



OFFICE OF THE SECRETARY OF DEFENSE
MILITARY COMMISSIONS TRIAL JUDICIARY
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DEC 21 2017

OMC-TJ

From: Chief Judge of the Military Commissions Trial Judiciary

Subject: CHANGE #2 to Military Commission Rules of Court, 1 September 2016 Edition

Reference:

- (a) Military Commissions Act of 2009, 10 U.S.C. §§ 948a, et seq., (M.C.A.) with Change #1, 2 March 2017
- (b) Manual for Military Commissions, 2012, (M.M.C.)
- (c) DoD Regulation for Trial by Military Commission (2011 Edition)

1. **Purpose.** To amend the Military Commission Rules of Court, 1 September 2016 Edition with Change #1 by issuing CHANGE #2 consistent with the references.

2. **Background.** The Rules of Court with CHANGE #2 are specifically promulgated pursuant to the authority of Rule for Military Commissions (R.M.C.) 108. The references authorize, and the sound administration of justice for Military Commissions requires, Rules of Court for the conduct of Military Commission proceedings. The enclosed changes to the rules are intended to facilitate the smooth and orderly trial of Military Commission cases and insure the utmost in public access while adhering to requirements of national security. To the extent that inconsistencies are perceived, the rules contained within references (a) and (b) shall control.

3. **Action.**

a. The Military Judges of the Military Commissions Trial Judiciary shall ensure enforcement of the Rules of Court with CHANGE #1 and CHANGE #2.

b. All counsel practicing before Military Commissions shall become familiar with these Rules with CHANGE #1 and CHANGE #2 and shall comply with them.

4. **Effective Date.** CHANGE #2, attached, is effective 1 January 2018 and shall remain in effect until cancelled, superseded, or modified.

JAMES L. POHL
Colonel, U.S. Army
Chief Judge, Military Commissions
Trial Judiciary

Attachment: CHANGE #2 to Military Commission Rules of Court, 1 September 2016 Edition



CHANGE #2 to Military Commission Rules of Court, 1 September 2016 Edition

RC 2.3.a. is replaced with the following

a. Use of the following e-mail addresses is mandatory in communicating with the Chief Clerk of the Trial Judiciary (hereinafter Chief Clerk) or Trial Judiciary Staff:

(1) Use only osd.pentagon.OMC.mbx.tj-pleadings@mail.mil to submit filings to the Chief Clerk (*See also* RC 3.10.d.(2)(b)).

(2) Use only osd.pentagon.OMC.list.tj-lrned-cnsl-vouchers@mail.mil to submit Learned Counsel Vouchers for processing I.A.W. RC 12.3.

(3) Use osd.pentagon.OMC.list.trial-judiciary@mail.mil for all other e-mails and communications not containing classified information and intended for a Military Judge or the Trial Judiciary Staff as part of the filing process. 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 so directed by the Military Judge.

(4) Use osd.mc-alex.omc.list.trial-judiciary-all@mail.smil.mil for any e-mails or communications containing information classified up to the **SECRET** level intended for a Military Judge or the Trial Judiciary Staff as part of the filing process. (*See also* RC 3.10.d.(3)(b)). 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 so directed by the Military Judge.

RC 2.3.b. is amended by replacing the second sentence with the following:

In addition, the Director, Office of Court Administration, Office of Military Commissions will be copied (“cc”) on all e-mails using osd.pentagon.omc.mbx.oca-pleadings@mail.mil with filings and all e-mails notifying the Chief Clerk of the submission of a filing.

RC 2.3.g. is amended by removing the second sentence concerning filing a large pleading using multiple e-mails.

g. All attachments to a filing will be sent in the same e-mail as the document to which it is an attachment. If the filing is so large the e-mail system cannot accommodate it, then the filing party must make arrangements with the Chief Clerk to hand carry and file by disk or paper. Where filings contain classified information or enclosures, in addition to the unclassified filings and tabs marking attachments, a complete filing, properly marked, must be filed at the highest classification level. This complete filing is the record copy. (*See also* RC 3.10.d.(4) for guidance on Paper Filings and RC 3.10.d.(3) for guidance on filing filings with classified information in either the pleading or in the attachment(s)).

RC 2.4. is replaced with the following

2.4. Because of potential changes to the composition of Prosecution and/or Defense trial teams, 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 each quarter of a fiscal year. The distribution list will not include e-mail addresses associated with a commercial or personal account. (*See* RC 2.8.). The Chief Clerk will not create or modify distribution lists for or provided by a party.

RC 2.8. is added

2.8. In accordance with Paragraph 25 of Enclosure C, Chairman of the Joint Chiefs of Staff Instruction 6510.01F, dated 9 February 2011 (current as of 9 June 2015), “Information Assurance (IA) and Support to Computer Network Defense (CND)”, the Trial Judiciary Staff will not send e-mails to commercial or personal e-mail accounts. This includes commercial or personal e-mail accounts associated with attorneys representing an accused/detainee or the U.S. Government.

RC 3.5.q.(4) is changed as follows

(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 in accordance with RC 3.7.a. The Third Party Filing is accepted as filed only upon the Chief Clerk’s notification e-mail being sent. The time period for filing a response or a reply (*See* RC 3.6. and RC 3.7.) starts the date the Chief Clerk sends the e-mail accepting the filing.

RC 3.10.a.(5) is changed

Replace the phrase “other DoD directives” with “other applicable DoD directives and manuals” after “DoD Manual 5200.01, DoD Information Security Program”

RC 3.10.a.(5) is further changed by adding the following sentence and sub-paragraphs

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) Downgrading instructions on the face of the 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 that it contains; and,

(d) A Classification Authority Block (CAB) on the first page of the filing.

