



Rules of Practice before Military Commissions

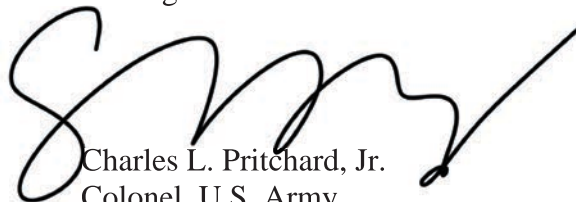
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PREAMBLE

The Rules of Practice before Military Commissions (Rules of Court) supplement the Rules for Military Commissions (R.M.C.) and the Manual for Military Commissions (2019) and govern trials by military commission. They supersede all rules previously published as “Military Commissions Trial Judiciary Rules of Court.”

These rules are established pursuant to R.M.C. 108, 801(a)(3), and 801(b)(1), to promote the orderly, expeditious, and just disposition of military commissions, provide for more efficient application of judicial and legal resources, and ensure public access while adhering to national security requirements. Counsel, as officers of the court, are ethically obligated and expected to be familiar with and follow these rules. However, noncompliance does not give rise to any rights or remedies for an accused. Counsel may be required to explain the failure to comply with these rules, and the military judge is empowered to take appropriate action pursuant to applicable law and regulation.

Military judges will enforce these rules. However, a military judge may modify or amend any rule contained herein if required for the commission to which the military judge is detailed. Military judges may not establish supplemental Rules of Court for a commission to which they are detailed without the approval of the Chief Trial Judge.

A handwritten signature in black ink, appearing to read 'C. L. Pritchard, Jr.', with a large, stylized initial 'C' and a long, sweeping horizontal stroke extending to the right.

Charles L. Pritchard, Jr.
Colonel, U.S. Army
Chief Trial Judge
Military Commissions Trial Judiciary

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SUMMARY OF CHANGES

These Rules of Court have been completely revised and reformatted making a summary of changes impractical. Counsel should read and become familiar with all the rules set forth herein.

RULE 1

INTERPRETATION, SHORT FORM CITATIONS, MODIFICATION

1.1. Application. These Rules of Court (RC) are established pursuant to the Manual for Military Commissions (M.M.C.) 2019 and Rules for Military Commissions (R.M.C.) 108, 801(a)(3), and 801(b)(1). They shall apply to all cases referred to trial by military commission.

1.2. Interpretation. The Rules of Court shall be interpreted to be consistent with the Military Commissions Act of 2009 (M.C.A.) and the M.M.C. In the event of any conflict between the M.C.A. or M.M.C. and the Rules of Court, the latter must be interpreted in a manner to comply with the former. In the event a Rule cannot be interpreted in such a manner, the M.C.A. and M.M.C. provisions prevail.

1.3. Citation. The Rules of Court should be cited as “RC” followed by the Arabic numeral of the Rule and then the Arabic paragraph and subparagraph numbers. For example, this Rule and paragraph should be cited as RC 1.3.

1.4. Modification. In an individual commission, a detailed military judge may modify or amend any Rule of Court or portion thereof, or determine a Rule is not applicable, but cannot supplement these Rules without the Chief Trial Judge’s permission.

1.5. Chief Clerk Definition. The term “Chief Clerk” throughout these Rules refers to either the individual occupying the position of Chief Clerk of the Trial Judiciary, paralegals assigned to the Trial Judiciary, or the Trial Judiciary staff.

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RULE 2

COMMUNICATIONS

2.1. Purpose. This Rule establishes general procedures for communications among counsel, between counsel and the Trial Judiciary staff, and if authorized, with the military judge. These procedures are designed to avoid unauthorized *ex parte* communications, to ensure procedural matters leading to trial are efficiently handled, and to provide expeditious methods of communication.

2.2. Ex Parte Communications. No person or entity with an interest in a military commission may communicate *ex parte* with the military judge except as authorized by the M.C.A., the M.M.C., or these Rules. This includes, but is not limited to, a party in a case, the Office of Military Commissions / Convening Authority, DoD General Counsel, any intelligence or law enforcement agency, and third-party filers. The rule is intended to preclude any actual or perceived attempt to improperly influence a commission in violation of 10 U.S.C. § 949b. The prohibition does not include administrative matters necessary for the management of the Office of the Trial Judiciary.

2.3. E-mail. E-mail is the only authorized method of communication between counsel and the military judge, via the Trial Judiciary staff. Failure to comply with these Rules may result in the communication being returned for lack of compliance with these Rules or other relief as the military judge may direct. The following e-mail conventions will be followed.

2.3.1. E-mail Addresses. Use of the following e-mail addresses is mandatory in communicating with the military judges via the Chief Clerk or in filing pleadings:

(a) Unclassified Pleadings (See RC [3.7.4.2.](#)): osd.pentagon.OMC.mbx.tj-pleadings@mail.mil.

(b) Unclassified Correspondence: osd.pentagon.OMC.list.trial-judiciary@mail.mil.

(c) Classified (up to SECRET) Pleadings and Correspondence (See RC [3.7.4.3.](#)): osd.mc-alex.omic.list.trial-judiciary-all@mail.smil.mil.

(d) Learned Counsel Vouchers (See RC 11): osd.pentagon.OMC.list.tj-lrned-cnsl-vouchers@mail.mil.

(e) Copying Director, Office of Court Administration (OCA), Office of Military Commissions when filing unclassified pleadings (*See* RC 2.3.2.2. and [3.7.4.2.1.](#)): osd.pentagon.omc.mbx.oca-pleadings@mail.mil.

2.3.2. E-mail Participants.

2.3.2.1. Military Judge. E-mail will not be sent directly to a military judge. The Trial Judiciary staff, in consultation with the military judge, will determine whether to forward any e-mails to the military judge. E-mails are not part of the record of trial unless they are included as an attachment to a filing or as directed by the military judge. A military judge may depart from this Rule without the Chief Trial Judge's permission when conducting R.M.C. 802 conferences by e-mail.

2.3.2.2. Others. Counsel for the parties to the case, the paralegals for each party, the Chief Defense Counsel, and the Chief Prosecutor will be copied on all e-mail correspondence sent to the Chief Clerk / Trial Judiciary staff intended for a presiding military judge. The Director, OCA referenced in RC 2.3.1.(e) will be copied on all e-mails sent to the Chief Clerk using the e-mail address at RC 2.3.1.(e) with a filing as an attachment.

2.3.2.3. Distribution Lists. The parties will provide the Chief Clerk up-to-date NIPRNET and SIPRNET e-mail distribution lists not later than the end of the first full week of October, January, April, and July. The distribution list will not include commercial or personal e-mail addresses. The Chief Clerk will not create or modify distribution lists for a party.

2.3.3. Format.

2.3.3.1. Subject. E-mails will include a single subject and use a simple, descriptive subject line. If the e-mail pertains to a specific case, use the case name in the subject line of every e-mail. If an Appellate Exhibit (AE) designation has been assigned, include the designation in the subject line, for example: US v Smith - AE 001 - Defense Motion to Compel Discovery.

2.3.3.2. Body. Every paragraph and sub-paragraph of any e-mail containing more than one paragraph or sub-paragraph will be numbered or lettered for easy reference. A logical numbering or lettering scheme will be used. Include a list of attachments to the e-mail in the body of the e-mail.

2.3.3.3. Attachments.

2.3.3.3.1. General. The filing party will submit all attachments in the same e-mail as the filing to which they are attached. If the attachments make the pleading too large for the e-mail system, the filing party must coordinate with the Chief Clerk concerning how the party will submit the pleading for filing. When attachments to a filing include both classified and unclassified information, a complete filing, properly marked, must be filed at the highest classification level. This complete filing is the record copy. (*See also* RC [3.6.11](#), and [3.7.4.3](#), for guidance on filing classified information in either the pleading or the attachment.)

2.3.3.3.2. Text Attachments. Will be submitted in PDF format and may not include “track changes” or “mark-up” versions of documents. If these Rules require a filing party to submit a draft order, the party will submit the draft order as an attachment to their pleading and as a Word document attached separately to the filing e-mail. The draft order shall include a watermark indicating that it is a draft. The watermark will state, “DRAFT ORDER / (PARTY NAME) / DD/MM/YR.” A draft order will be unsigned and should not include a “//s//” or any other marking indicating the military judge has signed it.

2.3.3.3.3. Image, Video, and Audio Attachments. The filing party will use the following formats, listed in order of preference:

(a) Still Images. JPG, TIF, PDF, or BMP.

(b) Videos. AVI, WMV, MPG, VOB, MOV, or AVCHD.

(c) Audio files. MP3, MP4, WAV, or FLAC.

(d) If a party wishes to use some other file format, the party must coordinate with the Chief Clerk.

2.4. Telephonic / Video Teleconference (VTC) R.M.C. 802 Conferences. When a telephonic or VTC R.M.C. 802 conference is necessary, the military judge will determine whether a party or the Trial Judiciary staff will make the arrangements.

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RULE 3

MOTION PRACTICE

3.1. Purpose. This Rule establishes general procedures for motion practice. These procedures are designed to avoid unauthorized *ex parte* communications, ensure pretrial procedural matters are handled efficiently, and provide for standardized and expeditious motion practice.

3.2. Public Release of Filings. It is judicial policy for all filings and judicial documents (rulings, orders, or notices) to be released to the public, subject to any regulatory restrictions imposed by the Department of Defense, unless the filings or judicial documents are ordered to be maintained under seal, *ex parte* and / or *in camera*, or are classified. All filings with or without attachments and judicial documents will be reviewed for sensitive and classified information prior to public release. (See RC [3.3.4.](#))

3.3. Definitions.

3.3.1. Filing: A filing includes the following types of documents: a notice, a motion, a response, a reply, an amendment, a supplement, a brief ordered by the commission, and an in-court submission. This list is not all inclusive. If a party desires to file a document with a different characterization, the party will coordinate with the Chief Clerk in conjunction with requesting the AE designation.

3.3.1.1. Notice: A notice is a written filing that informs the military judge and / or other parties of a particular fact of importance to the commission without seeking relief from the commission and without expectation of, or requirement for, a response from other parties.

3.3.1.2. Motions:

3.3.1.2.1. Motion: A motion is an application to the military judge for specific relief (a ruling on a legal issue and / or an order). This includes, but is not limited to, those motions addressed in R.M.C. 905, 906, and 907.

3.3.1.2.2. Joint Motion: In a case with multiple accused, a motion that is filed by two or more accused in which they concur in all aspects. (See RC [3.5.2.1.](#) for automatic joinder rules.)

3.3.1.3. Response: A response is another party's written answer to a motion.

3.3.1.4. Reply: A reply is the moving party’s written answer to a response.

3.3.1.5. Supplemental Filing: A supplement is an additional filing made with the military judge’s permission that adds new facts not known at the time of the original filing or newly decided case law to an existing motion or response. The military judge has the discretion to direct the parties to file supplemental pleadings without regard to the above limitations. (See RC [3.7.3](#) for filing prerequisites.)

