



**United States Court of Military Commission Review
One Liberty Center
875 N. Randolph Street, Suite 8000
Arlington, VA 22203-1995**

February 3, 2016

Administrative Order 16-01

By direction of the Acting Chief Judge, after consultation with the other judges of the Court, the February 3, 2016 revised Rules of Practice for the United States Court of Military Commission Review are promulgated. The revised rules will take effect immediately as interim rules under CMCR Rule 25 (2008) and CMCR Rule 26 (2016) and shall apply to all matters and cases that may come before the Court after February 3, 2016. This revision includes the amendments of the Rules approved by the Chief Judge and published by Administrative Order No. 08-01 on January 3, 2008; and the amendments of the Rules approved by the Chief Judge on April 10, 2008 and February 3, 2016. The February 3, 2016 revised Rules are attached to this order.

FOR THE COURT:

A handwritten signature in blue ink that reads "Mark Harvey".

Mark Harvey
Clerk of Court, U.S. Court of Military
Commission Review

Copy to:
Office of Department of Defense General Counsel
Convening Authority, Office of Military Commission
U.S. Court of Military Commission Review Judges
Appellate Counsel, *United States v. Al-Nashiri*
Appellate Counsel, *United States v. Khadr*
Custodian, Department of Defense Military Commission website



**United States Court of Military Commission Review
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February 3, 2016

MEMORANDUM FOR SECRETARY OF DEFENSE

SUBJECT: Rules of Practice for the United States Court of Military Commission Review (CMCR)

I have promulgated and prescribed the enclosed 2016 revision of the Rules of Practice for the United States Court of Military Commission Review (Rules). (Enclosure 1) These rules update many of the provisions of the 2008 Revised Rules. (Enclosure 2) The revision of Rule 22 was essential in light of the decision of the Court of Appeals for the District of Columbia Circuit in *In re Al-Nashiri*, 791 F.3d 71, 75-78 (D.C. Cir. 2015). Other rules required updating due to the development of security procedures and changes in the *Manual for Military Commissions* in 2012 and the Regulation for Trial by Military Commissions in 2011.

All judges on the court were given an opportunity to review the revisions and their comments were incorporated as appropriate. The 2016 Revised Rules are provided for your review and approval as required by *Manual for Military Commissions*, Rule for Military Commissions 1201(b)(6).

Respectfully submitted,

A handwritten signature in black ink, reading "Scott L. Silliman".

Scott L. Silliman
Acting Chief Judge, U.S. Court
of Military Commission Review

2 Enclosures

1. 2016 Revised Rules
2. 2008 Revised Rules

CC:

Department of Defense General Counsel
Convening Authority, Office of Military Commissions
Chief Prosecutor and Chief Defense Counsel, Office of Military Commissions
Appellate Counsel in *United States v. Al-Nashiri* and *United States v. Khadr*

DEPARTMENT OF DEFENSE

U. S. COURT OF MILITARY COMMISSION REVIEW



RULES OF PRACTICE

EFFECTIVE DATE: FEBRUARY 3, 2016

Court of Military Commission Review Rules of Practice

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U. S. Court of Military Commission Review Rules of Practice

RULE 1. TITLE; SCOPE OF RULES

(a) **Title.** These rules are to be known as the U. S. Court of Military Commission Review Rules of Practice. They are issued pursuant to Manual for Military Commissions, United States (M.M.C.), Rule for Military Commission (R.M.C.) 1201(b)(6), and Regulation for Trial by Military Commissions (RTMC) ¶ 25-3.

(b) **Scope of rules.** These rules govern practice before the U. S. Court of Military Commission Review (CMCR). In case of any conflict between these rules and the Military Commissions Act (M.C.A.), 10 U.S.C. §§ 948a, *et seq.*; the M.M.C.; or the RTMC; the latter three will control.

(c) **Suspension of rules.** With the exception of Rule 31, on its own or on a party's motion, the CMCR may - to expedite its decision or for other good cause - suspend any provision of these rules in a particular case and order proceedings as it directs.

RULE 2. JURISDICTION

(a) **References.** The jurisdiction of the CMCR is based on the M.C.A.; M.M.C., including the R.M.C.s; and the RTMC.

(b) **Appellate review.** The record of trial of all military commission cases with a finding of guilty as to any offense shall be referred to the CMCR after the convening authority's action in accordance with M.C.A. §§ 950b and 950c and R.M.C. 1111 and 1201(c), unless such review has been waived.

RULE 3. SCOPE OF APPELLATE REVIEW

(a) The CMCR shall decide all cases and matters referred to it under R.M.C. 908, 1111, 1201(c), and 1210.

(b) The CMCR shall consider timely filed written briefs and other pertinent materials submitted by the parties, and in its discretion may permit oral arguments and submissions by *amicus curiae*.

(c) **Standard and scope of review.** In a case reviewed by the court under M.C.A. § 950, "the Court may act only with respect to the findings and sentence as approved by the convening authority. The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh the

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evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the military commission saw and heard the witnesses.” 10 U.S.C. § 950f(d).

RULE 4. DECISION PANELS AND QUORUM

(a) The CMCR chief judge will establish one or more decision panels, each comprised of a minimum of three judges; designate the presiding judge for each panel; and establish a procedure for assignment of cases to these panels.

(b) The determination of any matter referred to a panel, except a motion for en banc consideration, shall be according to the opinion of a majority of the judges on the panel. However, any judge present for duty and assigned to the panel to which the case was assigned may issue all necessary orders concerning any proceedings pending before that panel, and any judge present for duty, or the clerk of court, if the chief judge has delegated such authority, may act on uncontested motions, provided such action does not finally dispose of an appeal, or case.

RULE 5. EN BANC PROCEEDINGS

(a) **When hearing or reconsideration en banc may be ordered.** Any judge assigned to the court, who is not disqualified, may suggest that a proceeding be considered or reconsidered by the court sitting as a whole (en banc) before a panel decision is issued by the clerk of court to the parties. A majority of the court’s judges, who are not disqualified, may order that a proceeding be heard or reconsidered by the court en banc. An en banc hearing or reconsideration is not favored and ordinarily will not be ordered unless:

(1) En banc consideration is necessary to secure or maintain uniformity of the court’s decisions; or

(2) The proceeding involves a question of exceptional importance.

(b) **Petition for hearing or reconsideration en banc.** A party may petition for a hearing or reconsideration en banc.

(1) The petition must begin with a statement that either:

(A) The panel decision conflicts with a decision of the United States Supreme Court, the Court of Appeals for the District of Columbia Circuit, or of this court (with citation to the conflicting case or cases) and

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consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) The proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States courts that have addressed the issue.

(2) Except by the court's permission, a petition for an en banc hearing or reconsideration must not exceed 15 pages.

(3) For purposes of the page limit in this rule, if a party files both a petition for panel reconsideration and a petition for reconsideration en banc, they are considered a single document even if they are filed separately.

(c) **Time for petition for hearing or reconsideration en banc.** A petition that a proceeding be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a reconsideration en banc must be filed within the time prescribed for filing a petition for reconsideration.

(d) **Number of copies.** The number of copies to be filed is one for each judge assigned to the court and one for the clerk of court. If electronically filed, a copy should be sent to the clerk of the court, who will electronically distribute copies to all of the judges on the court.

(e) **Response.** No response may be filed to a petition for an en banc consideration unless the court orders a response.

(f) **Disposition of petition for hearing or reconsideration en banc.** A petition for reconsideration ordinarily will not be granted, nor will an opinion or judgment be modified in any significant respect in response to a petition for reconsideration, in the absence of a request by the court for a response to the petition. A petition for panel reconsideration will not be acted upon until action is ready to be taken on any timely petition for reconsideration en banc. A majority of the court's judges, who are not disqualified, must agree to consider a case or reconsider a decision en banc. If reconsideration en banc is granted, the panel's opinion and judgment will be vacated. Upon termination of the en banc proceeding, a new opinion will be issued. If the en banc court divides evenly, a new opinion reinstating the judgment of the panel will be issued.

(g) **En banc endorsement of a panel decision.** A panel of the court may seek for its proposed decision the endorsement of the en banc court, and

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announce that endorsement in a footnote to the panel's opinion. This endorsement may be used for situations including but not limited to:

(1) Resolving an apparent conflict in the prior decisions of panels of the court;

(2) Rejecting a prior statement of law which, although arguably dictum, warrants express rejection to avoid future confusion;

(3) Overruling an old or obsolete decision which, although still technically valid as precedent, has plainly been rendered obsolete by subsequent legislation or other developments; and

(4) Overruling a more recent precedent which, due to an intervening Supreme Court decision or Court of Appeals for the District of Columbia Circuit decision, or the combined weight of authority from other circuits, a panel is convinced is clearly an incorrect statement of current law.

(h) **Court's internal en banc procedure.** When a panel has decided to seek en banc endorsement for a proposed decision, the opinion shall be circulated to the full court, along with the briefs of the parties, and a substantive memorandum explaining why en banc endorsement is warranted. In order to ensure that the court has an adequate opportunity to consider the panel request, the time for circulation of the proposed opinion shall be 15 days. Before publishing its opinion, the panel must obtain the affirmative agreement of every member of the court not recused. Finally, regardless of the number of recusals, those voting to endorse the panel's decision must constitute an absolute majority of the members of the court. *See* RTMC 25-2e; D.C. Circuit, *Policy Statement on En Banc Endorsement of Panel Decisions*, Jan. 17, 1996, [https://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%20Irons%20Footnote/\\$FILE/IRONS.PDF](https://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%20Irons%20Footnote/$FILE/IRONS.PDF) [hereinafter *D.C. Circuit Policy Statement*]. Upon obtaining the agreement of the court, the panel shall announce the en banc court's endorsement of its decision by means of a footnote citing *Irons v. Diamond*, 670 F.2d 265, 267-68 & n.11 (D.C. Cir. 1981). *See e.g., United States v. Southerland*, 466 F.3d 1083, n. 1 (D.C. Cir. 2006). Nothing in the foregoing statement of the court's policy is intended to affect other established procedures or rules allowing for en banc review, or to limit a panel's discretion to decide a case without resort to en banc endorsement or to seek full en banc hearing and disposition of an appeal in lieu of issuing a panel decision. *See D.C. Circuit Policy Statement*.

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RULE 6. PLACE AND MANNER FOR FILING DOCUMENTS

(a) **Address.** When the filing of a notice of appearance, brief, or other document for consideration of the CMCR is required by these rules, such documents shall be filed at the following mailing address:

Clerk of Court, U. S. Court of Military Commission Review
One Liberty Center
875 N. Randolph Street
Suite 8000
Arlington, VA 22203

Should facsimile filing be utilized, such filings may be sent to:

Facsimile: 703-696-1831

Voice telephone number: 703-696-8919 (Harvey)

Alternate telephone number: 703-696-8914 (Loughran)

Email: harveym@osdgc.osd.mil

Alternate email: loughrae@osdgc.osd.mil

(b) **Electronic filing.** Should electronic filing be utilized, unclassified documents should be sent to both harveym@osdgc.osd.mil and loughrae@osdgc.osd.mil. Adobe Acrobat PDF format is the preferred standard. The electronic image of the document constitutes the original document for all CMCR purposes. Filing is complete when the document is received at either of these email addresses. The burden is on the sender to ensure receipt of an uncorrupted document that can be opened by the recipient. The provisions in these rules requiring copies are not applicable for electronic filing under this subparagraph. The clerk of court will “reply all” by email acknowledging receipt. The clerk of court is authorized to serve all documents, including opinions, electronically.

(c) **Facsimile filing.** Any document not exceeding fifty pages in length in its entirety may be filed by facsimile transmission. The burden is on the sender to ensure receipt, completeness, and legibility. The document must comply with the typographical requirements of Rule 15(e), (f), and (g), and must show the sender’s facsimile and voice telephone numbers. Except as indicated below, if the facsimile shows the signature required by Rule 7 and the certificate of service on opposing counsel required by Rule 15(j), a signed original copy need not be mailed unless so ordered by the CMCR.

(d) **Service.** Copies of documents must also be sent to the opposing parties.

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RULE 7. SIGNING OF DOCUMENTS

(a) All formal documents shall be signed and shall show, typewritten or printed, the signer's name, address, military grade (if any), and the capacity in which the document is signed. Such signature constitutes a certification that the statements made therein are true and correct to the best of the knowledge, information, and belief of the person signing the document and that the document is filed in good faith and not for purposes of unnecessary delay. Each pleading or other document will be signed by an attorney of record. This applies to original or facsimile filings. Electronic signatures are authorized. Requirements for admission to the Bar of the CMCR are set forth in Rule 9, and notice of appearance requirements are set forth in Rule 13. A paralegal or legal intern who assists in preparing a pleading or other document may not sign the document, but the assistance may be recognized in a footnote.

(b) One attorney of record may sign "FOR" another attorney of record whose signature block appears on the same pleading or other document if authorized by that attorney to do so, in which event the CMCR will regard the latter as having personally signed the document.

RULE 8. COMPUTATION OF TIME

(a) **Weekends and holidays.** In computing any period of time prescribed or allowed by these rules, by order of the CMCR, or by any applicable order, instruction, regulation or statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or federal legal holiday.

(b) **Weather closure.** When the act to be done is the filing of a document in the CMCR on a day when the office of the clerk of court is closed due to weather, other conditions, or by order of the chief judge of the CMCR, the filing period runs until the end of the next day that is not a Saturday, Sunday, or federal legal holiday.

(c) **Timing of filing.** A facsimile or electronic filing shall be deemed filed when it is successfully transmitted. A document or pleading filed after 5:00 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is in effect at the time of filing, shall be deemed filed on the following day. When electronic filing is made in the CMCR, the last day ends at midnight Eastern Time. *See, e.g., United States v. Al-Nashiri*, 62 F. Supp. 3d 1305 (USCMCR 2014) (discussing calculating timeliness of filing of government appeal); *United States v. Khadr*, 753 F. Supp. 2d 1178, 1180, 1182-83 (USCMCR 2008) (dismissing untimely government appeal).

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RULE 9. QUALIFICATION OF COUNSEL

(a) **All counsel.** Counsel in any case before the CMCR shall be a member in good standing of the bar of the highest court of a state, territory, commonwealth, or possession of the United States, bar of the District of Columbia, or bar of a federal court. No attorney may practice before this court unless admitted to the bar of the CMCR or appearing by leave of the CMCR *pro hac vice* (Rules 9(c) and 13(e)) or as an *amicus curiae* (Rule 17). Additionally, military counsel must be qualified and detailed in accordance with 10 U.S.C. §§ 949c and 950h as well as RTMC ¶¶ 8-4, 9-1, 9-2, and 24-5. The classified information requirements of Chapter 18 of the RTMC apply during the appellate process. *See* Rules 27, 30, 31, 33. No counsel may appear in any proceeding before the CMCR while suspended from practice by the Judge Advocate General of any service.

