment(s) of Error (Rule 18(d))	60 Days following Docketing.
2.	Answer to Assignment(s) of Error (Rule 18(d))	30 Days following Assignment(s) of Error.
3.	Reply to Government's Answer to Assignment(s) of Error (Rule 18(d))	7 Days following Answer.
4.	Notice of Appeal for Article 66(b)(1) (2019) Appeal by Accused (Rule 18.5(a))	90 Days following mailing of notice to accused of the right to file an appeal.
5.	Brief and Assignment(s) of Error for Appeal by Accused (Rule 18.5(b))	60 Days following Court's receipt of Notice of Appeal.
6.	Brief on behalf of the Government where the Appellant does not submit a Brief (Rule 18(d))	30 Days following Expiration of time allowed for filing of Appellant's Brief.
7.	Amicus Curiae Brief (Rule 22.1(a), (c))	If supporting a party, 10 Days following filing of that party's brief. If not supporting a party, 10 Days after the Government's Answer (Article 66 reviews), or the Appellee's Reply Brief (Article 62 appeals). In the case of a petition for extraordinary relief, an amicus curiae brief should be submitted as soon as possible after the filing of the petition. Must be filed no later than 14 Days before the scheduled date of oral argument.
8.	Appellant's / Appellee's / Petitioner's / Respondent's Reply to Amicus Curiae Brief (Rule 22.1(c))	7 Days following Filing of Amicus Curiae Brief.
9.	Brief following CAAF remand to NMCCA (Rule 18(d))	60 Days following Docketing.
10.	Response to Brief following CAAF remand to NMCCA (Rule 18(d))	60 Days following Initial Brief.
11.	Brief following CAAF remand to Convening Authority (Rule 18(d))	60 Days following Re-Docketing.
12.	Response to Brief following CAAF remand to Convening Authority (Rule 18(d))	30 Days following Initial Brief.
13.	Supplemental Assignments of Error (Rule 18.1(e))	No specified time, but must be submitted by Motion for Leave to File.

14.	Response to Supplemental Assignments of Error (Rule 18.1(e))	If the motion above is granted, the Government may file an Answer within 30 days from the date the motion above is Granted.
15.	Motion for Oral Argument (Rule 25)	7 Days following Answer to Appellant's Brief.
16.	Supplemental Citation(s) of Authority (Rule 25.3(a))	No later than 7 Days before Oral Argument, or within 7 Days following Oral Argument.
17.	Memorandum of Argument (Rule 25.3(b))	7 Calendar Days following Oral Argument.
18.	Suggestion for Consideration of a Proceeding En Banc in cases reviewed pursuant to Article 66 UCMJ (Rule 27(b))	7 Days following Government's answer to the Assignment(s) of Error or if Appellant filed a Reply Brief under Rule 18(d).
19.	Suggestion for Consideration of other Proceedings En Banc (Rule 27(b))	Must be filed with Party's Initial petition or pleading, or within 7 Days following the Response thereto is filed.
20.	Appellant's Motion for Reconsideration or Reconsideration En Banc (Rules 27(b) and 31(b))	*Provided a petition for grant of review or certificate for review has not been filed with CAAF,* 30 Days following Receipt of Decision or Order by Appellate Defense Counsel or Civilian Defense Counsel, or by Appellant, if not represented.
21.	Government's Motion for Reconsideration or Reconsideration En Banc (Rules 27(b) and 31(b))	*Provided a petition for grant of review or certificate for review has not been filed with CAAF,* 30 Days following Receipt of Decision or Order by Appellate Government Counsel.
22.	Reply to Motion for Reconsideration (Rule 31(c))	7 Days following Receipt of the motion.
23.	Petition for Extraordinary Relief (Rule 19(b)(1))	As soon as possible; however, no later than 20 Days after Petitioner learns of the action complained of. This does not apply to Petitions for writs of habeas corpus or error *coram nobis*, which may be filed at any time.
24.	Answer to Petition for Extraordinary Relief (Rule 19(f))	20 Days following Show Cause Order or Order Granting Leave to File a Response.
25.	Reply to Answer to Petition for Extraordinary Relief (Rule 19(f))	7 Days following Answer.