3.3.1.6. Amended Filing: A filing made with the military judge’s permission that corrects a misstatement of fact or law in an existing filing. An amended filing also is used to correct a substantive mistake—e.g., inclusion of the wrong attachment, lack of a listed attachment, errors in the list of attachments, etc.—by the filing party beyond that of a scrivener’s error.

3.3.1.7. Corrected Copy: A filing previously accepted by the Chief Clerk which requires a correction to a non-substantive minor clerical or scrivener’s error in the original filing. Such a filing does not require the military judge’s permission in advance of filing. It adds the words “CORRECTED COPY*” in the original caption with a corresponding footnote to the asterisk that specifies the corrections. The corrected copy indicates changed material by strikethrough for deletions and underlining for additions.

3.3.1.8. Redacted Filing: A copy of a filing that has been reviewed by the Security Classification / Declassification Review Team (SC / DRT). (See RC [3.3.4](#).) Redacted copies will not be included in the Record of Trial unless otherwise properly introduced into evidence. Only original filings will be included in the Record of Trial.

3.3.1.9. Third-Party Filing: A filing by a person or entity other than the Defense, Prosecution, or *amicus curiae* that establishes standing and seeks particular relief from a military commission. (See RC [3.7.4.6](#) for filing procedures.) (Rule 8 addresses *amici curiae* briefers.)

3.3.1.10. “Emergency” Motion: As a general rule, the Trial Judiciary does not recognize such a designation. Labeling a motion an “Emergency Motion” has no legal effect, and such motions will not be handled differently from any other motion, unless the military judge directs otherwise.

3.3.2. Certificate of Conference: A statement by a moving party confirming it has conferred

with the other parties about its motion and stating whether the other parties concur with or object to the requested relief.

3.3.3. Certificate of Service: A statement by a party confirming its filing has been served on the other parties.

3.3.4. The Security Classification / Declassification Review Team: The SC / DRT represents Original Classification Authorities from DoD components and commands and coordinates with other Original Classification Authorities outside DoD. The SC / DRT is established in accordance with Office of the Secretary of Defense (OSD) Memoranda 09260-08, 10522-08, and 12079-08. The SC / DRT reviews all filings, with or without attachments, and judicial documents for sensitive and classified information prior to public release via the Office of Military Commissions' public facing website.

3.4. Computation of Time.

3.4.1. In computing any period of time prescribed or allowed by these Rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is:

(a) a Saturday;

(b) a Sunday;

(c) a Federal holiday;

(d) a day where the Office of Personnel Management (OPM) webpage declares the Federal Government in the National Capital Region to be closed; or,

(e) a day that the military judge informs the parties is excluded from the computation. In such cases, the period runs until the end of the next business day.

3.4.2. When a time is used in these Rules or in an order or other communication from a military judge, that time refers to Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect relevant to the date to which the time relates, unless the military judge indicates otherwise.

3.4.3. If a filing is received on a business day after 1600 hours (4:00 pm) or on a non-business day, the filing is considered to have been submitted on the next business day.

3.5. Timing for Filing.

3.5.1. Acceptance of Filing. A filing is only considered filed when the Chief Clerk receives and accepts it as being administratively compliant with these Rules of Court, to include compliance with classification and handling markings. The Chief Clerk will announce the date of acceptance of the filing in an e-mail to the parties. The Chief Clerk, Trial Judiciary paralegals on behalf of the Chief Clerk, the Trial Judiciary Staff Director, and Trial Judiciary staff attorneys are authorized to reject a filing if such filing fails to satisfy all requirements listed in these Rules, including being properly formatted.

3.5.2. Motions. Motions must be filed in accordance with R.M.C. 905(b) and the military judge's ordered deadlines. The military judge may depart from the timing set forth herein.

3.5.2.1. Automatic Motion Joinder. In a commission with multiple accused, when one accused files a motion, the co-accused being tried jointly are presumed to have joined the motion even if they are not signatories. This does not apply to an accepted Third-Party filing; any party may elect to join a Third-Party filing and must so signify via an appropriate joinder filing within seven calendar days of the date the Third-Party filing was accepted. (*See* RC [3.5.5](#) concerning Third-Party filing timelines.)

3.5.2.2. Declination of Automatic Joinder. In a commission with multiple accused, if an accused does not want to join a motion, in whole or in part, that accused must file a notice pleading styled as a "Notice of Declination of Automatic Joinder" within seven calendar days from the day the underlying motion was filed. If an accused who declines to be automatically joined to a motion wishes to state a separate position or seek relief other than what is set forth in the underlying motion, that accused must file a separate motion in accordance with these rules.

3.5.3. Responses. A response is due within 14 calendar days after a motion or supplement to a motion is accepted for filing.

3.5.4. Replies. Any reply shall be filed within seven calendar days of the acceptance of the response. Matters which could have been raised in the original motion may not be presented for the first time in a reply. A reply is unnecessary to simply state general disagreement with a response. The absence of a reply does not indicate agreement with a response. Instead, the absence of a reply indicates the party stands on their motion or initial filing.

3.5.5. Third-Party Filing Timelines. The named parties to a commission may join or respond to a Third-Party Filing unless the military judge directs otherwise. The time period for the parties to join or file responses to a Third-Party Filing starts on the date the Chief Clerk sends an e-mail accepting the Third-Party Filing. (See RC [3.5.2.1](#), and [3.5.2.2](#), concerning joinder notices and RC [3.5.3](#), regarding responses.)

3.5.6. Enlargement of Time. A request for an extension of a filing deadline is styled a “Motion for Enlargement of Time to File [Name of Substantive Filing].” The Motion for Enlargement must be filed at least five calendar days before the subject motion, response, or reply is due, unless the military judge permits a later filing based on good cause shown.

3.5.7. Waiver. Filings which are not timely filed in accordance with RC [3.5.2](#), or a controlling R.M.C. provision are waived.

3.5.8. Motion for Leave to File Out of Time. A motion requesting the military judge grant an exception to the waiver rule in RC 3.5.7. or a R.M.C. provision is styled a “Motion for Leave to File [Name of Substantive Filing] Out of Time” and must establish good cause for the failure to timely file. The substantive motion may not be filed unless the military judge grants the Motion for Leave to File Out of Time.

3.6. Filing Format.

3.6.1. Requirements. All filings must:

- (a) have one inch (1”) margins on the top and bottom of each page;
- (b) be formatted for 8 ½” x 11” sized paper;
- (c) be double-spaced;
- (d) apply indentation in .25” increments;
- (e) use Times New Roman 12-point font (except footnotes, which will use 10-point font);
- (f) use portrait mode for page orientation;
- (g) be written using the English language (See RC [3.6.10](#), for guidance on submitting text in a foreign language as an attachment to a pleading);
- (h) use the latest edition of “The Bluebook, A Uniform System of Citation” with the

following additional guidance:

- (1) use italics rather than underscoring where the Bluebook indicates the latter; and,
- (2) include 6-point spacing after each footnote for readability;
- (i) include the categories of information contained in Appendices A (motions, including Third-Party filings, and responses), B (replies), C (classified filings), or D (*ex parte* / under seal filings), as applicable. Directive or prohibitory language contained in Appendices A through D are incorporated in this subparagraph as rules; and
- (j) include a footer on every page in centered, red, 10-point font type, numbering the pages sequentially along with the total number of pages (e.g., “Page 1 of x”). The bottom right and left corners of filings are reserved for exhibit marking by the court reporters.

3.6.2. Attachments.

3.6.2.1. All attachments to filings must:

- (a) have one inch (1”) margins on the top and bottom of each page;
- (b) be formatted for 8 ½” x 11” sized paper;
- (c) use portrait mode for page orientation;
- (d) be written using the English language (See RC [3.6.10](#) for guidance on submitting text in a foreign language as an attachment to a pleading);
- (e) not include common publications (e.g., DoD regulations, pamphlets, etc.), published cases, and other general references. The filing party may reference these, and if appropriate, provide a URL link to the document noting the date last accessed by the filing party. Excerpts from general references may be included if not more than five pages in length. A pleading, ruling, order, or opinion, obtained using the Public Access to Court Electronic Records (PACER) system is not a common publication and, if referenced or cited as authority by a party in a filing, must be attached to the pleading.
- (f) If an attachment cannot comply with these formatting rules, the filing party, prior to submitting the pleading for filing, will coordinate with the Chief Clerk to develop a solution.

3.6.2.2. For attachments that include more than one document (i.e., separate evidentiary

items), the parties will identify the beginning of each document using the Adobe “bookmark” feature. The bookmark name should be a concise identification of the document (e.g., “Evidence 1”) and easily cross-referenced to the list of evidence in the accompanying filing (*see* Appendix A, paragraph 9.b.).

3.6.3. Responses will use the same format, and include the same categories of information, as motions.

3.6.4. If a party seeks to file a pleading *ex parte*, whether in accordance with M.C.R.E. 505 or 506 or other authority, it will so indicate in the caption above the AE# designation.

3.6.5. All filings will identify the filing party in the caption, e.g., “Government Response to Defense Motion.”

3.6.6. A Certificate of Service must be included in all filings. (*See also* RC [3.3.3](#) and 3.6.9.).

3.6.7. A Certificate of Conference is required for all motions except those filed *ex parte*, *in camera*, or as otherwise provided by these rules, or by order of the military judge. The other parties will be provided a minimum of one full business day to concur with or object to the requested relief in conference. If any other party fails to indicate its position before this time period expires, that party is presumed to object to the requested relief; the moving party should state the other party did not respond within the required time.

3.6.8. Captions in filings related to a motion shall duplicate the original motion’s caption unless the caption is inflammatory, prejudicial, or disrespectful toward a commission.

3.6.9. All attachments will be listed at the end of the pleading. Each attachment will be individually marked as an attachment, even if there is just one attachment (the Certificate of Service). The Certificate of Service will always be the first attachment. If an attachment contains classified information, the level of classification (CONFIDENTIAL (C), SECRET (S), TOP SECRET (TS)) will be stated in a parenthetical at the end of the title of the attachment. This is a separate requirement from portion marking the numbered paragraphs listing the attachments.

3.6.10. Translation of Foreign Text.

3.6.10.1. If a party desires to include text in a foreign language as part of a pleading, whether it is a document or a quote or otherwise, the party will submit the foreign language text as an attachment following the formatting rules of RC [3.6.2](#). Along with the foreign language

text, the filing party will include in the attachment a translation into English of the foreign language text. In the body of the pleading, the filing party will attest to the accuracy of the translation.

3.6.10.2. EXCEPTION: A translation of foreign language text is not required if:

- (a) the foreign language text was obtained through the discovery process; and,
- (b) the foreign language text is not offered substantively, but demonstratively or illustrative of something else (e.g., the quality of copies of documents provided or the scope of discovery necessitating translation).