(b) **Military counsel.** Detailed appellate defense and appellate government counsel shall, in addition to requirements in Rule 9(a), be qualified in accordance with Article 27(b)(1), Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. § 827(b)(1); M.C.A. §§ 948k and 950h, as well as RTMC ¶¶ 8-4, 9-1, 9-2, and 24-5.

(c) **Admission.** Upon entering an appearance, counsel shall be deemed admitted *pro hac vice*, subject to filing an application setting forth required qualifications if directed by the CMCR. If so directed, the applicant must file with the clerk of court an application for admission on the form prescribed by the CMCR, together with a certificate from the presiding judge, clerk, or other appropriate officer of a court specified in Rule 9(a), showing that the applicant is a member of the bar in good standing. The certificate must be an original and dated within one year of the actual date of admission to the bar of the CMCR. Applicants currently qualified and certified by a Judge Advocate General pursuant to Article 26(b) or 27(b), UCMJ, 10 U.S.C. § 826(b) or § 827(b) may be admitted without a certificate of good standing; however, the CMCR may require evidence of certification. If such evidence of certification is required, the clerk of court will so inform the applicant. An application form for admission is at Appendix 2.

Each applicant admitted to practice in the United States shall sign the following oath or affirmation: “I, [full name], do solemnly swear (or affirm) that I will support the Constitution of the United States, and that I will conduct myself uprightly and according to law as an attorney and counselor of the U. S. Court of Military Commission Review.” [Optional—Applicant may add: “So help me God.”] The reference to the Constitution of the United States may be omitted by foreign applicants.

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If the documents submitted demonstrate that the applicant possesses the necessary qualifications, and if the applicant has signed the oath or affirmation, the clerk of court will notify the applicant of acceptance as a member of the Bar.

(d) **Automatic admission.** Admission is automatic without the need for an application or motion for counsel detailed by the chief prosecutor or chief defense counsel in accordance with RTMC ¶ 24-5 and Rule 9(a) and (b). The oath taken before the military commission is sufficient. If no oath was taken before the military commission, then the oath must be given in the manner specified in Rule 9(e).

(e) **Admission by Motion.** An applicant who so wishes may be admitted on oral motion by a member of the bar of the CMCR, provided that all other requirements for admission have been satisfied. The motion and oath shall be substantially in the following form:

MOTION

May it please the court, I move the admission of [full name], a member of the Bar of [qualifying jurisdiction]. I have examined [his/her] credentials on file in the office of the clerk of court and I am satisfied that [he/she] possesses the necessary qualifications for membership in the bar of this honorable court.

OATH

I, [full name], do solemnly [swear/affirm] that I will support the Constitution of the United States, and that I will conduct myself as an attorney and counselor of this court uprightly and according to law. [Optional: So help me God.]

The form of the motion may be tailored for admission of more than one attorney. Also, the oath may be administered in interrogatory form (“Do you, [Full Name], solemnly swear . . .” “Do each of you solemnly swear . . .”). The reference in the oath to the Constitution of the United States may be omitted by foreign applicants.

(f) **Foreign attorneys.** An attorney qualified to practice in the courts of a foreign state may be permitted to argue *pro hac vice*. Counsel of record for the party on whose behalf leave is requested to argue *pro hac vice* must file a motion seeking permission of the CMCR. Counsel for the appellant *pro hac vice* must be detailed by the chief defense counsel, and must be qualified under Rule 9(a).

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However, the chief defense counsel may, by motion, ask the CMCR to waive specific requirements in Rule 9(a) for a foreign attorney lacking a security clearance, or being otherwise unqualified. Such waiver will not authorize access to classified information. This section does not imply any right to obtain a security clearance that might be necessary to review a record of trial or other document that contains classified information. Foreign attorneys lacking a security clearance are limited to reviewing the unclassified portions of the record of trial, and may not participate in proceeding involving classified information that are closed.

RULE 10. CONDUCT OF COUNSEL

(a) **Rules governing conduct.** The conduct of counsel appearing before the CMCR shall be in accordance with rules of conduct prescribed pursuant to R.M.C. 109 and the rules of conduct of the jurisdictions where they are admitted to practice for civilian counsel. However, the CMCR may exercise its inherent power to regulate counsel appearing before it, including the power to remove counsel from a particular case for misconduct in relation to that case. Conduct deemed by the CMCR to warrant consideration of suspension from practice or other professional discipline shall be reported by the CMCR to the convening authority.

(b) **Reporting Requirement.** Any member of the bar of this court who is subjected to discipline that results in disbarment, suspension, or other loss of good standing in the bar of any court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth, or possession of the United States, must promptly so notify the clerk of court. Likewise, any member of the CMCR bar who is suspended from practice in courts-martial or the Court of Criminal Appeals of any military service, or whose certification pursuant to Article 26(b) or 27(b), UCMJ, is withdrawn for cause, shall promptly so notify the clerk of court. Counsel also shall promptly notify the clerk of court of any issue which may cause substantial doubt about that counsel's qualifications for practice before the CMCR. Foreign lawyers admitted *pro hac vice* will notify the clerk of court if they are subjected to professional discipline by their licensing jurisdiction, or if an issue arises which may cause substantial doubt about their qualifications for practice before the CMCR. All notifications under this rule shall be made to the clerk of court at the address in Rule 6.

RULE 11. ASSIGNMENT OF DETAILED COUNSEL AND EMPLOYMENT OF CIVILIAN DEFENSE COUNSEL

The chief defense counsel is required to appoint counsel to represent the appellant by M.C.A. § 950h and the RTMC ¶¶ 9-1 and 24-5. An appellant may

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also be represented before the CMCR by civilian counsel provided by the appellant, or both, provided such counsel meets all requirements, including being eligible for the requisite security clearance to review the record of trial. Detailed counsel shall, within five days after service of an authenticated copy of the record of trial, forward to the clerk of court:

(a) Notice of the name, address, telephone number, telefax number, and e-mail address of any counsel representing the appellant before the CMCR.

(b) Notice that civilian counsel has been retained or that action has been taken to retain civilian counsel (must include name, address, telephone number, telefax number, and e-mail address of civilian counsel).

RULE 12. RETENTION OF CIVILIAN COUNSEL

(a) **Primary Counsel.** When civilian counsel represents an appellant before the CMCR, the CMCR will notify detailed defense counsel, who will notify the civilian counsel when the record of trial is received. If both civilian and detailed military defense counsel represent the appellant, the CMCR will regard the detailed defense counsel as primary counsel unless notified otherwise. Ordinarily, detailed military counsel will provide the copy of the record of trial received during the authentication process to civilian counsel, if such civilian counsel holds the requisite security clearance for all of the information in the record of trial.

(b) **Retention of Civilian Counsel.** If the appellant at any point in the post-trial process retains civilian counsel, detailed military counsel will ensure immediate notification of the clerk of court.

RULE 13. NOTICE OF APPEARANCE AND WITHDRAWAL OF COUNSEL

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

(b) Notices of Appearance are to be filed with the clerk of court. Signing a motion, as distinguished from a pleading, does not constitute notice of appearance. Civilian counsel shall file a written notice of appearance as soon as he or she is retained.

(c) Counsel may withdraw only by leave of the CMCR. A Motion to Withdraw as Counsel should state the reason for withdrawal and, if by an

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appellant's counsel, must indicate whether the appellant has been informed, whether the appellant consents to withdrawal, and what provisions have been made for continued representation.

(d) In noncapital cases and cases not scheduled for hearing, assigned military counsel need not move to withdraw when the withdrawal is due to counsel's reassignment and the representation will be continued by other assigned military counsel.

(e) If an attorney named on a pleading has not been admitted to the Bar of the CMCR, and automatic admission is not involved, the pleading shall be accompanied by an application for admission to the Bar (Rule 9(c)) or a Motion for Leave of the CMCR to Appear *Pro Hac Vice* (Rule 9(f)) in the case in question. The motion must identify the courts to which the movant is admitted to practice and must indicate whether any disciplinary proceedings are pending against the movant.

RULE 14. WAIVER OR WITHDRAWAL OF APPELLATE REVIEW

Withdrawals from appellate review and waivers of appellate review will be processed in accordance with M.C.A. § 950c and RTMC ¶ 24-2b.

RULE 15. ASSIGNMENTS OF ERROR AND BRIEFS

(a) **General provisions.** Appellate counsel for the appellant may file assignments of error if any are to be alleged, setting forth separately each error asserted. The assignments of error should be included in a brief for the appellant in the format set forth in Appendix 1. An original of all briefs, and four additional copies, shall be submitted. All briefs shall be typed or printed, double-spaced on white paper, and securely fastened at the top. All references to matters contained in the record shall show record page numbers and any exhibit designations. A brief on behalf of the government shall be of like character as that prescribed for the appellant.

(b) **Specified issues.** The CMCR may, in its discretion and at any time while an appeal is pending, specify and grant review of any errors on its own motion.

(c) **Time for filing and number of briefs.**

(1) Appeals by the United States under R.M.C. 908. Appeals under R.M.C. 908(d) will comply with the time limits and procedural requirements of that rule. In all other appeals under R.M.C. 908, unless the CMCR directs

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otherwise, a government notice of appeal will be filed with the clerk of court and served on the accused's military defense counsel within five days of the order or ruling being appealed. The form and content of the notice of appeal will be the same as the notice of appeal provided to the military judge under R.M.C. 908(b)(7). Filing the notice of appeal will satisfy RTMC ¶ 25-5f. The government brief must be filed within ten days of filing the notice of appeal. The defense must file any answer within ten days of receiving the government brief. Any *amicus curiae* brief must be filed no later than the due date for the defense brief. Any government reply brief must be accompanied by a motion for leave to file under Rule 15(k) and filed within five days after receiving the defense brief. All briefs will comply with the format, page and word limitations, and content requirements of Rule 15(d)-(k). Oral argument, if any, will be scheduled in accordance with Rule 18.

(2) Cases referred under R.M.C. 1111. Unless the CMCR directs otherwise, any defense brief shall be filed with the clerk of court and served on government counsel within 30 days after the detailed military defense counsel has received the authenticated record of trial. If a defense brief is filed, the government must file any answer within 30 days after receiving the defense brief. If the defense desires to file a reply brief, a motion for leave to file must be submitted in accordance with Rule 15(k) within five days after receiving the government brief. *Amicus curiae* shall submit any brief no later than the due date for the government brief.

(d) **Appendix to a brief.** The brief of either party may include an appendix. If an unpublished opinion or not readily available reference is cited in the brief, a copy of that opinion or reference shall be attached in an appendix. The appendix may also include extracts of statutes, rules, or regulations, but a motion must be filed under Rule 21(b), *infra*, to attach any other matter beyond those listed in this subparagraph.

(e) **Format for briefs.** Any pleading or other document filed with the CMCR must be submitted as a signed original, except for those filed by facsimile as permitted by Rule 6(c). The original document must be typed double-spaced in Times New Roman, 12 point, so as to produce a clear black image on a single side of white 8.5-inch by 11-inch, 20-pound paper. Except for electronic and facsimile submissions, all documents shall be pre-punched for a two-and-three-fourths-inch-wide prong fastener at the top center for insertion into a record of trial. Additional copies required by the CMCR may be reproduced by any means producing a clear black image on white paper.

(1) Citations. Citations must conform to the style prescribed by the current edition of *The Bluebook: A Uniform System of Citation* published and distributed by the Harvard Law Review Association, unless otherwise directed

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by the CMCR. The CMCR, in its discretion, may adopt and publish its own rules of citation.

(2) The Brief on Behalf of Appellant, Brief on Behalf of Appellee, and Reply Brief on Behalf of Appellant must conform to the format and requirements set forth in Appendix 1 to these rules.

(f) **Page limitations of briefs.** Unless otherwise authorized by order of the CMCR or by motion of a party granted by the CMCR, the page limitations for briefs filed with the CMCR, not including appendices, shall be as follows:

- (1) Briefs of the appellants shall not exceed 30 pages;
- (2) Answers of the appellees shall not exceed 30 pages; and
- (3) Replies of the appellants shall not exceed 15 pages.

(g) **Type-volume limitations of briefs.**

(1) A brief of the appellants and an answer of the appellees is acceptable if it contains no more than 14,000 words; or no more than 1,300 lines of monospaced text.

(2) A reply is acceptable if it contains no more than half of the type-volume specified in Rule 15(g)(1) or (g)(2).

(3) Headings, footnotes, and quotations count toward the word and line limitations. The index, table of cases, statutes, and other authorities, the appendix and any certificates of counsel do not count toward the limitation.

(h) **Certificate of Compliance.** A brief submitted under Rule 15 must include a certificate stating that the brief complies with the format limitations in Rule 15(e) and the type-volume limitation in Rule 15(g). The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either: (1) the number of words in the brief; or (2) the number of lines of monospaced type in the brief.

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(i) Form of Certificate of Compliance.

CERTIFICATE OF COMPLIANCE WITH RULE 15(g)

1. This brief complies with the type-volume limitation of Rule 15(g) because:

[principal brief may not exceed 14,000 words or 1,300 lines; reply or amicus brief may not exceed 7,000 words or 650 lines; line count can be used only with monospaced type]

This brief contains _____ [*state the number of*]
words,

or

This brief contains _____ [*state the number of*] lines
of text.

2. This brief complies with the typeface and type style requirements of Rule 15(e) because:

[12-point font must be used with monospaced typeface, such as Times New Roman or Courier New]

This brief has been prepared in a monospaced typeface using
_____ [*state name and*
version of word processing program, e.g., Microsoft Word
Version 2000 with _____ [*state*
number of characters per inch and name of type style].

/s/ _____

Attorney for _____

Dated: _____

(j) Service on opposing party. Copies of pleadings and other documents filed with the CMCR must be served on the counsel of record for the opposing party, including any civilian counsel. Proof of service shall be by Certificate of Service in the following form:

Certificate of Service

I certify that a copy of the foregoing was (mailed) (delivered)
(sent via _____) to _____
_____ at _____
_____ on the ___ day of _____ 20____.

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When service is upon civilian counsel, an additional certificate should be added to reflect service on associated military counsel, if any. The Certificate(s) of Service shall be signed by counsel of record or by a person supervised by that counsel.

(k) **Supplemental briefs.** Any Supplemental Brief on Behalf of Appellant must be submitted by Motion for Leave to File showing good cause for the delayed filing. If the motion is granted, the appellee must file a response within five days. However, when appellee's initial Brief on Behalf of Appellee has not previously been filed, the period for filing that brief is automatically extended to coincide with the time for filing a response to the Supplemental Brief on Behalf of Appellant.