26.	Article 62 Appeal by the United States (Rule 20(c)(1)(A))	20 Days following written notice to appeal filed with the trial court to reach the representative designated by the JAG. The person designated by the JAG has 5 days following receipt to file the original record with the Court with a copy to opposing counsel.
27.	Brief in Support of Article 62 Appeal by the United States (Rule 20(c)(1)(A))	20 Days following Filing of Record with the Court.
28.	Answer to Brief in Support of Article 62 Appeal by the United States (Rule 20(c)(1)(B))	20 Days following Government Brief.
29.	Reply to Answer to Article 62 Appeal by the United States (Rule 20(c)(1)(C))	7 Days following Answer.
30.	Petition for New Trial (Article 73) (Rule 21(c))	No specified time frame. If Petition indicates an intent to file a separate brief in support of petition, must be filed within 30 days following filing of the Petition.
31.	Response to Petition for New Trial (Article 73) (Rule 21(c))	30 Days following Petition or 30 Days following separate brief in support of Petition.
32.	Reply to Petition for New Trial (Article 73) (Rule 21(c))	7 Days following Respondent's Answer.
33.	Response to Motions for Enlargement of Time (Rule 23.1(b))	5 Days following Receipt of Motion.
34.	Response to All Other Motions (Rule 23.1(b))	10 Days following Receipt of Motion.
35.	Consent Motion for First Enlargement of Time Not to Exceed 10 Days (Rule 23.3(c)(1))	Due Date of Pleading.
36.	All Others Motions for Enlargement of Time (Rule 23.3(c)(2))	5 Days before Filing is Due.
37.	Motion to Appear Pro Hac Vice (Rule 12.3)	At the time of filing. *Counsel may not give oral argument pro hac vice.*
38.	Notice of Appearance by Successor Appellate Defense Counsel following Withdrawal of Appellate Defense Counsel (Rule 12.2)	10 Days following Retention.
39.	Notification of discipline that results in disbarment, suspension, or other loss of good standing in the Bar of any United States federal or state / territory / commonwealth / possession court. (Rule 10.2)	14 Days.

40.	Notification of suspension from practice in courts-martial or another service court of criminal appeals, or that Article 27(b), UCMJ, certification is withdrawn for cause. (Rule 10.2)	14 Days.

Appendix M. Oral Argument Script

[Pursuant to NMRAP 25.2, the senior judge of the panel, or Chief Judge of the Court en banc will proceed substantially as set forth below.]

[The Clerk will gavel the session to order with two solid strikes of the gavel and announce as follows:]

Clerk: "*All rise. The United States Navy-Marine Corps Court of Criminal Appeals is now open and in session. God save the United States and this Honorable Court.*"

[At the second strike of the gavel, and as the Clerk makes the above announcement, the judges of the Court enter the courtroom and take their positions behind their chairs. At the conclusion of the opening announcement, the Clerk will strike the gavel a third time.]

Senior/Chief Judge: "*Good morning (or good afternoon). Please be seated.*"

[All judges, the counsel, and those in the gallery are seated.]

Senior/Chief Judge: "*The Court will now hear oral argument in the case of United States v. (insert name). Are counsel for both sides ready to proceed*?"

[Counsel may respond in the affirmative; or respond with inviting the Court's attention to any unresolved matters, such as the swearing in of a new member of the Bar; an oral motion for relief; or other appropriate matter, such as the following:]

Counsel for Appellant: "*Yes, Your Honor, but before proceeding, the Appellant would request to reserve 5 minutes for rebuttal.*"

Senior/Chief Judge: "*Very well. The Appellant may argue.*"

[The above may be varied to "*The United States may argue*" in those cases in which the Government is arguing an interlocutory appeal.]

[Counsel presents argument and answers questions of the Court.]

[For both counsel, a yellow caution light will indicate when there are 5 minutes remaining of each counsel's time (or 1 minute of rebuttal time); a red light will indicate when time has expired. Counsel shall cease argument when the red light turns on. If counsel has not completed argument, counsel should request additional time to conclude. Ordinarily this means completing an answer to a question of Court.]

Counsel for the Appellant: "*If there are no further questions, that concludes my argument.*"

Senior/Chief Judge: "*Thank you. Counsel for the United States may argue.*"

[The above may be varied to "*The Appellant may argue*" in those cases in which the Government is arguing an interlocutory appeal.]

[Counsel presents argument and answers questions of the Court.]

Counsel for the Appellee: "*If there are no further questions, that concludes my argument*."

Senior/Chief Judge: "*Thank you. Counsel for the Appellant (*or "*Appellee*" during interlocutory appeals*) may argue in rebuttal*."

[Counsel presents arguments and answers questions of the Court.]

Counsel for the Appellant: "*If there are no further questions, that concludes my argument*."

Senior/Chief Judge: "*Thank you. The matter is submitted*."

Clerk: "*All rise*."

[The Clerk strikes the gavel once and the judges rise and depart. When all the judges have departed, the Clerk announces:]

Clerk: "*The United States Navy-Marine Corps Court of Criminal Appeals now stands adjourned*."

[The Clerk concludes with one final strike of the gavel.]