3.6.11. Classified Filings. All filings containing classified information will be protected and marked following standard marking procedures as set out in DoD Manual 5200.01, DoD Information Security Program, other applicable DoD directives and manuals, Chapter 18 of the R.T.M.C., and any applicable protective orders. The filing party is responsible for properly identifying and portion marking classified information in its pleadings. At a minimum, pleadings containing classified information in the body of the pleading or in an attachment will have the following markings:

- (a) The overall classification of the information in the document displayed at the top (header) and bottom (footer) of each page;
- (b) Separation instructions on the face of each page, where appropriate;
- (c) Every portion (e.g., subject, title, paragraphs, sections, tabs, attachments, classified signature blocks, bullets, footnotes, tables, and pictures) in every filing containing any classified information shall be marked to show the highest level of classification which the portion contains; and,
- (d) A Classification Authority Block (CAB) on the first page of the filing.

3.6.11.1. If a filing contains classified information, whether in the body of the pleading or in the attachment(s), the filing party will file one complete, properly marked, PDF document using a submission method—SIPRNET, hand carried via compact disk (CD) / digital versatile disk (DVD), or as authorized by the Chief Clerk—consistent with the size of the document and the highest level of classified information in the filing. This will be the record filing. (*See Appendix C.*)

3.6.11.2. If the classified information is only in the attachment(s), a copy of the unclassified pleading and the unclassified attachment(s) will be filed without any documents placed behind the attachment page(s) identifying the classified attachment(s). Court reporters will create and insert an appropriate place holder to serve in place of the classified attachment(s).

3.7. Filing Procedures.

3.7.1. Appellate Exhibit (AE) Designation. Prior to any filing with the commission, or service of any filing on an opposing party, the filing party must contact the Chief Clerk by sending an e-mail to osd.pentagon.OMC.list.trial-judiciary@mail.mil to obtain an Appellate Exhibit (AE) designator for the filing. The e-mail should state what type of filing the party is seeking to make (motion, reply, response, etc.), provide the proposed title of the filing, whether the filing will contain classified information, and the level of classification. Proposed titles will be unclassified to the maximum extent practicable.

3.7.1.1. A party seeking an AE designator will send the e-mail to the Chief Clerk not more than three business days prior to the date the party intends to submit the filing.

3.7.1.2. Once a party receives an AE designation, it must file its proposed pleading using the assigned AE designator within two business days of receiving the AE designator. If the party does not submit a filing with the assigned AE designator within the two business days, the AE designator will no longer be authorized. Absent a timely request to extend the usage of the issued AE designator, the Chief Clerk will recall the AE designator, and the party will be required to submit a new request for an AE designator for the proposed filing. All subsequent filings concerning the original motion must use the same AE designation with an alphabetical or numeric sub-designation, e.g., AE 075A, AE 075-1, AE 075.002, etc. The AE designator serves as the official designation for any such filing.

3.7.1.3. Once a filing has been assigned an AE designation, all future communications, whether by e-mail or in hard copy, concerning that series of filings will use that AE designation as a reference in addition to the name of the filing. This includes adding the initial file designations to the title of all filings, the subject lines of e-mails, and the file names to ALL e-mail attachments.

Examples:

*An e-mail subject line forwarding a response to AE 003, a defense motion in *US v Jones*, will read: “US v Jones AE 003A Gov Resp to AE 003”.

*The filename of the response attached to the above e-mail will read “AE 003A - Gov Resp to AE 003”.

*The filename of a document that is the second attachment to the response will read: “AE 003A - Attch B to Gov Resp to AE 003”.

3.7.1.4. Counsel, to the maximum extent practicable, must ensure the names of their filings are not classified. The names given to matters that may appear on the Filings Inventory, such as the subject of a motion, will not be classified or otherwise protected as the Filings Inventory is a working document and is intended to be transmitted through unsecured networks.

3.7.1.5. AE designators issued by the Chief Clerk will not be changed in form or format by a party.

3.7.2. Service of Filings. All filings with the Commission must be served on all other parties either before filing, if by CD / DVD or other approved medium, or concurrently if done by e-mail. Service may be accomplished by e-mail, by providing a copy on CD / DVD, or other approved medium. The parties will take into consideration the size of their filings when determining the mode of service / delivery upon other parties and the Chief Clerk.

3.7.3. Supplemental Filings. A Motion for Leave to File a Supplemental Filing must be filed before the supplement is filed. In a separately numbered paragraph, this motion must affirmatively state the supplemental filing will contain either new facts not known at the time of filing or newly decided case law. In addition, it will contain a concise summary of the new facts or case law and state why the new facts or case law should be considered by the commission.

3.7.3.1. A supplemental filing may not be filed before the military judge grants the Motion for Leave to File the Supplemental Filing.

3.7.3.2. The supplemental filing itself does not require a Certificate of Conference. The Motion for Leave to File a Supplemental Filing does require a Certificate of Conference.

3.7.4. Submitting the Filing. The moving party will submit the filing to the Chief Clerk.

3.7.4.1. Draft Orders. If the motion requests the military judge to issue an order, the filing must contain a proposed draft order. A PDF version will be an attachment to the motion and a Word version will be attached to the e-mail along with the filing. (See RC [2.3.3.3.2](#), for guidance on watermarking a draft Word document and RC [3.7.1.3](#), for guidance on naming the files.)

3.7.4.2. Unclassified Filings.

3.7.4.2.1. Consistent with RC [2.3](#), unclassified filings will be submitted to the Chief Clerk by attaching the filing to an unclassified e-mail. Submission via unclassified e-mail is the preferred method of tendering filings to the Chief Clerk; otherwise, hand carrying a copy on CD / DVD is permissible with prior coordination. When filing via e-mail, the filing party will send the filing to the following e-mail address: osd.pentagon.OMC.mbx.tj-pleadings@mail.mil copying the Office of Court Administration at osd.pentagon.omic.mbx.oa-pleadings@mail.mil. The filing party will send a second e-mail without any attachments addressed to all parties, the Chief Defense Counsel, the Chief Prosecutor, and the Office of Court Administration with the same subject line as the e-mail with the filing (case name, AE number, brief title) to: osd.pentagon.OMC.list.trial-judiciary@mail.mil to announce the tendering of the filing to the Chief Clerk.

3.7.4.3. Classified Filings.

3.7.4.3.1. Ex Parte / Under Seal. Classified filings that are filed *ex parte* and / or under seal must also comply with RC [3.7.4.4](#), and / or RC [3.7.4.5](#). (See also Appendices C and D.)

3.7.4.3.2. Coordination. Prior to filing a classified pleading, the filing party will coordinate with the Chief Clerk's office to resolve logistical issues associated with the Chief Clerk's physical receipt and acceptance of the classified material. Depending on the level of classified information in a classified filing and the size of the filing, it will be filed with the Chief Clerk via an e-mail on SIPRNET addressed to osd.mcalex.omic.list.trial-judiciary-all@mail.smil.mil or hand carried on a CD / DVD to the Trial Judiciary's office.

3.7.4.3.3. Unclassified Notice Required. If the base filing contains classified information (as opposed to classified information in an attachment only), the submitting party must additionally submit to the Chief Clerk an unclassified notice of the filing using the AE

designation assigned to the base filing and an unclassified title. The unclassified title of the classified base filing will be stated as part of the body of the notice. The unclassified notice will be the same as the first pages of the corresponding classified filing for the record of trial. The unclassified notice sent via e-mail on the NIPRNET system will not have classification markings. (See sample pleading at Appendix C.)

3.7.4.3.4. Separate Unclassified Notice Not Required. If the base filing does not contain any classified information, but there is classified information in at least one attachment, an unclassified notice is not required. The unclassified notice requirement in RC 3.7.4.3.3. is fulfilled by the submission and service of the unclassified pleading with any unclassified attachment(s) and the attachment divider page(s) without the classified information to account for the classified attachments to the Chief Clerk and all parties. Court reporters will prepare placeholder pages for the classified attachments.

3.7.4.3.5. Delivery of Classified Filings. Parties desiring to submit a filing with classified information requiring storage in a Sensitive Compartmented Information Facility (SCIF) using a CD / DVD as a storage medium will coordinate with the Chief Clerk concerning the date and time of delivery. The parties will arrive at the facility with the filing at the time prescribed by the Chief Clerk, but not later than 1500 hours (3:00 pm) to allow for the review / acceptance of the filings and the performance of other administrative tasks associated with the proper handling and transfer of classified information.

3.7.4.4. Ex Parte Filings. The filing party must provide a justification for the *ex parte* handling of the filing. The justification will be in a separately numbered paragraph in the body of the proposed *ex parte* filing. The military judge may deny a request for *ex parte* filing and require the party to serve the filing on the opposing party. Regardless, a separate notice of *ex parte* filings must be served on the opposing party. *Ex parte* filings are presumed to be under seal and will be treated accordingly.

3.7.4.4.1. Notice Required. If the base filing contains *ex parte* information (as opposed to *ex parte* information only in an attachment), the party submitting the filing must send the Chief Clerk a notice of an *ex parte* filing using the AE designator assigned to the base filing and a title which does not disclose the *ex parte* information. The notice of an *ex parte* filing will be the first pages of the corresponding *ex parte* filing for the record of trial. (See sample pleading

at Appendix D.)

3.7.4.4.2. Notice Not Required. If the base filing does not contain any *ex parte* information, but there is *ex parte* information in at least one attachment, a separate notice of an *ex parte* filing is not required. The notice requirement in RC 3.7.4.4.1. is fulfilled by the submission and service of the pleading without its *ex parte* attachment(s) behind the attachment divider page(s) to the Chief Clerk and all other parties.

3.7.4.4.3. Banner Marking. If a party desires an attachment to be treated as *ex parte*, the party must banner mark the attachment as such.

3.7.4.5. Sealed Filings. A document sealed by the military judge may not be unsealed except by direction of the military judge or reviewing and appellate authorities when deemed necessary for the proper fulfillment of their duties under the M.C.A. A sealed document may not be disclosed to parties beyond those indicated in the sealing directive.

3.7.4.5.1. A party desiring a pleading be sealed must expressly request such relief in a separately numbered paragraph in the body of the subject pleading in addition to any other requested relief. The party must justify the requested sealing order including establishing the legal basis for it. Failure to request this relief or to justify it may result in the military judge finding no good cause to seal the pleading. Merely including the words “Filed Under Seal” or similar language in the caption of a pleading does not satisfy the requirement of this Rule and does not equate to a judicial sealing order.

3.7.4.5.2. A Draft Sealing Order must accompany the pleading the party desires to be sealed. (See RCs [2.3.3.3.](#) and [3.7.4.1.](#)).

3.7.4.5.3. A notice of a sealed filing must be provided to the Chief Clerk with the submission of the proposed under seal filing following the same construct as provided for classified filings (See RC [3.7.4.3.](#)) and *ex parte* filings (See RC [3.7.4.4.](#)).

3.7.4.6. Third-Party Filings.

3.7.4.6.1. A Third-Party Filing will be considered only when the military judge determines it is appropriate or required to be considered. The Third Party will state its legal standing and the signatory’s qualifications in the overview paragraph.