RULE 16. ISSUES PERSONALLY RAISED BY AN APPELLANT

(a) The appellant, without conceding the legality of the findings of guilty or the sentence, may file a pleading that does not assign error, does not raise an error personally asserted by the appellant, and does not request specific relief. In such cases, the convening authority will promptly deliver the record to the CMCR unless notified within five calendar days that either side intends to file a brief pursuant to Rule 15.

(b) Unless otherwise briefed or argued by appellate defense counsel, issues personally raised by an appellant shall be brought to the CMCR's attention by footnote or in an Appendix to the Brief on Behalf of Appellant. To support the appellant's contentions, counsel may submit, by motion, written communications from the appellant. The appellant's submissions will not be considered unless they are signed. Appellate defense counsel is responsible for providing a typed transcript in English of any handwritten submissions or of any submissions in a language other than English. *See* Rule 21(b).

(c) The CMCR may require that any issue personally asserted by the appellant be briefed or argued.

RULE 17. AMICUS CURIAE BRIEFS

(a) A brief of an *amicus curiae* may be filed by invitation of the CMCR, or with the written consent of all parties, or by motion for leave to file.

(1) An *amicus curiae* brief that brings to the attention of the court relevant matter not already brought to its attention by the parties may be of

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considerable help to the court. An *amicus curiae* brief that does not serve this purpose burdens the court, and its filing is not favored.

(2) No motion for leave to file an *amicus curiae* brief is necessary if presented on behalf of any agency of the United States by the agency's authorized legal representative, or when submitted by the authorized legal representative of a country to which the accused claims citizenship.

(b) Ordinarily, neither the hearing nor the disposition of a case will be delayed pending action on a motion for leave to file an *amicus curiae* brief or a motion of an *amicus curiae* to participate in a hearing, or in order to await the filing of a brief of an *amicus curiae*.

(c) A brief of an *amicus curiae* is subject to the same length (30 pages) and format limitations as a brief for the appellant or appellee. See Rule 15(e)-(g).

RULE 18. ORAL ARGUMENTS

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

(1) Standards. Oral argument will be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(2) Order and Contents of Argument. The appellant opens and concludes the argument. Counsel should not read at length from briefs, records, or authorities.

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(3) **Cross-Appeals and Separate Appeals.** If there is a cross-appeal, the party who files a notice of appeal first is the appellant for purposes of oral argument. These designations may be modified by the parties' agreement or by court order. Unless the court directs otherwise, a cross-appeal or separate appeal will be argued when the initial appeal is argued.

(b) **Notice of hearing.** A Motion for Oral Argument may be filed contemporaneously with the filing of a Brief. The CMCR will issue a Notice of Hearing within five calendar days after receipt of the record and briefs, and at least ten (10) calendar days before the scheduled date for oral argument. The Notice of Hearing will specify the issues to be addressed during oral argument. Oral argument may be postponed for no more than five calendar days upon a showing of good cause.

(c) **Hearing calendar.** The CMCR's hearing calendar is established by a Notice of Hearing issued by the panel assigned to each case. The CMCR does not necessarily consult counsel in setting the calendar, but may take into account a preference expressed by either party. If the CMCR's calendar conflicts with that of another court before which counsel is scheduled to appear, counsel shall so notify the CMCR, orally or in writing, within three days after the CMCR's Notice of Hearing is issued. Otherwise, a party desiring re-scheduling shall file a Motion to (Postpone)(Advance) Oral Argument.

(d) **Time allotted.** Unless the CMCR specifies otherwise, each side will be allotted 30 minutes to present oral argument. Counsel desiring additional time shall show good cause by Motion for Leave to Exceed Time Limit for Oral Argument. Counsel representing the appellant or petitioner (or the moving party when the subject of the hearing is a motion) shall argue first, but may reserve any portion of the time for rebuttal. Surrebuttal ordinarily is not permitted.

(e) **One counsel limitation.** Only one counsel may present oral argument for each party. Any party wishing to deviate from this rule must obtain leave of the CMCR by motion. Any counsel who has entered an appearance in the case may be seated at the counsel table. Absent leave of CMCR, only members of the bar or counsel appearing *pro hac vice* or as *amicus curiae* may be seated.

(f) **Attire.** DoD counsel shall appear in the following uniforms: Army—class "A"; Navy—service dress blue; Marine Corps—service "A"; and Air Force—service dress. Civilian counsel shall wear similarly dignified business attire.

(g) **Decorum.** Smoking, eating, and chewing (gum, tobacco, etc.) are not permitted in the courtroom. Cellular telephones, pagers, watch alarms, and similar devices, will be turned off. Counsel may provide drinking water for personal convenience, but shall remove it when the hearing is adjourned.

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(h) **Supplemental citations.** Supplemental citations of authority may be submitted by Motion for Leave to File no later than two days prior to oral argument. Within five days following oral argument, counsel may submit a Motion for Leave to File a Memorandum of Argument or for Leave to File a Supplemental Citation of Authority for any argument or citation made during the hearing that was not set forth in the brief filed prior to argument.

(i) **Argument by *amicus curiae*.** Argument by counsel of an *amicus curiae* may be allowed on motion filed under Rule 21.

(j) **Arguments open to public.** Oral arguments shall be open to the public unless the presiding judge of the decision panel or other competent authority orders the hearing closed in accordance with the criteria and procedures set out for military commissions in R.M.C. 806, Mil. Comm. R. Evid. 505, and RTMC ¶ 18-3.

(k) **Failure to appear.** The court may regard the failure to appear at the time and place set for oral argument as a waiver of oral argument. The court may proceed without oral argument or continue the case until a later date. The court may require a written explanation for the failure to appear.

RULE 19. DISTRIBUTION OF ORDERS AND DECISIONS

Immediately upon issuance of an order, decision or notice of the CMCR, the clerk of court shall give notice of the CMCR's orders or decisions by immediately signing, dating and serving them on detailed appellate defense counsel, including civilian counsel, if any; government counsel; the convening authority (or designee); and the DoD General Counsel (or designee).

RULE 20. RECONSIDERATION

(a) **General provisions.** The CMCR may, in its discretion and on its own motion, or on motion by one of the parties, enter an order announcing its intent to reconsider its decision in any case not later than fifteen days after service of such decision on the detailed appellate defense counsel, and on the government appellate counsel, whichever is later. If there is a mistake in its decision, the CMCR may, in its discretion, and without further notice to the parties, issue a corrected decision. The corrected text in the decision will be underlined, and the first page of the decision at the top and bottom of the page will indicate "Corrected Copy." No briefs or arguments shall be received unless the order so directs.

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(b) **Time limits.** The CMCR may, in its discretion, reconsider its decision in any case upon motion filed either:

(1) By detailed appellate defense counsel within five days after receipt by counsel of a decision or order, or

(2) By detailed appellate government counsel within five days after the decision or order is received by counsel.

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

(d) **Extension of time.** The time limitations prescribed by this rule shall not be extended under the authority of Rule 22, except that the time for filing briefs by either party may be extended for good cause.

(e) **Filing rules.** A party may seek reconsideration of a decision by filing a Motion for Reconsideration, and include a copy of the decision or order as to which reconsideration is sought. Any motion for reconsideration must be delivered to the address specified in Rule 6.

(f) **Causes for reconsideration.** Ordinarily, reconsideration will not be granted without a showing that one of the following grounds exists:

(1) A material legal or factual matter was overlooked or misapplied in the decision;

(2) A change in the law occurred after the case was submitted and was overlooked or misapplied by the CMCR; or

(3) The decision conflicts with the following: a decision of the Supreme Court of the United States or of an Article III federal court; another decision of the CMCR; a decision of any other court of the United States; or an executive order, directive, or regulation promulgated by the President of the United States or the Secretary of Defense.

(g) **Stay.** The timely filing of a request for reconsideration does not stay the decision of the CMCR.

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(h) **Vacation.** Unless otherwise announced in an order granting reconsideration, the order granting reconsideration vacates the decision being reconsidered.

RULE 21. MOTIONS

(a) **Content.** All motions, unless made during the course of a hearing, shall concisely state with particularity the relief sought and the grounds therefore. Motions, pleadings, and other documents desired to be filed with the CMCR may be combined in the same document, with the heading indicating, for example “MOTION TO FILE (SUPPLEMENTAL ASSIGNMENTS OF ERROR) (CERTIFICATE OF CORRECTION) (SUPPLEMENTAL PLEADING)”, or “ASSIGNMENTS OF ERROR AND MOTION TO FILE ATTACHED REPORT OF SANITY EVALUATION”.

(b) **Motions to attach documents.** If a party desires to attach a statement of a person to the record for consideration by the CMCR on any matter under Rule 15(d), such statement shall be made either as an affidavit or as an unsworn declaration under penalty of perjury pursuant to 28 U.S.C. § 1746. All documents containing language other than English shall have, attached, a certified English translation.

(c) **Opposition.** Any opposition to a motion shall be filed within five days after receipt by the opposing party of service of the motion.

(d) **Leave to file.** Any pleading not required by these rules shall be accompanied by a motion for leave to file such pleading.

(e) **Oral argument.** Oral argument shall not normally be permitted on motions.

(f) **Decisions on motions.** In appropriate cases, the CMCR may act immediately on any motion without awaiting an answer from the other party. Any party adversely affected by the CMCR’s action may request reconsideration, vacation, or modification of such action. A single judge of the particular panel to which the case is assigned may act on any motion, but may not dismiss or otherwise determine an appeal. A majority of the particular panel to which the case is assigned may overrule any motion decided by a single judge.

(g) **Service on other parties.** Each motion must include the certificate of service prescribed by Rule 15(j).

(h) **Readability of accompanying documents.** Motions to file or judicially notice documents, except documents on file in the office of the clerk

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of court must be accompanied by a legible copy of the document, including a certified translation of any foreign language material and a typed copy of any hand-written material in English, if required for legibility.

RULE 22. CONTINUANCES, EXTRAORDINARY WRITS, AND INTERLOCUTORY MATTERS

(a) **Extraordinary Writs.** The court may, in its discretion, entertain petitions for extraordinary relief under 28 U.S.C. Section 1651(a), 10 U.S.C. Section 950f, and *In re Al-Nashiri*, 791 F.3d 71, 75-78 (D.C. Cir. 2015). A petition for extraordinary relief in the number of copies required by the court shall be accompanied by proof of service on each party respondent and will contain:

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

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

(3) A copy of any pertinent parts of the record and all exhibits related to the petition if reasonably available and transmittable at or near the time the petition is filed;

(4) A statement of the issue;

(5) The specific relief sought;

(6) Reasons for granting the writ;

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

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

(b) **Format.** The title of the petition shall include the name, and where appropriate, the official military or civilian title of any named party acting in an official capacity as an officer or agent of the United States. When an accused has not been named as a party, the accused shall be identified by name by the petitioner and shall be designated as the real party in interest. The petition must be captioned so as to specify the type of writ sought (for example, Petition for Extraordinary Relief in the Nature of a Writ of Mandamus). If a stay of ongoing or impending proceedings is sought, the caption must so indicate (for example,

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Petition for Extraordinary Relief in the Nature of a Writ of Mandamus and Application for Stay of Proceedings).

(c) **Electronic Petitions.** The court will docket petitions for extraordinary relief submitted by electronic means. A petition submitted by electronic means will conclude with the full name and address of petitioner's counsel, if any, and will state the date on which the written petition and brief, when required, were forwarded to the court and to all named respondents and by what means they were forwarded.

(d) **Notice to the Convening Authority.** Immediately upon receipt of any petition, the clerk shall forward a copy of the petition to the convening authority or designee.

(e) **Briefs.** Each petition for extraordinary relief must be accompanied by a brief in support of the petition. The court may issue a show cause order in which event the respondent shall file an answer within 10 days of the receipt of the show cause order. The petitioner may file a reply to the answer within 7 days of receipt of the answer. (d) Petitions for extraordinary relief and supporting briefs must comply with the standards set forth in Rule 15.

(f) **Initial Action by the Court.** The court may dismiss or deny the petition, order the respondent to show cause and file an answer within the time specified, or take whatever other action it deems appropriate.

(g) **Oral Argument and Final Action.** The court may set the matter for oral argument. However, on the basis of the pleadings alone, the court may grant or deny the relief sought or make such other order in the case as the circumstances may require. This includes referring the matter to a special master, who need not be a military judge, to further investigate, to take evidence, and to make such recommendations as the court deems appropriate.

(h) **Time Limits.** Except as otherwise provided in Rule 20(d), the M.C.A., M.M.C., or RTMC, the CMCR may, upon motion and for cause shown, grant counsel an extension of any time limits prescribed. The CMCR may dispose of any interlocutory or other appropriate matter not specifically covered by these rules, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case. *See generally* Rule 15(c). The filing of a motion for an enlargement does not toll the prescribed time period. Counsel must file motions for enlargement of time at least three days prior to the deadline to allow timely consideration by the CMCR.

(i) **Motions for Extensions.** Motions for extensions require a particularized showing of necessity for the extension, which shall not exceed thirty (30) days. When engagement in other litigation is a cause, specific

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information is required as to the number and type of cases and the courts involved. In each case, the motion must include information on whether the trial was contested, the number of transcript pages, the approved sentence, and date of sentencing, and the appellant's current status as to confinement. If the complexity of issues on appeal is a cause, the number and nature of those issues should be explained. Extreme hardship to counsel, if a cause, must be explained.

RULE 23. INTERLOCUTORY APPEALS BY THE UNITED STATES

(a) Interlocutory appeals by the United States will be processed under the procedures, legal standards, and time limits established in R.M.C. 908 and RTMC ¶ 25-5. Briefs will comply with Rule 15. Briefs will be filed and oral argument, if any, will be scheduled in accordance with Rules 15 and 18, unless more restrictive rules are applicable under R.M.C. 908 or RTMC ¶ 25-5.

(b) Appeals under this Rule will, whenever practicable, take priority over all other proceedings before the CMCR.

(c) Appeals will ordinarily be decided within 30 calendar days after oral argument or filing of briefs, whichever is later, unless the chief judge grants an extension of time.

(d) Appeals under this rule may be decided by order in lieu of a full written opinion.

RULE 24. PETITIONS FOR NEW TRIAL

Petitions for new trial referred to the CMCR by the convening authority under R.M.C. 1210 ordinarily will be decided, without additional briefs or oral argument, based on the materials submitted to the convening authority.

RULE 25. RECUSAL OR DISQUALIFICATION OF JUDGES

(a) **Grounds.** Judges may recuse themselves under any circumstances considered sufficient to require such action. Judges must disqualify themselves under circumstances set forth in 28 U.S.C. § 455, R.M.C. 902, or in accordance with Canon 3C, Code of Conduct for United States Judges as adopted by the Judicial Conference of the United States. U.S. Courts website, Code of Conduct for United States Judges webpage, <http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>. For purposes of R.M.C. 902, the same disqualification standards which apply to military judges shall also apply to civilian judges appointed under 10 U.S.C. § 950f.