RC 3.10.a.(7) is changed as follows

Replace the word “tab(s)” with the words “attachment page” in the first sentence.

RC 3.10.a.(12) which was added in Change #1 is further amended by reorganizing the rule and adding an exception to the general rule requiring translations of foreign language text into English in pleadings.

RC 3.10.a.(12) Translation of Foreign Text

(a) If a party desires to include text in a foreign language as a 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 3.10.a.(2) above. Along with the foreign language text the filing party will include in the attachment a translation of the foreign language text. In the body of the pleading itself the filing party will verify the accuracy of the translation with the signature of an attorney of record filing the pleading.

(b) EXCEPTION: A translation of the foreign language text is not required if:

- (i) the foreign language text was obtained through the discovery process; and
- (ii) 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).

RC 3.10.b. is changed as follows

Replace “provide a description of the filing (i.e. Motion to Exclude SGT Smith’s Statement).” with “provide the proposed title of the filing.”

RC 3.10.b.(3) is changed as follows

Replace the e-mail subject line example “US v Jones AE 003A Government Response to AE 003” with “US v Jones AE 003A Gov Resp to AE 003”.

RC 3.10.d.(2)(b) is replaced with the following

(b) Consistent with RC 2.3., unclassified filings will be submitted to the Chief Clerk. Filing via unclassified e-mail is the preferred method of submitting documents to the Chief Clerk, otherwise with prior coordination hand carrying a disk copy is permissible. 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. The filing party will send a second e-mail 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) without any attachments, i.e. the filing, to osd.pentagon.OMC.list.trial-judiciary@mail.mil to announce the submission of the filing.

RC 3.10.d.(3)(b) is replaced with the following

(b) 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, they will be filed with the Chief Clerk via an e-mail on SIPRNET at osd.mc-alex.omc.list.trial-judiciary-all@mail.smil.mil or hand carried on a CD or in paper format to the Chief Clerk's office. In all instances, at the time of filing, the Chief Clerk will be provided a copy of the proposed unclassified notice of a classified filing for examination for compliance with RC 3.

RC 3.10.d.(3)(d) is corrected as follows

The citation to "RC 3.10.d.(3)(d)" in the sub-paragraph is corrected to read "RC 3.10.d.(3)(e)".

RC 3.10.e.(1) is amended by adding the following sub-paragraphs

(a) If the pleading itself does not contain any *ex parte* information, but there is *ex parte* information in at least one (1) attachment, a separate notice of an *ex parte* filing is not required. The submission and service of the pleading without its *ex parte* attachment(s) behind the attachment divider page(s) to the Chief Clerk and opposing party fulfills the notice requirement in RC 3.10.d.(3)(e).

(b) If the pleading itself contains *ex parte* information, the party submitting the filing must send the Chief Clerk a notice of an *ex parte* filing using the AE number and a title which does not disclose the *ex parte* information so the filing can be accounted for through normal procedures and added to the Filings Inventory.

(c) The notice of an *ex parte* filing will be the first pages of the corresponding *ex parte* filing for the record of trial. The filing party will comply with the service requirements of RC 3.10.c. in filing the notice.

RC 3.10.e.(2) is amended adding the following sentence

(2) If a party cites to a pleading or ruling from a Federal Court obtained using the Public Access to Court Electronic Records (PACER) system the filing party will provide the Commission a copy of the pleading or ruling as an attachment to their filing.

RC 7.2.f.(1)-(3) is replaced with the following

(1) Any displays, whether technology based or not, a party or a party's witness intends to use in open court (i.e. with spectators present in the gallery or observing via remote feed) must undergo the standard classification review by all Original Classification Authorities (OCA) with equities implicated before it is publically displayed. The party is responsible for entering the item into the review process.

(2) The party will provide to the Court Information Security Officer (CISO) the item, be it PowerPoint slides, videos/video clips, or documents, in accordance with the following requirements, not less than five (5) business days prior to the party's travel to U.S. Naval Station Guantanamo Bay, Cuba for the hearing in the case in which the item is to be utilized. If the information to be reviewed is voluminous, (i.e. more than 100 pages) additional time may be required for the OCAs to conduct their reviews.

(a) Submissions to the CISOs will be on CD or DVD. To facilitate the review process by multiple OCAs three (3) 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 number]-Exhibit number (example: Nashiri-Defense-AE 200-Exhibit 1).

(b) A spreadsheet listing the contents of the disc to include the following information (at a minimum): AE number, file name, page count, whether the item/document had been previously submitted for review, and if so under what AE number/file name. A copy of the spreadsheet will be saved to each disc.

(3) In those cases where after arrival on U.S. Naval Station Guantanamo Bay, Cuba a party discovers it will be necessary to display a document, slide(s), video(s), etc., in open court, the party will immediately notify the CISO of the new requirement. This notice can be accomplished either in person or by an e-mail message. The party will submit the item to the CISO allowing no less than 48 hours (clock time) prior to the proposed usage for a proper classification review to take place. The party will follow the established naming requirements.

(4) No later than one (1) hour prior to the scheduled start of court on the day it will be presented, the presenter will provide the CISO a second copy of the material

intended to be used, to ensure the material remains unchanged from what was submitted for review and approved for use.

RC 12.3. is changed as follows

Replace osd.pentagon.OMC.list.trial-judiciary@mail.mil with osd.pentagon.OMC.list.tj-lrned-cnsl-vouchers@mail.mil