3.7.4.6.2. The Third Party will comply with RC 3 concerning the mechanics of filing

the pleading (obtaining AE designators, formatting, certificate of service, etc.).

3.7.4.6.3. The Chief Clerk will administratively process the Third-Party Filing as if it were filed by a named party.

3.7.4.6.4. If the military judge determines a Third-Party Filing will be considered, the Chief Clerk will notify the parties via e-mail of the acceptance of the filing.

3.7.4.7. Paper Filings.

3.7.4.7.1. While electronic filing is preferred, filing may be accomplished in paper format in the limited circumstances where an electronic filing (e-mail or CD / DVD) of the document is not possible.

3.7.4.7.2. Filings submitted in paper format must adhere to all other requirements for filing contained in these Rules.

3.7.4.7.3. Before submitting a filing in paper format, the filing party must coordinate with the Chief Clerk. If the filing is accepted in paper format, the submission of an electronic copy to the commission by e-mail or CD / DVD is not required. The filing party must comply with the service requirements of RC [3.7.2.](#)

3.7.5. Withdrawal of Filings.

3.7.5.1. Filing. The original filing party may file a motion requesting withdrawal of a filing.

3.7.5.2. Basis Moot. Should the basis for a motion become moot, the party that originally filed the motion shall, as soon as practicable, inform the commission of the change in circumstances via the filing of a notice pleading. The commission will provide direction thereafter.

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RULE 4

APPEARANCE, PRESENCE, EXCUSAL, RELIEF, AND WITHDRAWAL OF COUNSEL

4.1. Purpose. This rule governs the entry of appearance of counsel and the presence, excusal, relief, and withdrawal of counsel.

4.2. Appearance.

4.2.1. Military Counsel. Upon referral of a case, the lead detailed counsel for each party will provide copies of detailing documents to the Chief Clerk; the Director, Office of Court Administration; and opposing counsel. If opposing counsel is not known, the detailing documents will be provided to the Chief Prosecutor or Chief Defense Counsel, as appropriate. As additional military defense counsel are detailed, they will file their detailing documents with the commission in accordance with RC 3.

4.2.2. General Schedule (GS) / DoD Civilian Defense Counsel. The rules applicable to detailing and appearance of military counsel (RC 4.2.1.) are equally applicable to GS / DoD civilian defense counsel.

4.2.3. Non-GS /non-DoD Civilian Defense Counsel. A non-GS / non-DoD civilian defense counsel will file the form at Appendix E, the notice of appearance and agreement, including Military Commissions Form 9-2, “Affidavit and Agreement by Civilian Defense Counsel,” as part of the filing of detailing documents. Such counsel will have “made an appearance” before the commission when the counsel physically appears before the commission, states the counsel’s qualifications and detailing information on the record and is sworn.

4.2.4. Standby Counsel. If an accused has standby counsel under R.M.C. 506(d)(2), and the accused desires the standby counsel’s presence at counsel table, the accused must inform the military judge either by written motion or orally during a session of the commission.

4.3. Presence of Defense Counsel at Commission Sessions. The following rules govern the presence of defense counsel at commission sessions.

4.3.1. General Rule. Any defense counsel who has entered an appearance in a commission will attend all sessions of that commission either in-person or virtually from the Remote Hearing Room (RHR), unless an exception is granted by the military judge.

4.3.2. Requests for Temporary Absence. Defense counsel who has entered an appearance must request the military judge authorize the counsel's temporary absence from a session of the commission. The request for temporary absence must comply with the following requirements:

4.3.2.1. Timing. Absent exigent circumstances, the request must be made at least 14 calendar days in advance of the hearing or trial from which the counsel requests to be absent;

4.3.2.2. Declaration. The request must state that at least one detailed counsel will be physically present with the accused;

4.3.2.3. Waiver. If the accused consents to the absence, the request must include a written waiver signed by the accused. However, the military judge may permit the accused to make an oral waiver on the record in lieu of a written waiver for good cause shown; and,

4.3.2.4. Good Cause. If the accused objects to the absence, the request must include a statement indicating the objection and an explanation of good cause for the absence, why a continuance is not warranted, and why the accused's right to be adequately represented will not be impaired.

4.3.3. Request for Appearance from the Remote Hearing Room. The Remote Hearing Room (RHR) is a classified video-teleconference center in the National Capital Region. The military judges in the various commissions routinely determine the room is an extension of the well of the courtrooms in the Expeditionary Legal Center (ELC) on-board U.S. Naval Station Guantanamo Bay, Cuba (NSGB). As such, counsel must have the permission of the military judge to appear remotely from the RHR. Requests for permission to appear from the RHR must comply with the requirements of RC 4.3.2. and any case specific Trial Conduct Order.

4.3.4. Revocation of Waiver. If, at any session, the accused seeks to revoke his written or on-the-record waiver of the presence of counsel, that counsel may be required by the military judge to be present at all subsequent sessions of the commission. Alternatively, the counsel may request to withdraw from the case. Any such revocation of waiver by the accused during a given session will not require the counsel's presence during the session at which the revocation of waiver is made.

4.3.5. Leaving the Well of the Courtroom. A counsel who is present for a session of the commission may not leave the well of the courtroom (either the courtroom in the ELC or the

RHR) while the commission is in session without prior permission from the military judge. The requirements of RC 4.3.2. and RC 4.3.3., above, do not apply.

4.4. Excusal, Relief, or Withdrawal of Defense Counsel after Arraignment.

4.4.1. Excusal / Relief / Withdrawal. These terms are defined as the termination of all representational responsibility of a defense counsel who has entered an appearance at a military commission on behalf of an accused.

4.4.2. Written Notice of Termination of Representation is Required. Written notice of such termination will be provided to all parties including the military judge. A defense counsel who has formed an attorney-client relationship with an accused, whether that defense counsel has entered an appearance in a commission or not, will not be excused or permitted to withdraw without the military judge's permission consistent with R.M.C. 505(d)(2)(B).

4.5. Excusal, Relief, or Withdrawal of Government Counsel after Arraignment. The excusal, relief, or withdrawal of a prosecutor is at the discretion of the Chief Prosecutor and will be indicated on the record at the start of a session. At least one qualified and detailed prosecutor must be present at all sessions of the commission.

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RULE 5

FILINGS INVENTORY

5.1. Purpose. This rule establishes:

- (a) The definition of a filings inventory.
- (b) Requirements and formats for the Chief Clerk to maintain a filings inventory.
- (c) Responsibilities for counsel to check the accuracy of a filings inventory when received.

5.2. Definition. The filings inventory is a tracking mechanism in a military commission that lists the filings, including in-court submissions, before the military judge. It is a working document of the military judge and will not become part of the record of trial unless otherwise directed by the military judge. The filings inventory is separate and distinct from filing inventories maintained by the Office of Military Commissions on its public facing website.

5.3. Establishing the Filings Inventory. The Chief Clerk shall establish and maintain a filings inventory for each military commission. The content and format will be established by internal Trial Judiciary policy.

5.4. Distribution of the Filings Inventory. The Chief Clerk will distribute copies of the filings inventory to the Prosecution and Defense on the case via the distribution lists provided pursuant to RC [2.3.2.3](#) (Distribution Lists) and to the Director of Court Administration, Office of Military Commissions. The Chief Clerk's filings inventories are only to be distributed in accordance with this Rule or the direction of the military judge.

5.5. Counsels' Responsibility. The filings inventory is one method by which counsel can determine which filings have been received by the military judge. If a filing is not listed in the filings inventory, it may not be before the military judge for consideration or decision. If a party believes it has submitted a filing not reflected on the filings inventory, the party should inform the Chief Clerk and opposing counsel of the discrepancy.

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RULE 6

PUBLIC ACCESS

6.1. Judicial Policy. The rights of all parties will be protected while affording public access and adhering to the requirements of national security. Consistent with these responsibilities and competing interests, the military judge will ensure all commissions proceedings are as open and transparent as possible.

6.2. Public Access.

6.2.1. Decorum. Within limitations imposed by the DoD, the media and the public are welcome to attend commissions proceedings and shall be permitted to observe all proceedings unless the military judge determines the courtroom must be closed pursuant to applicable law. No one will be permitted to disrupt the dignified, formal atmosphere of a commission. Office of Military Commissions provided escorts, Public Affairs personnel, the Guard Force, and bailiffs will ensure that spectators are aware of, and adhere to, proper decorum throughout the proceedings.

6.2.2. Non-Interference with Proceedings. Unless otherwise directed by the military judge, or security requirements mandate, spectators may enter and leave the gallery of the courtroom during open sessions, so long as their conduct does not disturb or interrupt commission proceedings. Spectators shall refrain from indicating agreement or disagreement with testimony or procedures at a trial; wearing attire which detracts from the dignity of the proceedings; creating a disruption; or prejudicing the rights of any party. Any spectator who disrupts the commission or fails to demonstrate appropriate demeanor for a judicial proceeding may be excluded from the gallery of the courtroom.

6.2.3. Broadcast. R.M.C 806(c) does not allow commission proceedings to be broadcast, televised, recorded, or photographed for the purpose of public dissemination. However, contemporaneous closed-circuit television or audio transmissions are authorized under the provisions of R.M.C 806(c) for all proceedings subject to the provisions set out below. This will permit viewing and hearing by spectators when courtroom facilities are inadequate to accommodate a reasonable number of spectators.

6.2.3.1. Motion for Appropriate Relief. If contemporaneous video or audio

transmissions are anticipated, the Prosecution will file a motion requesting authorization for these transmissions to occur.

6.2.3.2. Security. The Prosecution's motion will list the locations to which the transmissions will be made and the security procedures at each location to ensure compliance with these Rules and any directives of the military judge.

6.2.3.3. Notice on the Record. If the military judge grants the motion and the Government uses such remote transmissions at a commission session, the Prosecution will state on the record at the start of the session that the proceedings are being remotely transmitted, the means of the transmission, and the locations receiving the transmission.

6.2.3.4. Sequestration. The Prosecution will ensure no potential witness observes the trial from a remote location unless the Prosecution notifies the military judge of that witness's potential observation in accordance with R.T.M.C. para. 16-4.b.4. If a potential witness inadvertently observes trial proceedings, the Prosecution will promptly notify the military judge and the other parties.

6.2.4. Presence in the Well. No one other than a trial participant identified on the record, the Chief Prosecutor or his / her designee and Chief Defense Counsel for Military Commissions or his / her designee, court personnel, or security personnel are allowed inside the well of the courtroom without the military judge's permission when a commission is in session. The military judge has the discretion to deny access to the well of the courtroom to any of the above-listed personnel (other than detailed or retained counsel or the accused); unless the military judge has excluded them from commission proceedings in accordance with R.M.C. 806, those personnel may observe the proceedings from the spectator gallery, if space is available, or other authorized public viewing sites.

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RULE 7

COURTROOM TECHNOLOGY AND DIGITAL EVIDENCE

7.1. Definitions.

7.1.1. Digital Evidence: Any form of graphic or other data, any still image or picture, any moving image or picture, any sound, or any combination of these media, which is presented to a commission through courtroom technology.