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(b) **Procedure.** A motion to disqualify a judge shall be referred to that judge for a final decision. If an initiating judge is recused or disqualified, that judge will notify the clerk of court, who will arrange for assignment of a substitute judge.

RULE 26. INTERNAL RULES

(a) The chief judge, in consultation with the other members of the CMCR, may amend, modify, or supplement these rules. The chief judge shall ensure that any such changes to the rules are consistent with the need to protect classified information.

(b) The chief judge may prescribe interim rules and procedures for the CMCR which are not inconsistent with these Rules of Practice, the M.C.A., M.M.C., or RTMC.

(c) Suggested changes in these rules should be addressed to the clerk of court.

RULE 27. RECORDING, PHOTOGRAPHING, BROADCASTING, OR TELECASTING OF HEARINGS

The recording, photographing, broadcasting, or televising of any session of the CMCR or other activity relating thereto is prohibited unless specifically authorized by the court. A recording of oral arguments will be posted on the DoD Military Commissions website unless the presiding judge of the proceeding directs otherwise.

RULE 28. CLERK OF COURT, CMCR

(a) **Appointment and supervision.** The General Counsel of the DoD appoints the clerk of court, the deputy clerk of court, and all assistant clerks of court of the CMCR under RTMC ¶ 25-4. The clerk of court, deputy clerk of court, and assistant clerks of court are part-time positions; however, CMCR duties take precedence over all other duties. The sole supervisors of the clerk of court in CMCR matters are the CMCR judges. The CMCR chief judge has authority to terminate the clerk of court, deputy clerk of court, and any assistant clerks of court from part or all of their CMCR duties.

(b) **Oath of office.** Before entering upon the execution of their office, the clerk of court, deputy clerk of court, and all assistant clerks of court shall take the oath or affirmation prescribed in 28 U.S.C. § 951.

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(c) **Assistance to parties.** The clerk of court receives documents for filing with the CMCR and has authority to return any submitted filing that does not comply with these Rules to the party providing the filing; however, if a party wishes, the decision to accept or reject the filing will be made by the CMCR panel with jurisdiction over the case.

(d) **Acceptance of authenticated records.** The clerk of court may accept authenticated portions of records of trial from the clerk of court for commissions prior to authentication of the complete record of trial, and may thereafter, transmit such records to the CMCR.

RULE 29. ENTRY OF JUDGMENT

The clerk of court shall prepare, sign, date, and enter the judgment immediately upon the filing of the opinion of the court. If a judgment is rendered without an opinion, the clerk of court shall prepare, sign, date, and enter such judgment in an order following instruction from the court. The clerk shall, on the date a judgment is entered, distribute to all parties, then to convening authority, then to the General Counsel of the DoD, and then to the OMC website Custodian a copy of the judgment and opinion, if any, or of the order if no opinion was written.

RULE 30. RECORDS OF TRIAL

(a) **Custody of records.** Original copies of records of trial will not be removed from the office of the clerk of court unless permission is granted by an employee of the clerk's office and a charge-out record is completed. Classified material will be handled in accordance with these rules, the M.C.A., M.M.C., RTMC, and applicable security regulations. Any document filed with the clerk of court and made a part of the CMCR's records may not thereafter be withdrawn from the official CMCR files without the permission of the panel where the case is docketed.

(b) **Altering records.** No notes or marks of any kind will be made on the pages of an original record of trial, including the accompanying documents and exhibits, nor shall any page be removed, rearranged, or inserted except in the office of the clerk of court by an employee of that office. Copies of records issued for use of appellate counsel remain subject to recall for further proceedings and for other necessary purposes; accordingly, the making of notes and other marks therein is discouraged, and such notes are not confidential or privileged.

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(c) **Number of copies provided to the CMCR.** The clerk of court shall provide one copy of the record of trial to each member of the panel to which the case is assigned. The original of the record of trial will be retained by the clerk of court.

(d) **Erroneous or incomplete records.** Non-substantive, administrative errors and irregularities found in records of trial, if not made the subject of an order of the CMCR, should be brought to the attention of the clerk of court for administrative action with a view to correction. The clerk of court will not change an exhibit or transcript in the original record of trial, but can file an errata sheet in the allied documents of the record of trial.

RULE 31. CASES INVOLVING CLASSIFIED AND PROTECTED INFORMATION

(a) **CMCR security officer.** The clerk of court shall serve as the CMCR security officer for the purpose of providing for the protection of classified information, including sensitive compartmented information (SCI), and controlled unclassified information (CUI) which includes protected and sensitive information. The clerk of court may designate such assistants as are appropriate for such purposes.

(b) **CMCR storage and handling of classified and CUI documents.** Documents containing classified information shall not be removed from the premises of the Offices of the CMCR except under extraordinary circumstances, and removal must be personally authorized by the CMCR security officer or an authorized designee. Any question regarding the classification level, proper handling, storage or other safeguarding procedures of any material shall be resolved by the CMCR security officer, who will refer the matter to the agencies having classification or CUI authority over said material for clarification, review, classification, or declassification. Documents containing classified information and CUI will be stored and safeguarded by the counsel admitted to practice before the CMCR and the CMCR security officer, in accordance with the following references:

(1) Classified Information Procedures Act (CIPA), 18 U.S.C. app. § 3;

(2) Executive Order (EO) 13526, *Classified National Security Information*, 75 Fed. Reg. 707 (Dec. 29, 2009);

(3) EO 12968 (EO), *Access to Classified Information*, 60 Fed. Reg. 40245 (Aug. 2, 1995);

(4) M.M.C.;

U. S. Court of Military Commission Review Rules of Practice

(5) RTMC;

(6) DoD Regulation 5200.1-R, *Information Security Program*;

(7) Intelligence Community Directive (ICD) No. 704, *Personnel Security Standards And Procedures Governing Eligibility For Access To Sensitive Compartmented Information And Other Controlled Access Program Information* (effective Oct. 1, 2008), http://www.dni.gov/files/documents/ICD/ICD_704.pdf, and its five associated Intelligence Community Policy Guidance (ICPG), nos. 704.1 through 704.5, <http://www.dni.gov/index.php/intelligence-community/ic-policies-reports/intelligence-community-policy-guidance>;

(8) DoD Manual (DoDM) 5200.01, vols. 1-4, *Information Security Program* (Feb. 24, 2012) pertaining to the DoD Information Security Program, especially vol. 3, Protection of Classified Information, and vol. 4, Controlled Unclassified Information, <http://www2.dla.mil/j-6/dlmsso/elibrary/manuals/regulations.asp>; and

(9) The applicable directives of the agency having classifying authority over the documents. *See* 18 U.S.C. app. 9 § 9, *Security Procedures* (Dec. 1, 2010) (issued by the Chief Justice of the United States pursuant to the CIPA and detailing responsibilities of court security officer); Robert Timothy Reagan & Fed. Judicial Ctr., *Keeping Government Secrets: A Pocket Guide on the State-Secrets Privilege, the Classified Information Procedures Act, and Classified Information Security Officers* (2nd ed. 2013), <https://www.fas.org/sgp/eprint/pocket.pdf>.

(c) **Classified information and CUI in briefs and filings.** Classified information and CUI shall be included in documents filed with the CMCR only when absolutely necessary for a full and fair consideration of the issues involved. The CMCR security officer or designee shall consult with the designated point of contact of the originating agency to ensure that specific procedures necessary to protect classified information are implemented when classified information is presented to the CMCR. The parties will ensure documents they file are properly classified and annotated as required by the references in Rule 31(b).

(d) **Material under seal or protective order.** Record material, including any appendix, brief, motion, or other document containing materials held under seal or protective order by another court, military commission, or agency, shall remain subject to that seal or protective order on appeal unless modified or amended by the CMCR.

(e) **Certificates of confidentiality.** At the time of filing any appendix, brief, motion, or other document containing, or otherwise disclosing materials

U. S. Court of Military Commission Review Rules of Practice

held under seal or under protective order by another court, military commission or agency, counsel or a pro se party shall file a certificate of confidentiality. Upon motion by any party or *sua sponte*, the CMCR shall enter protective orders, as an individual case may require, or for the protection of classified information and CUI. A certificate of confidentiality is not required if the CUI or classified information is redacted.

(1) A certificate of confidentiality must accompany any filing which contains or would otherwise disclose sealed materials. The certificate of confidentiality shall:

(A) identify the sealed material;

(B) list the dates of the orders sealing the material or, if there is no order, the lower court or agency's general authority to treat the material as sealed;

(C) specify the terms of the protective order governing the material;
and

(D) identify the appellate document that contains the sealed material.

(2) The order sealing the documents shall be attached to the certificate of confidentiality.

(f) **Motions to seal.** Motions to seal all or any part of the record are presented to and resolved by the lower court or agency in accordance with applicable law during the course of trial, hearing, or other proceedings below. *See, e.g.,* R.M.C. 905-906; Mil. Comm. R. Evid. 505-06.

(1) A motion to seal may be filed with the CMCR when:

(A) a change in circumstances occurs during the pendency of an appeal that warrants reconsideration of a sealing issue decided below;

(B) the need to seal all or part of the record on appeal arises in the first instance during the pendency of an appeal; or

(C) additional material filed for the first time on appeal warrants sealing.

(2) Any motion to seal filed with the CMCR shall:

U. S. Court of Military Commission Review Rules of Practice

(A) identify with specificity the documents or portions thereof for which sealing is requested;

(B) state the reasons why sealing is necessary;

(C) explain why a less drastic alternative to sealing will not afford adequate protection; and

(D) state the period of time the party seeks to have the material maintained under seal and how the material is to be handled upon unsealing.

(3) A motion to seal filed with the CMCR will be placed on the public docket, in redacted form if necessary, for at least five calendar days before the court rules on the motion. The materials subject to a motion to seal will be held under seal pending the court's disposition of the motion.

(g) Filing of confidential and sealed material.

(1) Record of trial. M.M.C. Rules 1103 and 1104 describe the process for assembling a record of trial that includes classified materials.

(2) Appendices. When sealed material is included in an appendix to a brief or motion, it must be segregated from other portions of the appendix and filed in a separate, sealed volume of the appendix.

(3) Briefs, motions, and other documents. When sealed material is included in a brief, motion, or any document other than an appendix, two versions of the document must be filed:

(A) a complete version under seal in which the sealed material has been distinctively marked; and

(B) a redacted version of the same document for the public file.

(4) Personal data identifying information. Personal data identifying information, such as an individual's social security number, an individual's tax identification number, a minor's name, a person's birth date, a financial account number, and (in a criminal case) a person's home address, shall be filed in accordance with section 205(c)(3) of the E-Government Act of 2002, P.L. 107-347, <https://www.gpo.gov/fdsys/pkg/PLAW-107publ347/pdf/PLAW-107publ347.pdf> and rules adopted thereunder. Names of witnesses should not be included in motions or briefs intended for public filing absent the consent of the witness.

U. S. Court of Military Commission Review Rules of Practice

(5) Marking of sealed material. The first page of any appendix, brief, motion, or other document tendered or filed under seal shall be conspicuously marked SEALED and all copies shall be placed in an envelope marked SEALED.

(6) Number of copies. Only one copy of a sealed appendix, brief, motion, or other document shall be filed, with one copy of the certificate of confidentiality or motion to seal. Unsealed volumes of the appendix and redacted copies of the public brief, motion, or other document shall be filed in conformity with the rules governing appendices, briefs, motions, and other documents.

(7) Responsibility for Compliance. The responsibility for following the required procedures in filing confidential and sealed material rests solely with counsel and the parties. The clerk of court will not review each filing for compliance with this rule.

(h) **Public access.** Parties must remember that any personal information not otherwise protected by sealing or redaction may be made available over the internet. Counsel should notify clients and witnesses of these facts so that informed decisions may be made on what information is to be included in a document filed with the court. Absent consent, the names of witnesses should be considered CUI, and accordingly redacted from the public version of the filed brief, motion, appendix or other document.

(i) **Delay prior to public release of documents.** After a document is filed by a party, either party within 48 hours may file a motion to seal, classify, or redact the document. A party should immediately notify the clerk of court if the other party files a document that should be classified or redacted, and then file the supporting motion. A motion to seal, classify, or redact a document must include:

(1) A statement as to why sealing, classifying, or redacting is necessary, and why another procedure will not suffice;

(2) References to governing law or regulation; and

(3) Unless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and as to how the matter is to be handled upon unsealing. The proposed order shall recite the findings required by governing law or regulation to support the proposed sealing.

(4) This rule should not be construed to limit the effect of more restrictive protective orders governing the filing and review of matters before the court.

U. S. Court of Military Commission Review Rules of Practice

(j) **Security Clearances.** Security clearances for all judges and personnel on the staff of the court will be obtained by the CMCR security officer in accordance with the references in Rule 31(b).

(k) **Improper classification and redaction.** Information shall not be classified or redacted from court documents to conceal inefficiency, violations of law, or administrative error; to prevent embarrassment to a person, organization, or agency; or to prevent or delay release of information that does not require protection in the interest of national security or to protect the identity of witnesses or commission participants. *See* 28 C.F.R. § 17.22(d); DoDM 5200.01, vol. 1, encl. 4, ¶ 2(a) and vol. 4, encl. 3, ¶ 1a.

(l) **Additional rules.** The CMCR in these rules or a panel for a particular case may adopt additional rules to protect the security interests of the United States or any other nation or interest.

(m) **Violations of security rules.** Should a possible violation of security rules occur involving documents provided to the CMCR, the violation shall be reported to the CMCR security officer, who will then inform the chief judge, who may, in turn, inform the panel with jurisdiction over the case. The CMCR security officer will also inform the OMC chief security officer of the possible violation of security rules, who will, in turn, take appropriate actions under references in Rule 31(b).

RULE 32. PUBLICATION OF ORDERS AND DECISIONS

(a) **Policies.** Published opinions of this court constitute the law of this jurisdiction. Selected orders and decisions of the court will be published in West's Federal Supplement Second or later edition. Orders and decisions not selected for publication may be posted on the DoD Military Commissions website in accordance with Rules 32(b) and 33(a). Published opinions serve as precedent providing the rationale of the court's decision to the public, the parties, practitioners and judicial authorities. Citations to published cases are favored; however, citations to unpublished cases are permissible. The court views citation to unpublished cases as merely persuasive authority.

(b) **Publication criteria.** An order or decision will be published only if it satisfies one or more of the following standards for publication:

(1) It establishes, alters, modifies, clarifies, or explains a rule of law applicable to trials by military commission or appellate review of trials by military commission;

(2) It involves a legal issue of continuing public interest;

U. S. Court of Military Commission Review Rules of Practice

(3) It criticizes existing law;

(4) It contains a historical review of a legal rule that is not duplicative; or

(5) It resolves a conflict between panels of this court or creates a conflict with a decision of another Article I or Article III federal court.

