

Office of the Presiding Officer
Military Commission

October 24, 2004

SUBJECT: Presiding Officers Memorandum (POM) # 12 - Filings Inventory

Note -- On the effective date of this POM 12, POM 11 was in the developmental stage and had not yet been issued.

1. The Presiding Officer previously adopted a process so that documents (e.g., motions, witness request, other filings) could be filed by email. See POMs 3, 4-2, 6, 7, and 10. This process was adopted because:

- a. Most items filed with the Commission are prepared in electronic form.
- b. Documents not in electronic form can be easily converted into an electronic file.
- c. The counsel, Assistant, members, court reporters, Presiding Officer and those who need to file and receive filings are often in geographically diverse locations.
- d. Electronic filing enables counsel anywhere in the world with email access (to include web based accounts) to make and receive filings.
- e. Service of filings by mail or courier is slow and expensive. Some filings are made to and from Guantanamo Bay, Cuba where service by mail is impractical.
- f. Electronic filing is fast, reliable, efficient and creates an electronic file that can be efficiently and quickly shared with others.
- g. Electronic filing creates and retains a precise record of dates and times on which filings and other actions took place.

2. A problem is that electronic filing enables parties to send emails or "CC" (carbon copy) emails to anyone. If a filing is sent to many, it is sometimes difficult to know who the intended or action recipient is. Similarly, those who receive large numbers of emails may overlook an email that was intended for them specifically.

3. This POM establishes a requirement for the Assistant to maintain a "Filings Inventory" (in progress, prior to the date of this POM, as a "Motions Inventory.") The purpose of the Filings Inventory is to make clear what filings (motions, responses, replies, attachments, and other filings) are before the Presiding Officer or the Commission. The *NOTES* section on previously issued Motions Inventory is superseded by this POM.

4. Establishing the Filings Inventory. The Assistant shall establish a Filings Inventory for each case referred to the Commission reflecting those filings pending before the Presiding Officer or the Commission.

a. As soon as the first filing on an issue is received, the Assistant shall assign a *filing designation* with one of 4 below categories followed by a number:

P for a filing or series of filings initiated by the prosecution.

D for a filing or series of filings initiated by the defense.

PO for a filing or series of filings initiated/directed by the Presiding Officer.

C for a filing or series of filings initiated/directed by the Commission as a body.

Other categories may be added at a later time.

b. The number following the category designation shall be the next unused number for the category and case. The *filing designation* (category and number *EX*: PE2, D4, PO1, C1) shall be unique for each case and the designation shall not be reused.

c. To identify a specific document that was filed, the filing designation may add a simple description of the nature of the filing such as Motion, Response, Reply, Supplement, Answer, or other designation assigned by the Assistant.

d. The Filings Inventory shall also contain a listing of filings that had a designation but are no longer active before the Commission or the Presiding Officer. These items shall be placed in the inactive section of the Filings Inventory.

5. Filing designation and future communications or filings. Once a filing designation has been assigned, all future communications - written or by email - to that series of filings will use the filing designation as a reference. This includes adding the file designations to the style of all filings and the file names to ALL attachments. Examples:

* An email subject line forwarding a response to P2 in US v Jones should read: “P2 Jones - Defense Response.”

* The filename of the attachment in the above email should read “P2 Jones - Defense Response.”

* The filename of a document that is an attachment to the response should read “P2 Jones - Defense Response - attachment - CV of Dr Smith.”

Each of the designations or filenames listed above may also include other descriptions or information (date, when filed, etc.) the parties may wish to add to assist in their management of filings.

6. Distribution of the Filings Inventory.

a. As soon as practical after the Assistant receives a filing, the Assistant shall reply advising that the Filings Inventory has been annotated. In the case of a filing that initiates a new issue or motion, the Assistant shall also provide the filing designation.

b. At the request of any party, the Assistant shall provide a copy of the current Filings Inventory as soon as practical.

c. The Assistant shall from time to time, or when directed by the Presiding Officer, distribute copies of the Filings Inventory.

d. The Presiding Officer shall ensure that a copy of the current Filings Inventory is attached at the beginning of each session of the Commission as a Review Exhibit so that parties are free to refer to filings by the filing designation.

e. At sessions of the Commission, counsel shall, whenever possible, refer to a filing by the filing designation so the record is clear precisely which filing or issue is being addressed.

7. Counsel responsibility when receiving the Filings Inventory. The Filings Inventory is the only method by which counsel can be sure what filings have been received by the Presiding Officer or the Commission, and therefore what matters are pending before the Presiding Officer or the Commission.

a. Counsel will examine each Filings Inventory as it is received and notify the Assistant, Presiding Officer, and opposing counsel of any discrepancies within one duty day.

b. If counsel believe they have submitted a filing that is not reflected on the Filings Inventory, they shall immediately send that filing - with all attachments - to the Assistant, Presiding Officer, and opposing counsel noting the discrepancy.

c. If there is a discrepancy in the Filings Inventory and counsel fail to take the corrective action as indicated above, the Presiding Officer or the Commission may elect not to consider that filing before the Presiding Officer or the Commission.

8. Filings in the Inactive Section of the Filings Inventory. If a filing is moved to the inactive section of a Filings Inventory due to the decision of the Presiding Officer, and counsel wish that the full Commission review the decision as one that the full Commission is empowered to decide, that counsel shall file a motion to have the Commission consider the matter. (This motion shall receive a new filing designation.) The new filing:

a. Shall contain as an attachment ALL previous filings (and their attachments) by ALL parties on the matter as well as the decision of the Presiding Officer that moved the action to the inactive section of the Filings Inventory.

b. Be styled and filed in accordance with POM 4-2.

c. Contain in the body of the motion that:

(1). The party wishes that the previous and attached (and listed) filings be considered by the entire Commission,

(2). The authority - to include the section of Commission Law if applicable - that indicates the matter is one that the full Commission must or may decide, and

(3). The reasons why the Presiding Officer's actions in moving the action to the inactive section were in error.

d. Responses and replies shall follow the procedure established in POM 4-2 except:

(1). Given the matter has been previously examined by counsel, the time to respond or reply shall be 2 duty days,

(2). Counsel may submit a response in the body of an email if only to say they adopt the matters they previously submitted on the matter before the matter was moved to the inactive section, and

(3). If the response is limited to only adopting matters previously submitted, no reply shall be allowed.

9. Objections to this POM. Counsel who object to the procedures in this POM must do so not later than 3 duty days after the effective date following the procedures in POM 4-2. A notice of motion is not required.

Original Signed by:

Peter E. Brownback III
COL, JA, USA
Presiding Officer