7.1.2. Courtroom Technology: Includes, but is not limited to, an electronic device, such as an image projector, a speaker, a “speaker-phone” telephone, or a video monitor combined with a computer, VCR, CD / DVD, or other electronic media player, including VTC transmissions and computers employing similar software, or analogous items designed to convey digital evidence to the commission. The military judge may designate novel media or other technology not specifically contemplated by this rule as “courtroom technology” for the purposes of applying this Rule.

7.2. General Rule.

7.2.1. Counsel Responsibility. Counsel are responsible for ensuring any courtroom technology they plan to use meets all security requirements mandated by the location where the technology will be used and the classification level of information to be conveyed to a commission.

7.2.2. Approval. Use of courtroom technology is within the discretion of the military judge to permit, consistent with applicable authority.

7.2.3. Delay. A session will not be delayed or otherwise interrupted by virtue of the unavailability of courtroom technology due to a party’s failure to plan for its usage.

7.2.4. Display. Counsel may not display digital evidence to panel members that has not previously been admitted into evidence, unless the military judge rules otherwise.

7.2.5. Security Review of Digital Evidence.

7.2.5.1. Classification Review. Any digital evidence that a party intends to use in open court (i.e., with spectators present in the gallery or observing remotely) must undergo the standard classification review by all Original Classification Authorities (OCA) with equities

implicated before it is publicly displayed. The party is responsible for submitting the digital evidence for review.

7.2.5.2. First Submission to CISO. The party will provide the digital evidence to the Court Information Security Officer (CISO) in accordance with the following requirements and not less than five business days prior to the military judge's travel to NSGB for the hearing in the case in which the item is to be displayed. If the information submitted for review is voluminous (i.e., more than 100 pages), additional time may be required for the OCAs to conduct their reviews.

7.2.5.2.1. Submissions to the CISOs will be on CD or DVD. To facilitate the review process by multiple OCAs, three copies of the CD or DVD will be provided. Files included on the CD or DVD will be marked with the following naming convention: [Case]-[Party]-[AE, PE, or DE designator]-Exhibit number / Witness name or number (example: "Smith-Defense-AE 200-Exhibit 1" or "Jones-Prosecution-Joe Doe-Exhibit 1").

7.2.5.2.2. The party will provide a spreadsheet listing the contents of the disk to include the following information (at a minimum): exhibit number (AE, PE, or DE), file name, page count, whether the item/document had been previously submitted for classification review, and if so under what exhibit number/file name. A copy of the spreadsheet will be saved to each disk.

7.2.5.3. Late Submission to CISO. If after arriving at NSGB, a party newly discovers that it will be necessary to display digital evidence in open court, the party will immediately notify the CISO of the new requirement. This notice can be accomplished in person or by e-mail. An in-person notification will be followed by an e-mail notification within 24 hours. The party will submit the item to the CISO no less than 48 hours prior to the proposed usage. The party will follow the established naming requirements of RC 7.2.5.2.1. and 7.2.5.2.2. above.

7.2.5.4. Exceptions to the RC 7.2.5.1. Classification Review Process. The following digital evidence is exempt from the standard classification review outlined in RC 7.2.5.1.:

7.2.5.4.1. Documents produced by the Prosecution in discovery marked UNCLASSIFIED or UNCLASSIFIED//FOR OFFICIAL USE ONLY or CUI. No additional handling restrictions (such as "Law Enforcement Sensitive" or "Not Releasable to Detainee or

Public”) or ambiguous markings may be present. Documents using this exemption must be an original or exact replica of that produced by the Prosecution, with no additional information added to the document, and must include the Bates Stamp number for the discovery.

7.2.5.4.2. Documents clearly marked UNCLASSIFIED after official Freedom of Information Act (“FOIA”) release. Documents using this exemption must be an original or exact replica of that produced under FOIA, with no additional information added to the document, and must include any native FOIA tracking stamps. Information within the item may be highlighted for emphasis.

7.2.5.4.3. Documents clearly marked UNCLASSIFIED after official release pursuant to Executive Order (EO) 14040, “Declassification Reviews of Certain Documents Concerning the Terrorist Attacks of September 2001,” (3 September 2021). Documents using this exemption must be an original or exact replica of that produced under FOIA, with no additional information added to the document, and must include any native tracking stamps pursuant to EO 14040. Information within the item may be highlighted for emphasis.

7.2.5.4.4. Legal opinions from United States Federal and State Courts or Executive Branch Agencies published by an official case law reporter. Information within the item may be highlighted for emphasis.

7.2.5.4.5. The Constitution, statutes, treaties, regulations, and presidential executive orders of the United States.

7.2.5.5. Submission to CISO on the Day of Display. No later than one hour prior to the scheduled start of a session on the day it will be displayed, the displaying party will provide the CISO a second copy of the digital evidence intended to be used (whether pursuant to RC [7.2.5.1.](#) or RC [7.2.5.4.](#)) to ensure the material remains unchanged from what was submitted for review and approved for use.

7.3. Pre-Trial Requirements.

7.3.1. Notice.

7.3.1.1. To ensure facilities and equipment are available, counsel shall provide an e-mail notice of intent to use courtroom technology to the Office of Military Commissions–South (OMC-S) Courtroom Technology section at: osd.pentagon.OMC.list.omc-south-av@mail.mil. A

copy of the notice will also be sent to all other parties. The notice does not need to conform to the requirements of RC 3. The Chief Clerk does not need to receive this e-mail. The e-mail shall generally describe the technology and purpose desired for use (e.g., electronic media to display evidence, the presentation of remote live testimony, etc.). No further elaboration is necessary in the e-mail. The e-mail should be sent with sufficient time for the OMC-S Courtroom Technology section to acquire any specialized equipment from vendors based in the continental United States.

7.3.1.2. The e-mail shall indicate whether any of the digital evidence is classified or otherwise protected.

7.3.1.3. Pretrial notice is not required for the use of courtroom technology for impeachment or in rebuttal; however, if notice of such an intention is not provided, counsel risk unavailability of necessary facilities, equipment, or access to remote witnesses.

7.3.1.4. The notice requirement above does not create any new substantive right of discovery of the content of any digital evidence beyond those rights provided in the rules governing discovery.

7.3.2. Disclosure.

7.3.2.1. Discussion of Proposed Use. Where a party has provided notice of intent to use courtroom technology before panel members, the military judge may require counsel to discuss the proposed use at an R.M.C. 802 pre-trial conference, in a filing, or in open or closed session.

7.3.2.1.1. The military judge may set the date on which disclosure to the commission and / or to other parties of digital evidence and use of courtroom technology is required.

7.3.2.1.2. The military judge may allow different disclosure dates for different uses of courtroom technology and may direct descriptions or summaries of digital evidence be disclosed in lieu of the actual evidence to protect the value of the presentation. For example, the nature and origin of material to be introduced into evidence and published via courtroom technology may be required to be disclosed, if necessary, sufficiently in advance of trial to dispose of any objections or to provide any needed safeguards, such as for the use of classified information.

7.3.2.2. Opening Statement, Closing Argument, or Sentencing Argument. If courtroom technology is intended for use in an opening statement, closing argument, or

sentencing argument, the military judge may require counsel to discuss such use at an R.M.C. 802 conference, in a filing, or in open or closed session.

7.3.2.2.1. Counsel are highly encouraged to disclose the content of digital evidence to the other parties. This will minimize the potential for objections that would interrupt the presentation of counsel.

7.3.2.2.2. The military judge may require the displaying party to disclose the nature and contents of digital evidence to the military judge and other parties as necessary.

7.3.3. Remote Live Testimony.

7.3.3.1. To use remote live testimony, a party must provide notice to the other parties and the military judge using the procedures set forth in RCs 2 and 3. Remote live testimony includes, but is not limited to, testimony by VTC, closed-circuit television, telephone, or other similar technology.

7.3.3.2. A party requesting the use of remote live testimony during its presentation of evidence or argument must submit a written motion, at the time required by the military judge, setting forth the justification for its use and the methods that will be used to ensure the remote live testimony can be properly recorded by the court reporters.

7.3.3.3. A party requesting remote live testimony must annotate its witness list to indicate the witnesses that are expected to testify remotely and the method of courtroom technology to be used.

7.4. Trial Procedure.

7.4.1. Admitting Evidence.

7.4.1.1. Loading Media.

7.4.1.1.1. Counsel should not pre-load any media into courtroom technology until a security review of the information to be displayed has been accomplished consistent with RC [7.2.5.](#)

7.4.1.1.2. Classified information may ONLY be loaded and displayed on courtroom technology previously cleared to contain and display such items. Permission to use such devices must be obtained from the appropriate information technology and security officials prior to the

hearing.

7.4.1.2. Displaying Unadmitted Digital Evidence to a Witness. When a witness must view digital evidence, but the evidence has not been admitted for substantive use, the examining party must request the military judge's permission to activate only the witness's monitor. When counsel is finished with the exhibit, counsel must turn off the witness monitor and orally inform the military judge.

7.4.1.3. Offering / Admitting Digital Evidence. For audio and video evidence, the proponent party will indicate, in writing or orally on the record, the relevant time hacks for the commission's consideration. The military judge may require the proponent to indicate the time hacks, on the document discussed in RC 7.5.1., below. Counsel should be prepared to discuss the procedures for the use of digital evidence or courtroom technology at an R.M.C. 802 conference prior to the hearing, in a filing, or in open or closed session.

7.4.2. Publishing Admitted Evidence. Counsel may not operate the electronic media control panel to activate the monitors of the panel members without the military judge's permission.

7.4.2.1. Counsel will obtain the military judge's permission to publish any exhibit to the panel members.

7.4.2.2. Generally, counsel will only publish one exhibit to the panel members at a time.

7.4.2.3. If a series of exhibits are being published, counsel may request to publish / display the series rather than seeking permission for each item individually.

7.4.3. Remote Live Testimony.

7.4.3.1. Before beginning any remote live testimony, the proponent party shall request a recess during which time the remote witness will be properly placed before the remote camera or telephone for a sound check. The receiving monitor will then be turned off or the telephone placed on "hold." Once the panel members are present, the proponent should request to call the witness for remote live testimony. Upon receiving permission, the proponent may activate the receiving monitor or telephone, and the remote witness will be sworn and testify.

7.4.3.2. If technical problems are encountered, such as loss of the phone connection or other transmission signal, the proponent party must request a recess to resolve the problem.

7.5. Preservation of Evidence for the Record.

7.5.1. Evidence in Electronic Format. Evidence submitted electronically must be in a printable format when possible and marked as an exhibit as appropriate (Prosecution or Defense) to facilitate inclusion in the record of trial. When evidence is not printable (i.e., audio and video files), the physical container for the digital files (e.g., CD, DVD, etc.) must be placed in a protective sleeve and affixed to an 8.5” x 11” plain white bond paper for inclusion in the record of trial. Both the CD / DVD and the paper to which it is affixed will be marked with the same exhibit designator(s). The CD / DVD will contain a table of contents listing the digital files on the CD / DVD by AE, DE, or PE designator and file name as required in [RC 3.7.1.3](#). A copy of the table of contents will be attached to the piece of paper to which the CD / DVD sleeve is affixed.