(c) Processing of orders and decisions.

(1) All decisions and orders will be distributed electronically to all judges on the court. An opinion or order will be published if a simple majority of non-recused judges on the court believe it satisfies one or more of the publication criteria. When a decision or order is proposed for publication by any judge, it will be circulated to all judges of the court, either electronically or by printed copy, or both, with a cover sheet to record votes and comments. Votes will be transmitted electronically or by printed copy to the office of the clerk of court. The clerk of court or an authorized designee will tally the votes and notify all judges of the result.

(2) If the court votes to publish a decision or order, the clerk of court or an authorized designee will transmit it electronically to West in accordance with the West publication guide. The clerk of court and deputy clerk of court will serve as point of contact for any necessary dialog regarding a decision or order submitted for publication.

(3) Published and unpublished opinions and orders will be transmitted for posting on the DoD Military Commissions website unless the court orders otherwise.

(4) An unpublished opinion will include the following declaration below the case caption: “IN ACCORDANCE WITH RULE 32(a), COURT OF MILITARY COMMISSION REVIEW RULES OF PRACTICE, THIS OPINION DOES NOT SERVE AS PRECEDENT.”

(d) **En banc and published decisions.** When a proposed published opinion of the court is circulated among the non-recused members of the court, the non-recused judges shall vote for or against consideration of the case en banc. If a majority of the non-recused judges of this court vote against consideration of the case en banc, the opinion, when published, shall contain a footnote worded, depending on the circumstances, in substance as follows: “This opinion has been circulated among all non-recused judges of this court. (No judge voted for) (A majority did not vote for) en banc consideration of the case (Judge XXX and Judge YYY voted to consider this case en banc).” En banc endorsement of a published decision is addressed in Rule 5(g).

U. S. Court of Military Commission Review Rules of Practice

RULE 33. PUBLIC RELEASE OF CMCR FILINGS AND DECISIONS

(a) **Process for release.** The clerk of court is authorized to release court filings, orders, administrative documents, and decisions (“court documents”), which **clearly do not contain** classified information or CUI for posting on the DoD Military Commissions website and to the public without a security review. Releasable court documents are those versions of such materials that contain no classified information or CUI, or from which all such information has been redacted either by the clerk of court or by the DoD Security Classification/Declassification Review Team and/or the pertinent non-DoD federal department and agency (“security review”). *See* RTMC. The clerk of court will provide documents that do not require security review to the custodian of the DoD Military Commissions website, and the DoD Military Commissions website custodian shall post such court documents within two business days of receipt from the clerk of court. If the DoD Military Commissions website custodian or the security review determines that something should be redacted from the court documents provided by the clerk of court, the DoD Military Commissions website custodian shall immediately return those documents to the clerk of court.

(b) **Publication on the DoD Military Commissions website.** Other parties providing or having access to court documents are not permitted to release to the public such documents until after they are posted on the OMC website or released to the public by the clerk of court. Filings and decisions will be available at: <http://www.mc.mil/Cases.aspx?caseType=cmcr>.

(c) **Referral to DoD Security Classification/Declassification Review Team.** The clerk of court or designee shall refer court documents possibly containing CUI or classified information for review and possible redaction by the DoD Security Classification/Declassification Review Team and by any relevant non-DoD federal department and agency original classification authority (“security review”) prior to public release. *See* RTMC.

(1) The clerk of court or designee shall release to the DoD Military Commissions website custodian all non-sealed court documents for review and subsequent posting on the DoD Military Commissions website that possibly contain CUI or classified information, who will, in turn, refer the court documents for security review. The security review shall generally take no longer than 15 business days. The 15 business day security review period shall be extended for a reasonable period if the entities conducting the security review submit a notification to the clerk of court declaring that such additional time is required by exceptional circumstances. Any additional time provided shall be the minimum additional time required in light of the exceptional circumstances set out in the request for additional time. In no event should the security review exceed 90 calendar days, unless the document filed with the court exceeds 200 pages.

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(2) If there is some particular urgency to release any document to the public, the parties or press may ask the clerk of court to urge that the security review be expedited.

(d) **Media inquiries.** Responses to media inquiries that cannot be answered by release of documents under Rule 33(a) will be referred to the Office of the Assistant Secretary of Defense for Public Affairs.

U. S. Court of Military Commission Review Rules of Practice

**APPENDIX 1. FORMAT FOR BRIEF ON BEHALF OF (APPELLANT)
(APPELLEE)**

	)	IN THE COURT OF MILITARY
	)	COMMISSION REVIEW
)	
U N I T E D S T A T E S	)	BRIEF ON BEHALF OF
	)	(APPELLANT) (APPELLEE)
)	
v.	)	Case No. _____
)	
_____	)	Tried at Guantanamo, Cuba
(Full typed name and alias, if any)	)	on _____(dates)
	)	before a Military Commission
	)	convened by_____
)	
)	
	)	Presiding Military Judge
	)	Colonel _____

**TO THE HONORABLE, THE JUDGES OF THE U. S. COURT OF
MILITARY COMMISSION REVIEW**

Table of Contents

[If the brief exceeds ten pages, a table of contents and a table of cited authorities (i.e., cases alphabetically arranged, constitutional provisions, statutes, treatises, and other materials) with references to the pages in the document where such authorities are cited is required. A table of contents is required for any Appendix that exceeds 50 pages.]

Issue(s) Presented

[Set forth, in a concise statement, each issue presented to the CMCR. Issues presented will be set forth in upper case letters.]

Statement of Statutory Jurisdiction

[Set forth the statutory basis of the CMCR’s jurisdiction.]

U. S. Court of Military Commission Review Rules of Practice

Statement of the Case

[Set forth a concise summary of the chronology of the case, including the general nature of the charges, the pleas of the appellant, the findings and sentence at trial, and any other pertinent information regarding the proceedings.]

Statement of Facts

[Set forth accurately all facts pertinent to the issues raised, including specific page references and exhibit designations. Assertions of fact must be supported by specific citations to the record of trial, exhibits, or, when appropriate, documents accompanying the record of trial (allied or related documents). Any inference a party wishes the CMCR to draw from the facts of record should be clearly identified and the facts supporting that inference set out. If counsel elect not to make a separate statement of facts, but to include them within the particular assignment of error, the pertinent facts should be set forth in one or more paragraphs distinct from the statement of law and argument thereon. Answers may adopt appellant's statement of facts if there is no dispute, or, if there is a dispute, may restate the facts as they appear from appellee's viewpoint. The repetition of uncontroverted matters is not desired.]

Errors and Argument

[Set forth each assignment of error in upper case letters, followed by separate argument for each error unless two or more assignments of error are consolidated for purposes of argument. Arguments must discuss briefly the question presented, citing and quoting such authorities as are deemed pertinent. Each argument must include a statement of the applicable standard of review, and must be followed by a prayer for the specific relief requested.]

U. S. Court of Military Commission Review Rules of Practice

Appendix

[An appendix may set forth matters for the convenience of the CMCR, such as extracts from the record of trial, statutes, rules, or regulations; copies of decisions of other courts; and unpublished decisions. See Rules 15(d) and 21. Appendices must not be used to submit extra-record factual matter, which must instead be submitted to the CMCR by Motion to Admit (Defense)(Government) Appellate Exhibit (Letter or Numerical Designation), Motion to Judicially Notice (Description), or other appropriate motion.]

(Signature of counsel)

(Name, grade, branch, and title of military counsel, if any, and name, address, email address, telephone number, and telefax number of all military and civilian counsel, should be included)

CERTIFICATE OF COMPLIANCE WITH RULE 15

1. This brief complies with the type-volume limitation of Rule 15(g) because:

[principal brief may not exceed 14,000 words or 1,300 lines; reply brief may not exceed 7,000 words or 650 lines; line count can be used only with monospaced type]

This brief contains _____ [*state the number of*] words,

or

This brief contains _____ [*state the number of*] lines of text.

2. This brief complies with the typeface and type style requirements of Rule 15(e) because:

U. S. Court of Military Commission Review Rules of Practice

[12-point Times New Roman font must be used with monospaced typeface.]



This brief has been prepared in a monospaced typeface using _____ [state name and version of word processing program, e.g., Microsoft Word Version 2000 with _____ [state number of characters per inch and name of type style].

/s/ _____
Attorney for _____
Dated: _____

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was (mailed) (emailed) (delivered) (sent via _____) to _____ on the _____ day of _____ 20____.

(Signature of counsel)

(Name, grade, branch, and title of military counsel, if any, and name, address, email address, telephone number, and telefax number of all military and civilian counsel, should be included)

U. S. Court of Military Commission Review Rules of Practice

APPENDIX 2. FORMAT FOR APPLICATION FOR ADMISSION TO THE BAR OF THE U. S. COURT OF MILITARY COMMISSION REVIEW

**Clerk of Court, U. S. Court of Military Commission Review
(Address *See* Rule 6)**

The undersigned hereby makes application for admission to the Bar of the U. S. Court of Military Commission Review pursuant to Rule 9, Rules of Practice for the U. S. Court of Military Commission Review.

NAME _____
SSN_____

MILITARY RANK (if applicable)_____

PRESENT OCCUPATION: Name of firm or military unit, address, and telephone number:

HOME ADDRESS (permanent) and TELEPHONE NUMBER:

LAW SCHOOL: Name, location, degree, and year degree awarded:

Name all jurisdictions and courts in which you have been admitted to practice law. Give year admitted to practice:

JURISDICTION: COURTS (with year admitted)

_____	_____
_____	_____
_____	_____
_____	_____

U. S. Court of Military Commission Review Rules of Practice

If you are currently qualified and certified by a Judge Advocate General pursuant to Articles 26(b), 27(b), UCMJ, 10 U.S.C. §§ 826(b) and 827(b) state the armed force and certification date:

Have you been disbarred, suspended, reprimanded, censured, or otherwise disciplined as an attorney? Yes or No: _____. If so, state nature of the action (disbarred, suspended, etc.), the name and address of the authority in possession of the record thereof:

Are there any charges or complaints now pending concerning your conduct as an attorney? Yes or no: _____. If so, state the address of the authority in possession of the record thereof:

I have read the foregoing document and have answered all questions fully and frankly. The answers are complete and are true to the best of my own knowledge.

DATE _____

SIGNATURE _____

U. S. Court of Military Commission Review Rules of Practice

ADMISSION REQUIREMENTS

a. To be eligible for admission to the bar of the CMCR, an attorney must be a member in good standing of the bar of the highest court of a state, territory, commonwealth, or possession of the United States, the District of Columbia, or of the bar of a federal court.

b. Except for persons currently certified by a Judge Advocate General pursuant to Article 26(b) or 27(b), UCMJ, 10 U.S.C. § 826(b) or 827(b), the application must be accompanied by a current original certificate of admission and good standing before the bar of the highest court of a state, territory, commonwealth, possession, or District of Columbia, or of the bar of a federal court. (A certificate from the highest court of a state or similar jurisdiction is preferred.) The certificate is current if it is dated not more than one year before the date of admission. When admission is sought on the basis of certification under Article 26(b) or 27(b), UCMJ proof may be required at the discretion of the CMCR.

c. Similarly qualified attorneys of foreign nations may be admitted to honorary membership in the bar of the CMCR.

ADMISSION PROCEDURES: Admission procedures are set out in Rule 9. Applications should be mailed to: **Clerk of Court, U. S. Court of Military Commission Review, 875 North Randolph Street, Suite 8000, Arlington, VA 22203.**

FEE: There is no fee for admission to the bar of the CMCR.

REPORTING PROFESSIONAL DISCIPLINE: Attorneys, who are admitted to practice before the CMCR bar, shall promptly inform the clerk of court, if they are subjected to professional discipline. Foreign lawyers will notify the clerk of court if they are subjected to public discipline or suspended from practice in their licensing jurisdictions. Professional discipline includes the following actions:

(1) receipt of public discipline by any court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth, or possession of the United States;

(2) suspension from practice in courts-martial or in another United States military court, commission, or tribunal; or

(3) certification pursuant to Article 26(b) or 27(b), UCMJ, is withdrawn.



UNITED STATES COURT
OF
MILITARY COMMISSION REVIEW

10 April 2008

Administrative Order No. 08-02

By direction of the Chief Judge, after consultation with the other judges of the Court, the revised Rules of Practice for the United States Court of Military Commission Rules of Practice are promulgated. The revised rules will take effect immediately as interim rules under CMCR Rule 25 and shall apply to all matters and cases that may come before the Court after this date. This revision includes the amendments of the Rules approved by the Chief Judge and published by Administrative Order No. 08-01 on 3 January 2008; and the amendments of the Rules approved by the Chief Judge on 10 April 2008. The revised Rules are attached to this order, with the amendments of 10 April 2008 highlighted.

FOR THE COURT:

A handwritten signature in black ink, appearing to read "L. Foreman", is written over a horizontal line.

LEROY F. FOREMAN
Clerk of Court



UNITED STATES COURT
OF
MILITARY COMMISSION REVIEW

10 April 2008

MEMORANDUM FOR SECRETARY OF DEFENSE

SUBJECT: Rules of Practice for United States Court of Military Commission Review (CMCR)

I have promulgated and prescribed the enclosed revision of the Rules of Practice for the United States Court of Military Commission Review (Rules). All judges on the Court were given an opportunity to review the revisions and their comments have been incorporated. The revised Rules are provided for your review and approval, as required by *Manual for Military Commissions*, RMC 1201(b)(4).

Respectfully submitted,

A handwritten signature in black ink, reading "Frank J. Williams", is positioned below the "Respectfully submitted," text.

Frank J. Williams
Chief Judge

Enclosure
Revised Rules

Cc:
General Counsel, Department of Defense
Convening Authority, Office of Military Commissions
Chief Prosecutor, Office of Military Commissions
Chief Defense Counsel, Office of Military Commissions
CMCR Judges, Clerk, and Deputy Clerk

DEPARTMENT OF DEFENSE

COURT OF MILITARY COMMISSION REVIEW



RULES OF PRACTICE

**REVISED
EFFECTIVE DATE: 10 APRIL 2008**

Court of Military Commission Review Rules of Practice

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Court of Military Commission Review Rules of Practice

RULE 1. TITLE; SCOPE OF RULES¹

(a) Title. These rules are to be known as the Court of Military Commission Review Rules of Practice.

(b) Scope of rules. These rules govern practice before the Court of Military Commission Review (CMCR). In case of any conflict between these rules and the Military Commissions Act of 2006 or the Manual for Military Commissions, United States, 2007, the latter two will control.

(c) Suspension of rules.² On its own or a party's motion, the CMCR may - to expedite its decision or for other good cause - suspend any provision of these rules in a particular case and order proceedings as it directs.

RULE 2. JURISDICTION

(a) References. The jurisdiction of the CMCR is based on the following references:

- (1) Military Commissions Act of 2006 (MCA), 10 U.S.C. §§ 948a, *et seq.*
- (2) Manual for Military Commissions, United States, 2007 (Manual), including the Rules for Military Commissions (RMC) promulgated in Part II of the Manual.
- (3) Department of Defense Regulation for Trial by Military Commission (Regulation).

(b) Post-trial review. The record of trial of all military commission cases with a finding of guilty as to any offense shall be referred to the CMCR after the Convening Authority's action in accordance with MCA §§ 950b and 950c and RMC 1111.

¹ CMCR Rule 1 is from Fifth Circuit Federal Rule of Appellate Procedure (FRAP) Rule 1.

² CMCR Rule 1(c) is from Fifth Circuit FRAP 1(c), except Fifth Circuit FRAP 1(c) has an exception for Fifth Circuit FRAP 26(b), which states the court may not extend the time to file a notice of appeal. Because the CMCR is required to review every case that meets certain criteria, this exception is unnecessary. CMCR Rule 1(c) is also very similar to Army Court of Criminal Appeals (ACCA) Rule 25 (Suspension of Rules) and Rhode Island Supreme Court Rule 2. **This rule does not create any authority for the Court to suspend legal requirements not contained in these Rules of Practice.**

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RULE 3. SCOPE OF POST-TRIAL REVIEW

(a) The CMCR shall decide all cases and matters referred to it under RMC 908, 1111, and 1210.

(b) The CMCR shall consider timely filed written briefs and other pertinent materials submitted by the parties, and in its discretion may permit oral arguments and submissions by *amicus curiae*.

RULE 4. DECISION PANELS AND QUORUM³

(a) The CMCR Chief Judge will establish one or more three-member decision panels, designate the presiding judge for each panel, and establish a procedure for assignment of cases to three-member panels.

(b) Upon motion by a party or one of the judges on the panel to which the case was assigned, the CMCR may, in its discretion, consider a case en banc, if two-thirds of the judges appointed to the CMCR vote to grant the motion for en banc consideration.

(c) The determination of any matter referred to a panel, except a motion for en banc consideration, shall be according to the opinion of two of the three judges on the panel. However, any judge present for duty and assigned to the panel to which the case was assigned may issue all necessary orders concerning any proceedings pending to that panel, and any judge present for duty, or the Clerk of Court, if the Chief Judge has delegated such authority, may act on uncontested motions, provided such action does not finally dispose of an appeal, or case.

(d) For military officers serving on the CMCR as appellate military judges, duty on the CMCR will take precedence over all other military duties.

RULE 5. PLACE FOR FILING PAPERS⁴

(a) When the filing of a notice of appearance, brief, or other paper for consideration of the CMCR is required by these rules, such papers shall be filed at the following mailing address:

³ The rule is from ACCA Rule 4 (Quorum).

⁴ The rule is from ACCA Rule 5 (Place for Filing Papers). The portion pertaining to electronic filing is from Fifth Circuit FRAP 25.2 and Fifth Circuit FRAP 25.3.

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Clerk of Court, Court of Military Commission Review
One Liberty Center
875 N. Randolph Street
Suite 8000
Arlington, VA 22203

Should facsimile filing be utilized, such filings may be sent to:

Facsimile: 703-696-1831

Voice telephone number: 703-696-6640

(b) Should electronic filing be utilized, the Clerk of Court will provide and publish an e-mail address. Adobe Acrobat PDF format is the preferred standard. The electronic image of the document constitutes the original document for all CMCR purposes. Filing is complete when the document is received by the Clerk of Court. The provisions in these rules requiring copies are not applicable. The Clerk of Court is authorized to serve all papers, including opinions, electronically.

(c) Any paper not exceeding fifty pages in length in its entirety may be filed by facsimile transmission. The burden is on the sender to ensure receipt, completeness, and legibility. The paper must comply with the typographical requirements of Rule 14(e), (f), and (g), and must show the sender's facsimile and voice telephone numbers. Except as indicated below, if the facsimile shows the signature required by Rule 6 and the certificate of service on opposing counsel required by Rule 14(j), a signed original copy need not be sent unless so ordered by the CMCR.

(d) Copies of papers should also be filed with the opposing parties.

RULE 6. SIGNING OF PAPERS⁵

(a) All formal papers shall be signed and shall show, typewritten or printed, the signer's name, address, military grade (if any), and the capacity in which the paper is signed. Such signature constitutes a certification that the statements made therein are true and correct to the best of the knowledge, information, and belief of the persons signing the paper and that the paper is filed in good faith and not for purposes of unnecessary delay. Each pleading or other paper will be signed by an attorney of record. This applies to original or facsimile filings. Electronic signatures are authorized. Requirements for admission to the Bar of the CMCR are set forth in Rule 8, and notice of appearance requirements are set forth in Rule 12. A paralegal or legal intern who assists in preparing

⁵ This rule is from ACCA Rule 6 (Signing of Papers).

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a pleading or other paper may not sign the paper, but the assistance may be recognized in a footnote.

(b) One attorney of record may sign “FOR” another attorney of record whose signature block appears on the same pleading or other paper if authorized by that attorney to do so, in which event the CMCR will regard the latter as having personally signed the document.

RULE 7. COMPUTATION OF TIME⁶

In computing any period of time prescribed or allowed by these rules, by order of the CMCR, or by any applicable order, instruction, regulation or statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, or, when the act to be done is the filing of a paper in the CMCR, a day on which the Office of the Clerk of Court is closed due to weather or other conditions or by order of the Chief Judge of the CMCR, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. A facsimile or electronic filing shall be deemed filed when it is transmitted. A document or pleading filed after 5:00 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is in effect at the time of filing, shall be deemed filed on the following day.

RULE 8. QUALIFICATION OF COUNSEL⁷

(a) **All counsel.** Counsel in any case before the CMCR shall be a member in good standing of the bar of the highest court of a state, territory, commonwealth, or possession of the United States, bar of the District of Columbia, or bar of a federal court. No attorney may practice before this CMCR unless admitted to the Bar of the CMCR or appearing by leave of the CMCR *pro hac vice* (Rules 8(c) and 12(e)) or as an *amicus curiae* (Rule 16). Additionally, military counsel must be qualified and detailed in accordance with 10 U.S.C. §§ 949c and 950h as well as Regulation ¶¶ 9-1 and 9-5. The classified information requirements of Chapter 18 of the Regulation apply during the appellate process. *See* Rules 27-29. No counsel may appear in any proceeding before the CMCR while suspended from practice by the Judge Advocate General of any service.

⁶ This rule is from ACCA Rule 7 (Computation of Time).

⁷ This rule is from ACCA Rule 8 (Qualification of Counsel). Supreme Court Rules 5 (Admission to the Bar), 6 (Argument *Pro Hac Vice*), 7 (Disbarment and Disciplinary Action) and 9 (Appearance of Counsel), all pertain to the when and how counsel are permitted before the Supreme Court.

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(b) Military counsel. Detailed appellate defense and appellate government counsel shall, in addition to requirements in Rule 8(a), be qualified in accordance with Articles 27(b)(1), Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. § 827(b)(1); MCA §§ 948k and 950h, as well as Regulation ¶¶ 9-1 and 9-5.

(c) Admission. Upon entering an appearance, counsel shall be deemed admitted *pro hac vice*, subject to filing an application setting forth required qualifications if directed by the CMCR. The applicant must file with the Clerk of Court, CMCR, an application for admission on the form prescribed by the CMCR, together with a certificate from the presiding judge, clerk, or other appropriate officer of a court specified in Rule 8(a), showing that the applicant is a member of the bar in good standing. The certificate must be an original and dated within one year of the actual date of admission to the Bar of the CMCR. Applicants currently certified by a Judge Advocate General pursuant to Article 26(b) or 27(b)(1), UCMJ, 10 U.S.C. § 826(b) or 827(b)(1) may be admitted without a certificate of good standing; however, the CMCR may require evidence of certification. If such evidence of certification is required, the Clerk of Court will so inform the applicant. An application form for admission is at Appendix 2.

Each applicant admitted to practice in the United States shall sign the following oath or affirmation: “I,[full name], do solemnly swear (or affirm) that I will support the Constitution of the United States, and that I will conduct myself uprightly and according to law as an attorney and counselor of the Court of Military Commission Review.” The reference to the Constitution of the United States may be omitted by foreign applicants.

If the documents submitted demonstrate that the applicant possesses the necessary qualifications, and if the applicant has signed the oath or affirmation fee, the Clerk of Court will notify the applicant of acceptance as a member of the Bar.⁸

(d) Automatic admission. Admission is automatic without the need for an application or motion for counsel detailed by the Chief Prosecutor or Chief Defense Counsel in accordance with Regulation ¶ 24-4 and Rule 8(a) and (b). The oath taken before the military commission is sufficient. If no oath was taken before the military commission, then the oath must be given in the manner specified in Rule 8(e).⁹

(e) Admission by Motion. An applicant who so wishes may be admitted on oral motion by a member of the Bar of the CMCR, provided that all other requirements for admission have been satisfied. The motion and oath shall be substantially in the following form:

⁸ This rule is based on Supreme Court Rule 5.

⁹ This rule is similar to Supreme Court Rule 9, which does not require admission for counsel appointed under applicable federal statute.

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MOTION

May it please the Court, I move the admission of [full name], a member of the Bar of [qualifying jurisdiction]. I have examined [his/her] credentials on file in the Office of the Clerk of Court and I am satisfied that [he/she] possesses the necessary qualifications for membership in the Bar of this honorable Court.

OATH

I, [full name], do solemnly [swear/affirm] that I will support the Constitution of the United States, and that I will conduct myself as an attorney and counselor of this Court uprightly and according to law. [So help me God.]

The form of the motion may be tailored for admission of more than one attorney. Also, the oath may be administered in interrogatory form (“Do you, [Full Name], solemnly swear . . .” “Do you and each of you solemnly swear . . .”).

(f) Foreign attorneys.¹⁰ An attorney qualified to practice in the courts of a foreign state may be permitted to argue *pro hac vice*. Counsel of record for the party on whose behalf leave is requested to argue *pro hac vice* must file a motion seeking permission of the CMCR. The motion must identify the courts to which the *pro hac vice* counsel is admitted to practice and must indicate whether any disciplinary proceedings are pending against that counsel. Counsel of record may, by motion, ask the CMCR to waive specific requirements in Rule 8(a) for a foreign attorney lacking a security clearance, or being otherwise unqualified. Such waiver will not authorize access to classified information.¹¹

RULE 9. CONDUCT OF COUNSEL¹²

(a) The conduct of counsel appearing before the CMCR shall be in accordance with rules of conduct prescribed pursuant to Rule for Courts-Martial 109 by the Judge Advocate General of the service concerned for military counsel and the rules of conduct

¹⁰ This rule is from Supreme Court Rule 6.

¹¹ This section does not imply any right to obtain a security clearance that might be necessary to review a record of trial or other document that contains classified information. Foreign attorneys lacking a security clearance are limited to reviewing the unclassified portions of the record of trial.

¹² This rule is from ACCA Rule 9 (Conduct of Counsel).

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of the jurisdictions where they are admitted to practice for civilian counsel. However, the CMCR may exercise its inherent power to regulate counsel appearing before it, including the power to remove counsel from a particular case for misconduct in relation to that case. Conduct deemed by the CMCR to warrant consideration of suspension from practice or other professional discipline shall be reported by the CMCR to the Convening Authority.

(b) Reporting Requirement. Any member of the Bar of this CMCR who is subjected to discipline that results in disbarment, suspension, or other loss of good standing in the bar of any court of the United States or the District of Columbia, or by a court of any State, Territory, Commonwealth, or Possession of the United States, must promptly so notify the Clerk of Court at the address shown in Rule 5. Likewise, any member of the Bar who is suspended from practice in courts-martial or the Court of Criminal Appeals of any military service, or whose certification pursuant to Article 26(b) or 27(b)(1), UCMJ, is withdrawn for cause, shall promptly so notify the Clerk of Court. Counsel also shall promptly notify the Clerk of Court of any issue which may cause substantial doubt about that counsel's qualifications for practice before the CMCR. Foreign lawyers admitted pro hac vice will notify the Clerk of Court if they are subjected to professional discipline by their licensing jurisdiction, or if an issue arises which may cause substantial doubt about their qualifications for practice before the CMCR.

RULE 10. ASSIGNMENT OF DETAILED COUNSEL AND EMPLOYMENT OF CIVILIAN DEFENSE COUNSEL¹³

The Chief Defense Counsel is required to appoint counsel to represent the appellant by MCA §950h(a) and the Regulation ¶¶ 9-1 and 24-4a. An appellant may also be represented before the CMCR by civilian counsel provided by the appellant, or both provided such counsel meets all requirements, including being eligible for the requisite security clearance to review the record of trial. Detailed counsel shall, within five days after service of an authenticated copy of the record of trial, forward to the Clerk of Court, Court of Military Commission Review:

(a) Notice of the name, address, telephone number, telefax number, and e-mail address of detailed counsel, and

(b) Notice that civilian counsel has been retained or that action has been taken to retain civilian counsel (must include name, address, phone number, telefax number, and e-mail address of civilian counsel), or

¹³This rule is from ACCA Rule 10 (Request for Appellate Defense Counsel) and Rule 11 (Assignment of Counsel).

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(c) Notice that the appellant will be represented by detailed counsel without civilian counsel and the name, address, telephone number, telefax number, and e-mail address of detailed counsel.

RULE 11. RETENTION OF CIVILIAN COUNSEL¹⁴

(a) When civilian counsel represents an appellant before the CMCR, the CMCR will notify detailed defense counsel, who will notify the civilian counsel when the record of trial is received. If both civilian and detailed military defense counsel represent the appellant, the CMCR will regard the detailed defense counsel as primary counsel unless notified otherwise. Ordinarily, detailed military counsel will provide the copy of the record of trial received during the authentication process to civilian counsel, if such civilian counsel holds the requisite security clearance for all of the information in the record of trial.

(b) Retention of Civilian Counsel. If the appellant at any point in the post-trial process retains civilian counsel, detailed military counsel will ensure immediate notification of the Clerk of Court.

RULE 12. NOTICE OF APPEARANCE AND WITHDRAWAL OF COUNSEL¹⁵

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

(b) Notices of Appearance are to be filed with the Clerk of Court. Signing a motion, as distinguished from a pleading, does not constitute notice of appearance. Civilian counsel shall file a written notice of appearance as soon as he or she is retained.