7.5.2. Physical, Non-Documentary Evidence. When items of physical, non-documentary evidence are published to the panel members through courtroom technology, proponent counsel must move to substitute a photograph, i.e., the source of the projected image, in lieu of the actual physical, non-documentary evidence in the record of trial.

7.5.3. Annotations to an Exhibit.

7.5.3.1. Oral Descriptions. All annotations made to an exhibit by a witness using the touch-screen monitor should be clearly described for the record by the witness or counsel. If a witness uses multiple colors, print fonts, symbols, or the like to annotate a document, an oral description of each convention used must be provided by the witness or counsel.

7.5.3.2. Annotated Exhibits.

7.5.3.2.1. New Exhibit. Whenever a witness uses the touch screen monitor to make annotations on a previously admitted exhibit, the annotations shall be saved as a new exhibit on the court reporter’s computer system and marked as a separate exhibit for identification. This will be included in the record of trial.

7.5.3.2.2. Corrections. A witness may not erase or delete annotations once they are made without the military judge’s permission. If a witness needs to correct an annotation, counsel shall first request permission of the military judge, so the record properly reflects the change.

7.5.3.2.3. Proponent Request. Upon admission into evidence by the military judge,

the proponent counsel shall request the electronic media exhibit be saved on the court reporter's computer system as annotated and marked with the appropriate exhibit designator for inclusion in the record of trial.

7.5.3.3. “Clear All” Function. When counsel has completed questioning a witness using courtroom technology, counsel must request permission to verify with the court reporter that all witness annotations on the touch screen have been preserved for the record. Upon such confirmation by the court reporter, counsel must then request permission from the military judge to activate the “clear all” function. Only the military judge may authorize counsel to activate the “clear all” button to remove markings from the touch-screen monitor. Court reporters will maintain backups of all screen snapshots to ensure files containing exhibits are not accidentally deleted.

7.5.4. Digital Evidence in Deliberations. When the panel members retire to deliberate, a printed copy of all previously admitted and published exhibits will ordinarily be provided to the president of the panel to take into the deliberation room. If an original exhibit was admitted electronically, the printed copy shall be an exact duplicate of the original, including color. Counsel will ensure the panel members have the equipment in the deliberation room to view / listen to the evidence. A stand-alone laptop must be wiped of all other irrelevant documents / files. If the panel members are required to do more than double-click on a file on the computing device's desktop in order to view / listen to the evidence, counsel will provide written instructions on how to access the evidence on the computing device (e.g., double-click on the desktop folder labeled “X,” then double-click on the subfolder labeled “Y,” then double click on the file labeled “Z”). These instructions should be included on the document indicated in RC [7.5.1.](#), above. In any instance, OMC-S Courtroom Technology section will have a technician available to assist panel members in viewing or listening to the digital evidence.

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RULE 8

AMICUS CURIAE BRIEFS

8.1. Purpose. This rule establishes general procedures for submitting an *amicus curiae* brief. An *amicus* brief, which addresses an important matter not previously considered by a commission or addresses an important matter in a way another brief filed with a commission does not, may be of benefit to and may be requested of or permitted by the military judge. The military judge is not bound to consider *amicus* briefs. An *amicus curiae* briefer is different from a Third-Party Filer. (See RC [3.3.1.9](#).)

8.2. Submitting Briefs. A person, individually or on behalf of an organization or entity, may provide an *amicus* brief to the Chief Clerk. The person submitting the brief must obtain an AE designation in accordance with RC 3, file a Motion for Leave to File an *Amicus* Brief, and receive permission from the military judge prior to filing.

8.3. Qualifications of *Amicus*. The person submitting the brief must meet the following qualifications and shall state such qualifications in the first paragraph of the brief.

8.3.1. The submitter is an attorney who is licensed to practice before the highest court of any State or Territory of the United States or the District of Columbia;

8.3.2. If the submitter is a party to any other commission case in any capacity or has an attorney-client relationship with any person whose case has been referred to a military commission, or serves as counsel in habeas proceedings for any detainee, the submitter must so state and further state the submission is only to be considered for its value as an *amicus* brief and not for any other purpose to include as a brief on behalf of any specific party to any commission proceeding; and

8.3.3. The submitter certifies, by submitting the brief, that the submitter believes in good faith, as a licensed attorney, that the law is accurately stated, has read and verified the accuracy of all points of law cited in the brief, and is not aware of any contrary authority not cited in the brief or not substantially addressed by the contrary authority cited in the brief.

8.4. Format. *Amicus* briefs must comply with the formatting rules in RC 3 and Appendix A.

8.5. Action by the Chief Clerk. When received, the Chief Clerk will process the brief in

accordance with RC 3.

8.6. Consideration of *Amicus* Briefs.

8.6.1. The commission may consider an *amicus* brief tendered if:

(a) A filing (motion, response, or reply) by a party cites and endorses an *amicus* brief, and a copy of the brief is appended to the filing;

(b) The *amicus* brief cited is relevant to the issues being asserted in the filing; and,

(c) The *amicus* brief, the certification, and its manner of submission meet the criteria in RCs 8.2, 8.3., and 8.5.

8.6.2. The commission may consider an *amicus* brief *sua sponte* in the interests of justice regardless of the provisions of RC 8.6.1.

8.7. Other Matters.

8.7.1. A party may not argue an *amicus* brief before the military judge without specific, prior leave from the military judge. However, any party may invite the attention of the military judge to an *amicus* brief cited in the party's pleading or in oral argument when such argument is permitted.

8.7.2. Generally, a scheduled hearing or the disposition of a case will not be delayed pending action on a Motion for Leave to File an *Amicus* Brief or a motion of *amicus curiae* to participate in a hearing, or to await the filing of an *amicus curiae* brief.

8.8. Public Access. *Amicus* briefs, to include responses from the parties, will be released to the public, subject to any administrative requirements imposed by DoD for security review, unless otherwise prohibited by the military judge. (See RC [3.2.](#) and [3.3.4.](#))

8.9. Time Frame Exceptions.

8.9.1. If an *amicus* brief has been made available as provided in RC 8.2., after a party has filed a motion, response, or reply on the same or a substantially similar issue, and before the military judge has issued a ruling on the record or in writing, a party may request the military judge consider the *amicus* brief by:

(a) Requesting in a supplemental pleading that the military judge consider the brief; and,

(b) Stating those matters raised in the *amicus* brief that were not considered or known before all filings were due.

8.9.2. If the commission agrees to consider the brief, the military judge may allow the other parties to file a response. Generally, no reply to that response will be permitted. No adverse inferences will be drawn from an election by other parties not to respond to an *amicus* brief.

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RULE 9

MILITARY COMMISSION BAILIFFS

9.1. Purpose. This Rule sets out the duties and responsibilities for bailiffs supporting the military commissions at NSGB. The U.S. Government is responsible for providing bailiff support.

9.2. Assignment, Uniform, and General Duties.

9.2.1. The bailiff works at the direction of the military judge to ensure the orderly conduct of a military commission. When a commission is in session, the bailiff will perform tasks assigned by the military judge or the Trial Judiciary staff. When a commission is not in session, supervision of the bailiff reverts to the parent unit.

9.2.2. Bailiffs will be enlisted members, in the grade of E-4 or above, of any armed force.

9.2.3. Bailiffs will wear the duty uniform of their Service. They will not carry side-arms.

9.2.4. When a commission is in session, the bailiff's place of duty is inside the courtroom unless the military judge directs the bailiff to leave the courtroom to perform other duties. When the panel members are in deliberations, the bailiff will remain near the deliberation room controlling access to and from the deliberation room. The Trial Judiciary staff will ensure the bailiff is provided an access roster for the deliberation room.

9.2.5. Bailiffs will report to the judicial chambers, in proper uniform, at the time prescribed by the Trial Judiciary staff.

9.2.6. Questions about the bailiff's duties will be directed to the Trial Judiciary staff.

9.2.7. Any time witnesses are expected to testify during a session or when panel members are present, two bailiffs will be used.

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RULE 10

COURT INFORMATION SECURITY OFFICER

10.1. Purpose. This rule sets out the functions and responsibilities of the CISO.

10.2. Supervision and Function. The CISO is supervised by the Trial Judiciary Staff Director.

10.2.1. The CISO is the principal information security advisor to the Chief Trial Judge, to the Trial Judiciary Staff Director, and to the detailed military judges.

10.2.2. The CISO provides expertise in advising military judges on protective orders, procedures for using classified evidence in trial proceedings, and all other relevant issues concerning information security presented to the military judge for determination. The *ex parte* prohibition contained in RC [2.2](#), applies to communications with CISOs.

10.2.3. The CISO serves as primary information security liaison between the Trial Judiciary and the Office of Military Commissions, the DoD, and other federal law enforcement and intelligence entities on all security matters within the limitations on *ex parte* communications.

10.3. Tasks. Under the direction of the Trial Judiciary Staff Director, the CISO will:

(a) Develop, implement, and oversee the policies, instructions, procedures, control systems, and methods for classification and declassification review for all rulings and orders.

(b) Ensure military judges and the Trial Judiciary staff comply with personnel access to controlled areas and “need to know” criteria.

(c) Ensure the transmittal, transfer, reproduction, and destruction of classified materials is accomplished in accordance with established regulations.

(d) Ensure all material the parties intend to introduce / display in the courtroom, and to authorized extensions of the courtroom, has undergone appropriate reviews by the Original Classification Authorities prior to the materials being introduced / displayed in accordance with RC [7.2.5](#), *et. seq.*

(e) Coordinate the approval of access of trial participants and others into the well of the courtroom both in the ELC and in the RHR when the RHR is designated by the military judge as an extension of the well of the ELC courtroom.

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RULE 11

PAYMENT OF LEARNED COUNSEL

11.1. Purpose. In a military commission referred as a capital case, paragraph 9-1.a.6.G. of the R.T.M.C. requires the military judge to review the hours and fees of learned counsel before payment by the Convening Authority. This rule establishes procedures to accomplish this task.

11.2. Authorization for Payment. Prior to or simultaneous with the submission of Learned Counsel's first request for payment, the Learned Counsel will submit a statement signed by the Convening Authority indicating when payment is authorized to begin using funds approved for this purpose. This submission will be e-mailed to the Trial Judiciary staff at:
osd.pentagon.OMC.list.tj-lrned-cnsl-vouchers@mail.mil.

11.3. Payment Requests. Payment requests submitted for review by a military judge must be accompanied by:

11.3.1. Completed copies of the forms at Appendix F; and,

11.3.2. An affidavit or sworn statement by a detailed military defense counsel who has appeared before the commission setting forth that he / she has reviewed the hours and expenses submitted, and that in his / her professional estimation they are correct, proper, and are necessary to the defense of the client. If the Detailed Military Defense Counsel has not had the opportunity to appear before the commission, a statement from the Chief Defense Counsel or the Deputy Chief Defense Counsel explaining when Detailed Military Defense Counsel will appear will accompany the forms at Appendix F.