(c) Counsel may withdraw only by leave of the CMCR. A Motion to Withdraw as Counsel should state the reason for withdrawal and, if by an appellant's counsel, must indicate whether the appellant has been informed, whether the appellant consents to withdrawal, and what provisions have been made for continued representation.

(d) In noncapital cases and cases not scheduled for hearing, assigned military counsel need not move to withdraw when the withdrawal is due to counsel's reassignment and the representation will be continued by other assigned military counsel.

¹⁴ This rule is from ACCA Rule 12 (Retention of Civilian Counsel).

¹⁵ This rule is from ACCA Rule 13 (Notice of Appearance of Counsel).

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(e) If an attorney named on a pleading has not been admitted to the Bar of the CMCR, and automatic admission is not involved, the pleading shall be accompanied by an application for admission to the Bar (Rule 8) or a Motion for Leave of the CMCR to Appear *Pro Hac Vice* (Rule 8(f)) in the case in question. The motion must identify the courts to which the movant is admitted to practice and must indicate whether any disciplinary proceedings are pending against the movant.

RULE 13. WAIVER OR WITHDRAWAL OF APPELLATE REVIEW¹⁶

Withdrawals from appellate review, and waivers of appellate review will be processed in accordance with MCA § 950c and Regulation ¶ 25-7.

RULE 14. ASSIGNMENTS OF ERROR AND BRIEFS¹⁷

(a) **General provisions.** Appellate counsel for the appellant may file assignments of error if any are to be alleged, setting forth separately each error asserted. The assignments of error should be included in a brief for the appellant in the format set forth in Appendix 1. An original of all assignments of error and briefs, and four additional copies shall be submitted. Briefs and assignments of error shall be typed or printed, double-spaced on white paper, and securely fastened at the top. All references to matters contained in the record shall show record page numbers and any exhibit designations. A brief on behalf of the government shall be of like character as that prescribed for the appellant.

(b) **Specified issues.** The CMCR may, in its discretion and at any time while an appeal is pending, specify and grant review of any plain errors not assigned by appellant.¹⁸

(c) Time for filing and number of briefs.

(1) Appeals by the United States under RMC 908. Appeals under RCM 908(d) will comply with the time limits and procedural requirements of that rule. In all other appeals under RMC 908, unless the CMCR directs otherwise, a government notice of appeal will be filed with the Clerk of Court and served on the accused's military defense counsel within five days of the order or ruling being appealed. The form and content of the notice of appeal will be the same as the notice of appeal provided

¹⁶ This rule is from ACCA Rule 14 (Waiver or Withdrawal of Appellate Review).

¹⁷ This rule is from ACCA Rule 15 (Assignments of Error and Briefs).

¹⁸ This rule is from Court of Appeals for the Armed Forces Rule 21(d).

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to the military judge under RMC 908(b)(7). Filing the notice of appeal will satisfy Regulation ¶ 25-5f. The government brief must be filed within ten days of filing the notice of appeal. The defense must file any answer within ten days of receiving the government brief. Any *amicus curiae* brief must be filed no later than the due date for the defense brief. Any government reply brief must be accompanied by a motion for leave to file under Rule 14(k) and filed within five days after receiving the defense brief. All briefs will comply with the format, page and word limitations, and content requirements of Rule 14(d)-(k). Oral argument, if any, will be scheduled in accordance with Rule 17.

(2) Cases referred under RMC 1111. Unless the CMCR directs otherwise, any defense brief shall be filed with the Clerk of Court and served on government counsel within 30 days after the detailed military defense counsel has received the authenticated record of trial. If a defense brief is filed, the government must file any answer within 30 days after receiving the defense brief. If the defense desires to file a reply brief, a motion for leave to file must be submitted in accordance with Rule 14(k) within five days after receiving the government brief. *Amicus curiae* shall submit any brief no later than the due date for the government brief.

(d) Appendix to a brief. The brief of either party may include an appendix. If an unpublished opinion or not readily available reference is cited in the brief, a copy shall be attached in an appendix. The appendix may also include extracts of statutes, rules, or regulations, but a motion must be filed under Rule 20(b), *infra*, to attach any other matter.

(e) Format for briefs. Any pleading or other paper filed with the CMCR must be submitted in original, signed copy, except those filed by facsimile as permitted by Rule 5(c). The original copy must be typed double-spaced in Times New Roman, 12 point, so as to produce a clear black image on a single side of white 8.5-inch by 11-inch, 20-pound paper. Except for electronic and facsimile submissions, all papers shall be pre-punched for a two-and-three-fourths-inch-wide prong fastener at the top center for insertion into a record of trial. Additional copies required by the CMCR may be reproduced by any means producing a clear black image on white paper.

(1) Citations. Citations must conform to the style prescribed by the current edition of *The Bluebook: A Uniform System of Citation* published and distributed by the Harvard Law Review Association, unless otherwise directed by the CMCR. The CMCR, in its discretion, may adopt and publish its own rules of citation.

(2) The Brief on Behalf of Appellant, Brief on Behalf of Appellee, and Reply Brief on Behalf of Appellant must conform to the format and requirements set forth in Appendix 1 to these rules.

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(f) Page limitations of briefs. Unless otherwise authorized by order of the CMCR or by motion of a party granted by the CMCR, the page limitations for briefs filed with the CMCR, not including appendices, shall be as follows:

- (1) Briefs of the appellants shall not exceed 30 pages;
- (2) Answers of the appellees shall not exceed 30 pages;
- (3) Replies of the appellants shall not exceed 15 pages.

(g) Type-volume limitations of briefs. A brief of the appellants and an answer of the appellees is acceptable if:

- (1) it contains no more than 14,000 words; or
- (2) contains no more than 1,300 lines of monospaced text.

(3) A reply **or amicus curiae brief** is acceptable if it contains no more than half of the type-volume specified in Rule 14(g)(1) or (g)(2).

(4) Headings, footnotes, and quotations count toward the word and line limitations. The index, table of cases, statutes, and other authorities, the appendix and any certificates of counsel do not count toward the limitation.

(h) Certificate of Compliance. A brief submitted under Rule 14 must include a certificate stating that the brief complies with the format limitations in Rule 14(f) and the type-volume limitation in Rule 14(g). The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either: (i) the number of words in the brief; or (ii) the number of lines of monospaced type in the brief.

(i) Form of Certificate of Compliance.

CERTIFICATE OF COMPLIANCE WITH RULE 14(i)

1. This brief complies with the type-volume limitation of Rule 14(i) because:

[principal brief may not exceed 14,000 words or 1,300 lines; reply or amicus brief may not exceed 7,000 words or 650 lines; line count can be used only with monospaced type]

This brief contains _____ *[state the number of]* words,

or

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This brief contains _____ [*state the number of*] lines of text.

2. This brief complies with the typeface and type style requirements of Rule 14(e) because:

[12-point font must be used with monospaced typeface, such as Times New Roman or Courier New]

This brief has been prepared in a monospaced typeface using _____ [*state name and version of word processing program, e.g., Microsoft Word Version 2000 with _____ [*state number of characters per inch and name of type style*]*].

/s/ _____
Attorney for _____
Dated: _____¹⁹

(j) Service on opposing party. Copies of pleadings and other papers filed with the CMCR must be served on the counsel of record for the opposing party, including any civilian counsel. Proof of service shall be by Certificate of Service in the following form:

Certificate of Service

I certify that a copy of the foregoing was (mailed) (delivered) (sent via _____) to _____ at _____ on the ___ day of _____ 20____.

When service is upon civilian counsel, an additional certificate should be added to reflect service on associated military counsel, if any. The Certificate(s) of Service shall be signed by counsel of record or by a person supervised by that counsel.

(k) Supplemental briefs. Any Supplemental Brief on Behalf of Appellant must be submitted by Motion for Leave to File showing good cause for the delayed filing. If the motion is granted, the appellee must file a response within five days. But, when appellee’s initial Brief on Behalf of Appellee has not previously been filed, the period for filing that brief is automatically extended to coincide with the time for filing a response to the Supplemental Brief on Behalf of Appellant.

¹⁹ The length limitations and Certificate are from Court of Appeals for the Armed Forces Rule 24. The length limitations are the same as for Fifth Circuit FRAP 32(a)(7).

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RULE 15. ISSUES PERSONALLY RAISED BY AN APPELLANT

(a) The appellant, without conceding the legality of the findings of guilty or the sentence, may file a pleading that does not assign error, does not raise an error personally asserted by the appellant, and does not request specific relief. In such cases, the Convening Authority will promptly deliver the record to the CMCR unless notified within five calendar days that either side intends to file a brief pursuant to Rule 14.

(b) Unless otherwise briefed or argued by appellate defense counsel, issues personally raised by an appellant shall be brought to the CMCR's attention by footnote or in an Appendix to the Brief on Behalf of Appellant. To support the appellant's contentions, counsel may submit, by motion, written communications from the appellant. The appellant's submissions will not be considered unless they are signed. Appellate defense counsel is responsible for providing a typed transcript in English of any handwritten submissions or in a language other than English. *See* Rule 20(b).

(c) The CMCR may require that any issue personally asserted by the appellant be briefed or argued.

RULE 16. *AMICUS CURIAE* BRIEFS²⁰

(a) A brief of an *amicus curiae* may be filed by invitation of the CMCR, or with the written consent of all parties, or by motion for leave to file.

(1) An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored.

(2) No motion for leave to file an *amicus curiae* brief is necessary if presented on behalf of any agency of the United States by the agency's authorized legal representative, or when submitted by the authorized legal representative of a country where the accused claims citizenship.

(b) Ordinarily, neither the hearing nor the disposition of a case will be delayed pending action on a motion for leave to file an *amicus curiae* brief or a motion of an *amicus curiae* to participate in a hearing, or in order to await the filing of a brief of an *amicus curiae*.

²⁰ This rule is from ACCA Rule 15.4 (*Amicus Curiae* Briefs), Court of Appeals for the Armed Forces Rule 26, and Supreme Court Rule 37.

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(c) A brief of an *amicus curiae* is subject to the same format requirement as a brief for the appellant or appellee. The length of an *amicus curiae* brief is set forth in Rule 14(g)(3).

RULE 17. ORAL ARGUMENTS²¹

(a) Oral arguments may be heard in the discretion of the CMCR upon motion by either party or when otherwise ordered by the CMCR. If not filed contemporaneously with a brief, the motion of a party for oral argument shall be made no later than five days after the filing of an answer to an appellant's brief. Such motion shall identify the issue(s) upon which counsel seek argument. The CMCR may, on its own motion, identify the issue(s) upon which it wishes argument.

(1) Standards. Oral argument will be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

- (A) the appeal is frivolous;
- (B) the dispositive issue or issues have been authoritatively decided; or
- (C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(2) Order and Contents of Argument. The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(3) Cross-Appeals and Separate Appeals. If there is a cross-appeal, the party who files a notice of appeal first is the appellant for purposes of oral argument. These designations may be modified by the parties' agreement or by court order. Unless the Court directs otherwise, a cross-appeal or separate appeal will be argued when the initial appeal is argued.

(b) A Motion for Oral Argument may be filed contemporaneously with the filing of a brief. The CMCR will issue a Notice of Hearing within five calendar days after receipt of the record and briefs, and at least 10 calendar days before the scheduled date for oral argument, unless oral argument is determined to be unnecessary. The Notice of Hearing will specify the issues to be addressed during oral argument. Oral argument may be postponed for no more than five calendar days upon a showing of good cause.

²¹ The standards, order and contents of argument and provisions for cross-appeals and separate appeals are derived from Federal Rule of Appellate Procedure (FRAP) 34. The designation of the appellant when there is a cross-appeal is based on FRAP 28.1.

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(c) The CMCR's hearing calendar is established by Notice of Hearing issued by the cognizant panel in each case. The CMCR does not necessarily consult counsel in setting the calendar, but may take into account a preference expressed by either party. If the CMCR's calendar conflicts with that of another court before which counsel is scheduled to appear, counsel shall so notify the CMCR, orally or in writing, within three days after the CMCR's Notice of Hearing is issued. Otherwise, a party desiring re-scheduling shall file a Motion to (Postpone)(Advance) Oral Argument.

(d) Unless the CMCR specifies otherwise, each side will be allotted 30 minutes to present oral argument. Counsel desiring additional time shall show good cause by Motion for Leave to Exceed Time Limit for Oral Argument. Counsel representing the appellant or petitioner (or the moving party when the subject of the hearing is a motion) shall argue first, but may reserve any portion of the time for rebuttal. Surrebuttal ordinarily is not permitted.

(e) Only one counsel may present oral argument for each party. Any party wishing to deviate from this rule must obtain leave of the CMCR by motion. Any counsel who has entered an appearance in the case may be seated at the counsel table. Absent leave of CMCR, only members of the Bar or counsel appearing *pro hac vice* or as *amicus curiae* may be seated.

(f) Military counsel shall appear in the class "A" uniform **or its equivalent**. Civilian counsel shall wear similarly dignified business attire.

(g) Smoking, eating, and chewing are not permitted in the courtroom. Cellular telephones, pagers, watch alarms, and similar devices, will be turned off. Counsel may provide drinking water for personal convenience, but shall remove it when the hearing is adjourned.

(h) Supplemental citations of authority may be submitted by Motion for Leave to File no later than two days prior to oral argument. Within five days following oral argument, counsel may submit a Motion for Leave to File a Memorandum of Argument or for Leave to File a Supplemental Citation of Authority for any argument or citation made during the hearing that was not set forth in the brief filed prior to argument.

(i) Argument by *amicus curiae*. Argument by counsel of an *amicus curiae* may be allowed on motion filed under Rule 20.

(j) Oral arguments shall be open unless the presiding judge of the decision panel or other competent authority orders the hearing closed in accordance with the criteria and procedures set out for military commissions in RMC 806, Mil. Comm. R. Evid. 505, and Regulation ¶ 18-3.

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(k) Failure to Appear. The Court may regard the failure to appear at the time and place set for oral argument as a waiver of oral argument. The Court may proceed without oral argument or continue the case until a later date. The Court may require a written explanation for the failure to appear.

RULE 18. DISTRIBUTION OF ORDERS AND DECISIONS²²

Immediately upon issuance of a an order, decision or notice of the CMCR, the Clerk of Court shall give notice of the CMCR's orders or decisions by immediately signing, dating and serving them on detailed appellate defense counsel, including civilian counsel, if any, government counsel, the Convening Authority (or designee) and the DoD General Counsel (or designee).

RULE 19. RECONSIDERATION²³

(a) The CMCR may, in its discretion and on its own motion, or on motion by one of the parties, enter an order announcing its intent to reconsider its decision in any case not later than fifteen days after service of such decision on the detailed appellate defense counsel, and on the government appellate counsel, whichever is later. No briefs or arguments shall be received unless the order so directs.