11.4. Submission. Requests for review will be submitted, with required documentation, to the Trial Judiciary staff at the email address in RC 11.2.

11.5. Validation and Documentation. The military judge may validate the voucher based upon submitted documentation and the representations of Learned Counsel and detailed military defense counsel. The military judge may require additional documentation.

11.6. Payment. The military judge will forward the review of the request for payment to the Convening Authority, Office of Military Commissions, for payment under the terms of the agreement or contract the Convening Authority executed with the Learned Counsel.

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APPENDIX A

UNITED STATES OF AMERICA v. [Name of Accused] [aka if any; not required]	AE 123 Defense / Government Motion [for Appropriate Relief] [to Dismiss] [in Limine] (Relief Requested in Motion) [Do not use ALL CAPS in the caption; Capitalize the first Letter of all Nouns and Verbs] [Date motion filed]
---	---

- 1. Relief Sought.** Include a concise statement of the relief sought; alternative relief may be requested. Each motion will only address a single legal wrong for which the party requests relief.
- 2. Summary.** Include a brief summary of the legal issues and justification for the relief [and justification for *ex parte* and / or under seal filing if applicable].
- 3. Issues Presented.** If the motion requires the military judge to decide more than one legal issue to determine whether the requested relief is warranted, it may be helpful to list the issues presented in the order the military judge must address them.
- 4. Burden of Proof.**
- 5. Facts.**
 - a. Facts must be supported by evidence, not merely the assertions of counsel.
 - b. Facts should be limited to those that are necessary to resolve the legal issues.
 - c. Facts should be accompanied by cross-references to submitted evidence or expected testimony.
- 6. Law and Argument.**
- 7. Conclusion.**
- 8. Oral Argument.** The [Government / Defense] [does / does not] request oral argument. If a party requests oral argument, it must explain why oral argument would be helpful to the military judge.

APPENDIX A

9. Supporting Evidence.

a. Witnesses. List witnesses along with their contact information and a synopsis of their expected testimony relevant to the motion. Listing a witness is not a request for the witness. Defense requests for production of witnesses must be made separately in accordance with R.M.C. 703.

b. Documentary Evidence. The list of evidence does not constitute a discovery or production request, which must be made separately in accordance with R.M.C. 701 or 703, as appropriate.

10. Certificate of Conference. (Unless an *ex parte* motion.)

The [Government / Defense] has conferred with the [Defense / Government] concerning this motion, as set forth in greater detail above. The [Defense / Government] [does / does not] oppose this motion. (See RC [3.3.2](#) and [3.6.7](#).)

11. List of attachments. (See RC [3.6.9](#).)

- a. Certificate of Service, dated 3 April 2025. (See RC [3.3.3](#) and [3.6.6](#).)
- b. [Government / Defense] Request for [Discovery / Funding], dated 28 March 2025.
- c. Draft Order. (See RC [2.3.3.3](#) and [3.7.4.1](#).)

Respectfully submitted,

//s//

Signature Blocks of Counsel(S) of Record with
//s// or other representation of a Signature

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APPENDIX B

UNITED STATES OF AMERICA	AE 123B
v.	Defense / Government Reply to
[Name of Accused]	Government / Defense Response to AE 123
	(Original Motion Caption)
[aka if any; not required]	[Date reply filed]

1. Summary. (If helpful.)

2. Replies.

- a. In separately numbered paragraphs, address the response as needed.
- b. When referring to the response, identify the paragraph in the response being addressed.

3. Law and Argument. Add citations to additional authority or address the legal authority included in the response as necessary.

4. Additional Supporting Evidence.

- a. Witnesses. The rules contained in Appendix A pertaining to witnesses apply here.
- b. Documentary Evidence. The rules contained in Appendix A apply here.

5. Conclusion. (If helpful.)

6. Attachments. (See RC [3.6.9.](#))

- a. Certificate of Service, dated 3 April 2025. (See RC [3.3.3.](#) and [3.6.6.](#))
- b. [Defense / Government] Response to Request for [Discovery / Funding], dated 28 March 2025.
- c. Additional Documentation.

Respectfully submitted,

//s//

Signature Block of Counsel on Record
with //s// or other mark of a Signature

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APPENDIX C

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>[Name of Accused] [AKA if any, not required]</p>	<p>AE __</p> <p>DEFENSE / GOVERNMENT</p> <p>Notice to Defense / Government and Commission of a Classified Filing</p> <p>[Date Filed]</p>
---	---

1. [Name filing party] has filed a classified filing with the Chief Clerk of the Military Commissions Trial Judiciary and other part(y)(ies) of record. This notice is filed in accordance with RC [3.7.4.3.3.](#)

2. List of Attachments:

A. Certificate of Service

//s//
NAME
Rank, Branch (if applicable)
Learned Counsel

//s//
NAME
Rank, Branch (if applicable)
Detailed Government/Defense Counsel

ATTACHMENT A

APPENDIX C

CERTIFICATE OF SERVICE

I certify that on the [date filed], I filed AE __ [name of filing], with the Office of Military Commissions Trial Judiciary and served a copy on counsel of record.

//s//

SIGNATURE BLOCK OF COUNSEL(S)
OF THE RECORD

APPENDIX C

CLASSIFICATION MARKING

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA v. [Name of Accused] [AKA if any, not required]	AE — DEFENSE / GOVERNMENT Name of Classified Filing [Date Filed]
---	---

1. **Timeliness.** *See* APPENDIX A.
2. **Relief Sought.** *See* APPENDIX A.
3. **Burden of Proof.** *See* APPENDIX A.
4. **Facts.** *See* APPENDIX A.
5. **Law and Argument.** *See* APPENDIX A.
6. **Oral Argument.** *See* APPENDIX A.
7. **Witness and Evidence.** *See* APPENDIX A.
8. **Certification of Conference.** *See* APPENDIX A.
9. **Attachments.** *See* APPENDIX A. Additionally, if an attachment contains classified information the level of classification (C, S, TS, TS/SCI, TS/SCI/SAP) will be annotated at the end of the title of the attachment in the list of attachments. (*See* RC [3.6.2.](#))
10. **Certificate of Service.** *See* APPENDIX A.
11. **Proposed Order.** *See* APPENDIX A.

[Classification
Authority Block]

[Footer:] p. 1 of 4
CLASSIFICATION MARKING

APPENDIX C

CLASSIFICATION MARKING

12. **Formatting.** Pleadings and any attachments will adhere to RC [3.6](#). A classified filing will be marked appropriately (i.e., CAB, banner marking, and portion marking) in accordance with RC [4.3](#).

//s//

NAME

Rank, Branch (if applicable)

Learned Counsel

//s//

NAME

Rank, Branch (if applicable)

Detailed Government/Defense Counsel

[Footer:] p. 2 of 4

CLASSIFICATION MARKING

APPENDIX C

CLASSIFICATION MARKING

ATTACHMENT A

[Footer:] p. 3 of 4

CLASSIFICATION MARKING

APPENDIX C

CLASSIFICATION MARKING

CERTIFICATE OF SERVICE

I certify that on the [date filed], I filed AE __ [name of filing], with the Office of Military Commissions Trial Judiciary and served a copy on counsel of record.

//s//

SIGNATURE BLOCK OF COUNSEL(S)
OF THE RECORD

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CLASSIFICATION MARKING

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APPENDIX D

UNITED STATES OF AMERICA v. [Name of Accused] [aka if any; not required]	AE ____ NOTICE OF <i>EX PARTE</i> / UNDER SEAL FILING [Date Filed]
--	---

1. This placeholder serves as a notice that [Defendant Name] filed AE ____ (Team Name), Notice of *Ex Parte* and *Under Seal* filing with the Trial Judiciary on [date]. (See RC [3.7.4.4.1](#) concerning including the actual title of the underlying motion in the body of the notice.)

2. Attachments:

A. Certificate of Service (1 page).

3. Signatures:

//s//

[Attorney Name]
Learned Counsel

Counsel for (Accused Name)

//s// (if applicable)

[Attorney Name]
Defense Counsel

ATTACHMENT A

APPENDIX D

CERTIFICATE OF SERVICE

I certify that on [date], I electronically filed, via email [or hand delivery], the attached AE ____
(Team Name), Notice of *Ex Parte* and *Under Seal* Filing, with the Trial Judiciary and served a
placeholder to all parties.

//s//

[Attorney Name]
Learned Counsel

APPENDIX D

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>[Name of Accused]</p> <p>[AKA if any, not required]</p>	<p>AE —</p> <p><i>Ex Parte / Under Seal</i></p> <p>DEFENSE / GOVERNMENT</p> <p>Title of Filing</p> <p>[Date Filed]</p>
--	--

1. **Timeliness.** A statement indicating whether the pleading is timely filed within any timeframes established by the Military Judge, the R.M.C., the Military Commission Rules of Evidence (M.C.R.E.), or the Rules of Court (R.C.). (See R.C. [3.4.](#) and [3.5.](#)).
2. **Justification for *Ex Parte* Submission:** This notice is submitted by lead counsel for [Team Name] pursuant to [state reason for *Ex Parte* submission]. (See RC [3.7.4.4.](#))
3. For the remainder of the filing, follow filing and formatting rules of RC 3. A Certificate of Conference is not required in motions filed *ex parte* or under seal. See RC [3.6.7.](#)
4. **Attachments.** (See RC [3.6.2.](#))
 - A. Certificate of Service
 - B. [If applicable]

Very respectfully,

//s//

[Attorney Name]

Rank, Branch (if applicable)

Learned Counsel

//s//

[Attorney Name]

NAME

Rank, Branch (if applicable)

Detailed Government/Defense Counsel

ATTACHMENT A

APPENDIX D

CERTIFICATE OF SERVICE

I certify that on the [date filed], I electronically filed AE __ [Team Name], with the Clerk of the Court, Trial Judiciary and served a copy on counsel of record.

//s//

SIGNATURE BLOCK OF COUNSEL(S)
OF THE RECORD
Learned Counsel

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APPENDIX E

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>NAME OF ACCUSED</p>	<p>AE ____</p> <p>Civilian Defense Counsel</p> <p>Notice of Appearance and Agreement</p> <p>(Date)</p>
---	---

1. Pursuant to procedures of court / instruction for counsel, I, ATTORNEY'S FULL NAME, hereby provide notice to the Military Judge of my appearance on behalf of CLIENT'S FULL NAME.

2. My office address, phone numbers, and E-mail address are:

ADDRESS

VOICE AND FAX PHONE NUMBERS E-MAIL ADDRESS.

3. I am an active member in good standing licensed to practice in the following jurisdictions:

LIST BAR ADMISSIONS.

4. I have attached MC Form 9-2, Affidavit and Agreement by Civilian Defense Counsel.

5. Attachment:

A. MC Form 9-2. (*See* Figure 9.2, Regulation for Trial by Military Commissions).

//s//

Signature Block

Office Address E-mail Address Phone Number

ATTACHMENT A

APPENDIX E

AFFIDAVIT AND AGREEMENT BY CIVILIAN DEFENSE COUNSEL

Pursuant to the Military Commissions Act of 2009, Pub. L. No. 111-84, *codified in part at* 10 U.S.C. §§ 948a– 950t, the Manual for Military Commissions promulgated May 2, 2019 and Chapter 9 of the Regulation for Trial by Military Commission (2011 Edition with 2016 change to Chapter 9), I, [Name of Civilian Attorney], make this Affidavit and Agreement for the purposes of applying for qualification as a member of the pool of civilian defense counsel available to represent the Accused before military commissions and serving in that capacity.

I. Oaths or Affirmations. I swear or affirm that the following information is true to the best of my knowledge and belief:

A. I have read and understand the Secretary’s Manual for Military Commissions, and all other Military Commissions Regulations, Orders, Instructions and Directives applicable to trial by military commissions. I will read all amendments, rescissions, or promulgations pertinent to the aforementioned.

B. I am aware that my qualification as a civilian defense counsel does not guarantee my access to any information subject to the national security privilege under 10 U.S.C. §§ 949p-1–949p-7.

II. Agreements. I hereby agree to comply with all applicable regulations and rules for counsel, including any rules of court governing proceedings and any protective orders, and specifically agree, without limitation, to the following:

A. I will notify the Chief Defense Counsel and, as applicable, the relevant military judge immediately if, after the execution of this Affidavit and Agreement but prior to the conclusion of proceedings (defined as the review and final decision of the Court of Military Commission Review), there is any material change in any of the information provided in my application, including this Affidavit and Agreement, for qualification as member of the civilian defense counsel pool. I understand that such notification shall be in writing and shall set forth the substantive nature of the changed information.

B. I will be well prepared and will conduct the defense zealously, representing the Accused

APPENDIX E

throughout the military commission process, from the inception of my representation through the completion of any post-trial proceedings as detailed in 10 U.S.C. §§ 950a-950j and R.M.C. 1101-1209. Prior to undertaking representation of the Accused, I will ensure that I can commit sufficient time and resources to handle the Accused's case expeditiously and competently. In making this assessment, I am aware that the military judge may deny any request for a delay or continuance of proceedings based on reasons relating to matters that arise in the course of my law practice or other professional or personal activities that are not related to military commission proceedings, if in the military judge's determination such a continuation would unreasonably delay the proceedings.

C. The defense team shall consist entirely of myself, detailed military defense counsel, and other personnel provided by the Chief Defense Counsel, the military judge, or the Convening Authority. I understand I must include the justification for particular individuals to be added to the defense team in a request to the Chief Defense Counsel, the military judge, or the Convening Authority as appropriate, and I will state any special requests regarding access to the Accused, classified information, as defined at 10 U.S.C. § 948a(2), or privileged under 10 U.S.C. §§ 949p-1 – 949p-7, Rule for Military Commissions (R.M.C.) 701, and Military Commission Rule of Evidence (M.C.R.E.) 505, or the ability to enter into a confidential relationship. Regarding entering into a confidential relationship, I understand that those determined eligible to receive attorney confidences or attorney work product containing facts specific to the case will be required to complete an affidavit similar to this Form prior to receiving any attorney confidences or attorney work product containing facts specific to the case. I further understand that those I request to have access to the Accused, other detainees, or classified information will be required to obtain a security clearance and be specifically approved for access to each individual or item of classified information requested, prior to access being granted. I understand that nothing in this agreement allows me to disregard any laws, rules, regulations, or instructions governing the handling of classified information or privileged information. I will make no claim against the U.S. Government for any fees or costs associated with my conduct of the defense or related activities or efforts.

D. Recognizing that my representation does not relieve detailed defense counsel of duties specified in 10 U.S.C. § 949c(b) and R.M.C. 502(d)(7), I will work cooperatively with such

APPENDIX E

counsel to ensure coordination of efforts and to ensure such counsel is capable of conducting the defense independently if necessary.

E. During my representation of an Accused before a military commission, I will comply with the following restrictions on my communications and travel:

1. I will not discuss, transmit, communicate, or otherwise share documents or information that are classified or protected / privileged, with anyone who does not have the necessary security clearance and a recognized “need to know.” I will only share with properly cleared persons as is necessary to represent my client before a military commission. In any case of doubt regarding whether I may share information about a case with another, I understand that I have an affirmative duty to request clarification from the Deputy General Counsel (Personnel and Health Policy) or the military judge before discussing, transmitting, communicating, or otherwise sharing documents or information. I understand that nothing in this agreement allows me to disregard any laws, rules, regulations, or instructions governing the handling of classified information and material, or other protected information.

2. I understand that once proceedings have begun, I may be required by the military judge to remain at the site of the proceedings until he or she approves my departure.

3. I understand I will obtain prior approval from the Convening Authority for a country clearance for travel to U.S. Naval Station Guantanamo Bay, Cuba.

F. At no time, to include any period subsequent to the conclusion of the proceedings, will I make any public or private statements regarding any closed sessions of the proceedings or any document or material constituting classified, protected, or privileged information under M.C.R.E. 505, 506, 506A, or 507, or subject to the national security privilege under 10 U.S.C. §§ 949p-1 – 949p-7, R.M.C. 701, and M.C.R.E. 505. This restriction does not apply to discussions with other members of the defense team or the Chief Defense Counsel who are appropriately authorized to receive the specific classified information and privileged information in question, when such disclosure is related to the defense efforts on behalf of the Accused during military commission proceedings or subsequent review. I understand that nothing in this agreement allows me to disregard any laws, rules, regulations, instructions, or protective orders governing the handling of classified or privileged information.

APPENDIX E

G. I understand and agree to comply with all rules, regulations and instructions governing the handling of classified information and material or other privileged information.

H. I understand that there may be reasonable restrictions on the time and duration of contact I may have with my client, as imposed by the Convening Authority, the military judge, detention authorities, or regulation.

I. I understand that communications with an Accused are not protected if they would facilitate criminal acts or a conspiracy to commit criminal acts, or if those communications are not related to the seeking or providing of legal services to the client.

J. I agree that I shall reveal to the Chief Defense Counsel, and any other appropriate authorities, information relating to the representation of my client to the extent that I reasonably believe necessary to prevent the commission of a future criminal act that I believe is likely to result in death or substantial bodily harm, or significant impairment of national security.

K. I understand and agree that nothing in this Affidavit and Agreement creates any substantive, procedural, or other rights for me as counsel or for my client(s).

/s/;_ Print Name: _____

Address: _____

Date: _____

STATE OF _____)

COUNTY OF _____)

Sworn to and subscribed before me, by _____, this ____ day of
____, 20__.

Notary

My commission expires:

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APPENDIX F

1. CIR./DIST./DIV. CODE	2. PERSON REPRESENTED	3. VOUCHER NUMBER																																													
4. DIST.DKT./DEF. NUMBER																																															
5. ATTORNEY'S NAME (First Name, MI., Last Name, including any suffix) AND MAILING ADDRESS																																															
6. NAME AND MAIL ADDRESS OF LAW FIRM																																															
<p>7. STAGE OF PROCEEDINGS Check the box which corresponds to the stage of the proceedings during which the work claimed at Item 15 was performed even in the work is intended to be used in connection with a later stage of the proceedings. CHECK NO MORE THAN ONE BOX. Submit a separate voucher for each state of the proceeding.</p> <table style="width: 100%; border: none;"> <tr> <td style="vertical-align: top;"> <p><u>CAPITAL PROSECUTION</u></p> <p>a. <input type="checkbox"/> Pre-Trial e. <input type="checkbox"/> Appeal</p> <p>b. <input type="checkbox"/> Trial f. <input type="checkbox"/> Petition for the U.S. Supreme Court</p> <p>c. <input type="checkbox"/> Sentencing i. <input type="checkbox"/> Dispositive Motions</p> <p>d. <input type="checkbox"/> Other Post Trial j. <input type="checkbox"/> Appeal</p> </td> <td style="vertical-align: top;"> <p><u>HABEAS CORPUS</u></p> <p>g. <input type="checkbox"/> Habeas Petition k. <input type="checkbox"/> Petition for U.S. Supreme Court</p> <p>h. <input type="checkbox"/> Evidentiary Hearing l. <input type="checkbox"/> Writ of Certiorari</p> </td> <td style="vertical-align: top;"> <p><u>OTHER PROCEEDING</u></p> <p>1. <input type="checkbox"/> Stay of Execution</p> <p>m. <input type="checkbox"/> Appeal of Denial to Stay</p> <p>n. <input type="checkbox"/> Petition for Writ of Certiorari to the U.S. Supreme Court</p> <p>o. <input type="checkbox"/> Other</p> </td> </tr> </table>			<p><u>CAPITAL PROSECUTION</u></p> <p>a. <input type="checkbox"/> Pre-Trial e. <input type="checkbox"/> Appeal</p> <p>b. <input type="checkbox"/> Trial f. <input type="checkbox"/> Petition for the U.S. Supreme Court</p> <p>c. <input type="checkbox"/> Sentencing i. <input type="checkbox"/> Dispositive Motions</p> <p>d. <input type="checkbox"/> Other Post Trial j. <input type="checkbox"/> Appeal</p>	<p><u>HABEAS CORPUS</u></p> <p>g. <input type="checkbox"/> Habeas Petition k. <input type="checkbox"/> Petition for U.S. Supreme Court</p> <p>h. <input type="checkbox"/> Evidentiary Hearing l. <input type="checkbox"/> Writ of Certiorari</p>	<p><u>OTHER PROCEEDING</u></p> <p>1. <input type="checkbox"/> Stay of Execution</p> <p>m. <input type="checkbox"/> Appeal of Denial to Stay</p> <p>n. <input type="checkbox"/> Petition for Writ of Certiorari to the U.S. Supreme Court</p> <p>o. <input type="checkbox"/> Other</p>																																										
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<p>I certify that the forgoing is a true and accurate statement of the hours expended and expenses incurred during the dates covered by this billing.</p> <p>FROM _____ TO _____</p> <p>Attorney _____ Date _____</p> <p>I swear that I have reviewed the hours and expenses and that in my professional estimation they are correct, and are proper and necessary for the defense of the client.</p> <p>Detailed Defense Counsel _____ Date _____</p>																																															

APPENDIX F

	A	B	C	D	E	F	G	H	I	J	
Date	In Court Hearings (\$178.00 per hr.)	Interviews & Conferences	Witness Interviews	Consultation with Investigators and Experts	Obtaining & Reviewing the Court Record	Obtaining and Reviewing Documents & Evidence	Consulting with Expert Counsel	Legal Research & Writing	Travel	Other	Total for Day
											0.00
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	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Total Hours: 0.00

Total Amount Claimed: \$0.00