(b) The CMCR may, in its discretion, reconsider its decision in any case upon motion filed either:

(1) By detailed appellate defense counsel within five days after receipt by counsel of a decision or order, or

(2) By detailed appellate government counsel within five days after the decision or order is received by counsel.

(c) A motion for reconsideration shall briefly and directly state the grounds for reconsideration, including a statement of facts. A reply to the motion for reconsideration

²² This rule is from ACCA Rule 18 (Orders and Decisions of the Court), and Court of Appeals for the Armed Forces Rule 43 (Entry of Judgment).

²³ This rule is from ACCA Rule 19 (Reconsideration), and Court of Appeals for the Armed Forces Rule 43A (Issuance of Mandate). Under ACCA Rule 19, once a higher court has acted on a case, reconsideration can no longer be granted. Reconsideration is useful because sometimes there are mistakes in opinions that can be readily corrected. Assuming a party requests reconsideration 5 days after receipt of the decision, the other party files a rebuttal 5 days later, and the CMCR chooses not to reconsider, the CMCR's decision would be automatically final five days later. The CMCR could also issue an order immediately after receiving the party's request for reconsideration, granting or denying it.

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will be received by the CMCR only if filed within five days of receipt of a copy of the motion. Oral arguments shall not be heard on a motion for reconsideration unless ordered by the CMCR. The original of the motion filed with the CMCR shall indicate the date of receipt of a copy of the same by opposing counsel.

(d) The time limitations prescribed by this rule shall not be extended under the authority of Rule 21, except that the time for filing briefs by either party may be extended for good cause.

(e) A party may seek reconsideration of a decision by filing a Motion for Reconsideration, and include a copy of the decision or order as to which reconsideration is sought. Any motion for reconsideration must be delivered to the Office of the Clerk of Court, Court of Military Commission Review.

(f) Ordinarily, reconsideration will not be granted without a showing that one of the following grounds exists:

(1) A material legal or factual matter was overlooked or misapplied in the decision;

(2) A change in the law occurred after the case was submitted and was overlooked or misapplied by the CMCR; or

(3) The decision conflicts with a decision of the Supreme Court of the United States, or Article III Federal Court, another decision of the CMCR, a decision of any other court of the United States, or an executive order, directive, or regulation promulgated by the President of the United States or the Secretary of Defense.

(g) The timely filing of a request for reconsideration does not stay the decision of the CMCR.

(h) Unless otherwise announced in an order granting reconsideration, the order granting reconsideration vacates the decision being reconsidered.

(i) Reconsideration en banc of a panel decision is not authorized.

RULE 20. MOTIONS²⁴

(a) Content. All motions, unless made during the course of a hearing, shall concisely state with particularity the relief sought and the grounds therefore. Motions, pleadings, and other papers desired to be filed with the CMCR may be combined in the

²⁴ This rule is from ACCA Rule 23 (Motions) and 23.1 (Expedited Ruling on Motions). *See also* Supreme Court Rule 21 (Motions to the Court). Part is from 5th Circuit FRAP 27.

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same document, with the heading indicating, for example “MOTION TO FILE (SUPPLEMENTAL ASSIGNMENTS OF ERROR) (CERTIFICATE OF CORRECTION) (SUPPLEMENTAL PLEADING)”, or “ASSIGNMENTS OF ERROR AND MOTION TO FILE ATTACHED REPORT OF SANITY EVALUATION”.

(b) Motions to attach documents. If a party desires to attach a statement of a person to the record for consideration by the CMCR on any matter under Rule 14(d), such statement shall be made either as an affidavit or as an unsworn declaration under penalty of perjury pursuant to 28 U.S.C. § 1746. All documents containing language other than English shall have, attached, a certified English translation.

(c) Opposition. Any opposition to a motion shall be filed within five days after receipt by the opposing party of service of the motion.

(d) Leave to file. Any pleading not required by these rules shall be accompanied by a motion for leave to file such pleading.

(e) Oral argument. Oral argument shall not normally be permitted on motions.

(f) Decisions on motions. In appropriate cases, the CMCR may act immediately on any motion without awaiting an answer from the other party. Any party adversely affected by the CMCR’s action may request reconsideration, vacation, or modification of such action. A single judge of the particular panel to which the case is assigned may act on any motion, but may not dismiss or otherwise determine an appeal. The two judges of the particular panel to which the case is assigned may overrule any motion decided by a single judge.

(g) Service on other parties. Each motion must include the certificate of service prescribed by Rule 14(j).

(h) Readability of accompanying documents. Motions to file or judicially notice documents, except documents on file in the Office of the Clerk of Court, Court of Military Commission Review, must be accompanied by a legible copy of the document, including a certified translation of any foreign language material and a typed copy of any hand-written material in English, if required for legibility.

RULE 21. CONTINUANCES AND INTERLOCUTORY MATTERS²⁵

(a) Except as otherwise provided in Rule 19(d), the MCA, the Manual, or the Regulation, the CMCR, in its discretion, may extend any time limits prescribed and may

²⁵ This rule is from ACCA Rules 20 (Extraordinary Relief), 21 (Government Appeals), and 24 (Continuances and Interlocutory Matters).

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dispose of any interlocutory or other appropriate matter not specifically covered by these rules, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case. *See* Rule 14(c).

(b) Petitions for extraordinary relief will be summarily denied, unless they pertain to a case in which there is an approved finding of guilty and appellate review has not been waived. The CMCR's authority is limited to interlocutory appeals by the United States under MCA § 950d and RMC 908, cases referred to it pursuant to MCA § 950f and RMC 1111, and petitions for new trial referred to it pursuant to RMC 1210.

(c) The CMCR may, upon motion and for cause shown, grant counsel an extension of time. The filing of a motion for an enlargement does not toll the prescribed time period. Counsel must file motions for enlargement of time at least three days prior to the deadline to allow timely consideration by the CMCR.

(d) Motions for extensions require a particularized showing of necessity for the extension, which shall not exceed thirty (30) days. When engagement in other litigation is a cause, specific information is required as to the number and type of cases and the courts involved. If the complexity of issues on appeal is a cause, the number and nature of those issues should be explained. Extreme hardship to counsel, if a cause, must be explained. In each case, the motion must include information on whether the trial was contested, the number of transcript pages, the approved sentence and date of sentencing, and the appellant's current status as to confinement.

RULE 22. INTERLOCUTORY APPEALS BY THE UNITED STATES

(a) Interlocutory appeals by the United States will be processed under the procedures, legal standards, and time limits established in RMC 908 and Regulation ¶ 25-5. Briefs will comply with Rule 14. Briefs will be filed and oral argument, if any, will be scheduled in accordance with Rules 14 and 17, unless more restrictive rules are applicable under RMC 908 or Regulation ¶ 25-5.

(b) Appeals under this Rule will, whenever practicable, take priority over all other proceedings before the CMCR.

(c) Appeals will ordinarily be decided within 30 calendar days after oral argument or filing of briefs, whichever is later, unless the Chief Judge grants an extension of time.

(d) Appeals under this rule may be decided by order in lieu of a full written opinion.

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RULE 23. PETITIONS FOR NEW TRIAL

Petitions for new trial referred to the CMCR by the convening authority under RMC 1210 ordinarily will be decided, without additional briefs or oral argument, based on the materials submitted to the Convening Authority.

RULE 24. RECUSAL OR DISQUALIFICATION OF JUDGES²⁶

(a) Grounds. Judges may recuse themselves under any circumstances considered sufficient to require such action. Judges must disqualify themselves under circumstances set forth in 28 U.S.C. § 455, or in accordance with Canon 3C, Code of Conduct for United States Judges as adopted by the Judicial Conference of the United States.

(b) Procedure. A motion to disqualify a judge shall be referred to that judge for a final decision. If an initiating judge is recused or disqualified, that judge will notify the Clerk of Court, Court of Military Commission Review, who will arrange for assignment of a substitute judge.

RULE 25. INTERNAL RULES

(a) The Chief Judge, in consultation with the other members of the CMCR, may amend, modify or supplement these rules.

(b) The Chief Judge may prescribe interim rules and procedures for the CMCR to be effective during consultation with the other members of the CMCR and while awaiting review and approval of the Secretary as required by RMC 1201(b)(4).

(c) Suggested changes in these rules should be addressed to the Clerk of Court.

(d) All rules and procedures prescribed for the CMCR, including any suspension of the rules under Rule 1(c) and interim rules and procedures prescribed under this Rule, must be consistent with the MCA, the Manual, the Regulations, and the procedures for safeguarding classified information.

²⁶ This rule is from Fifth Circuit FRAP 48.

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RULE 26. RECORDING, PHOTOGRAPHING, BROADCASTING, OR TELECASTING OF HEARINGS²⁷

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

RULE 27. CLERK OF COURT, CMCR²⁸

(a) The Clerk of Court receives documents for filing with the CMCR and has authority to reject any submitted filing that does not comply with these Rules.

(b) The Clerk of Court maintains the CMCR's records and will not permit any of them to be removed from the CMCR except as authorized by the CMCR. Any document filed with the Clerk of Court and made a part of the CMCR's records may not thereafter be withdrawn from the official CMCR files without the permission of the panel where the case is docketed.

(c) The Clerk of Court may accept authenticated portions of records of trial from the Clerk of Court for Commissions prior to authentication of the complete record of trial, and may thereafter transmit such records to the CMCR.

RULE 28. RECORDS OF TRIAL²⁹

(a) Custody of records. Original copies of records of trial will not be removed from the Office of the Clerk of Court unless permission is granted by an employee of the Clerk's office and a charge-out record is completed. Classified material will be handled in accordance with these rules, the MCA, the Manual, the Regulation, and applicable security regulations.

(b) Altering records. No notes or marks of any kind will be made on the pages of an original record of trial, including the accompanying papers and exhibits, nor shall any page be removed, rearranged, or inserted except in the Office of the Clerk of Court by an

²⁷ This Rule is similar to ACCA Rule 27 (Recording, Photographing, Broadcasting, or Telecasting of Hearings). If there is significant press interest in oral argument, closed circuit broadcast of oral argument may be appropriate.

²⁸ This Rule is similar to ACCA Rule 29 (Clerk of Court) and Supreme Court Rule 1.

²⁹ This Rule is similar to ACCA Rule 30 (Records of Trial).

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employee of that office. Copies of records issued for use of appellate counsel remain subject to recall for further proceedings and for other necessary purposes; accordingly, the making of notes and other marks therein is discouraged, and such notes are not confidential or privileged.

(c) Number of copies provided to the CMCR. The Clerk of Court shall provide one copy of the record of trial to each member of the panel to which the case is assigned. The original of the record of trial will be retained by the Clerk of Court.

(d) Erroneous or incomplete records. Non-substantive, administrative errors and irregularities found in records of trial, if not made the subject of an order of the CMCR, should be brought to the attention of the Clerk of Court for administrative action with a view to correction. The Clerk of Court will not change an exhibit or transcript in the original record of trial, but can file an errata sheet in the allied papers of the record of trial.

RULE 29. CASES INVOLVING CLASSIFIED AND PROTECTED INFORMATION³⁰

(a) CMCR security officer. The Clerk of Court shall serve as the CMCR security officer for the purpose of providing for the protection of classified information, and may designate such assistants as are appropriate for such purposes.

(b) CMCR storage of classified documents. Documents containing classified information will be stored and safeguarded by the CMCR security officer in accordance with the Executive Order 12958 (EO), 60 Federal Register 19825 (April 20, 1995), Department of Defense Information Security Program Regulation (DoD Regulation 5200.1-R), and the applicable directives of the agency having classifying authority over the documents. Documents classified Secret or Top Secret shall not be removed from the premises of the Offices of the CMCR except under extraordinary circumstances, and removal must be personally authorized by the CMCR security officer or an authorized designee. Any question regarding the classification level, proper handling, storage or other safeguarding procedures of any material shall be resolved by the CMCR Security Officer, who will refer the matter to the agencies

³⁰ Rule 29 is primarily from 4th Circuit Local Rule 25 (April 16, 2007). If classified information is included in a filing or record of trial, the process is encumbered with additional administrative burdens. Computers and copiers have to be set aside for classified information. Special couriers have to be used to move the classified documents outside the CMCR offices. The classified information is supposed to be stored in a safe. If transported via e-mail, a classified-type system is necessary. DoD Regulation 5200.1-R contains general guidelines about treatment of classified materials. The CMCR security officer or designee shall consult with the designated point of contact of the originating agency to ensure that specific procedures necessary to protect classified information are implemented when classified information is presented to the CMCR.

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having classification authority over said material for clarification, or for classification review, or for declassification review.

(c) Classified and protected information in briefs and filings. Classified and protected information shall be included in documents filed with the CMCR only when absolutely necessary to full and fair consideration of the issues involved. The parties will ensure documents they file are properly classified and annotated as required by DoD Regulation 5200.1-R.

(d) Certificates of confidentiality. At the time of filing any appendix, brief, motion, or other document containing, or otherwise disclosing, materials held under seal by another court, military commission or agency, counsel or a pro se party shall file a certificate of confidentiality. Upon motion by any party or *sua sponte*, the CMCR shall enter protective orders, as an individual case may require, or for the protection of classified information.

(1) Record material held under seal by another court, military commission or agency remains subject to that seal on appeal unless modified or amended by the CMCR.

(2) A certificate of confidentiality must accompany any filing which contains or would otherwise disclose sealed materials. The certificate of confidentiality shall:

(i) identify the sealed material;

(ii) list the dates of the orders sealing the material or, if there is no order, the lower court or agency's general authority to treat the material as sealed;

(iii) specify the terms of the protective order governing the information; and

(iv) identify the appellate document that contains the sealed information.

(3) The order sealing the documents shall be attached to the certificate of confidentiality.

(e) Motions to seal. Motions to seal all or any part of the record are presented to and resolved by the lower court or agency in accordance with applicable law during the course of trial, hearing, or other proceedings below. *See e.g.*, M.M.C. Rules 905 and 906 and Mil. Comm. R. Evid. 505 and 506.

(1) A motion to seal may be filed with the CMCR when:

(i) a change in circumstances occurs during the pendency of an appeal that warrants reconsideration of a sealing issue decided below;

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(ii) the need to seal all or part of the record on appeal arises in the first instance during the pendency of an appeal; or

(iii) additional material filed for the first time on appeal warrants sealing.

(2) Any motion to seal filed with the CMCR shall:

(i) identify with specificity the documents or portions thereof for which sealing is requested;

(ii) state the reasons why sealing is necessary;

(iii) explain why a less drastic alternative to sealing will not afford adequate protection; and

(iv) state the period of time the party seeks to have the material maintained under seal and how the material is to be handled upon unsealing.

(3) A motion to seal filed with the CMCR will be placed on the public docket for at least five calendar days before the Court rules on the motion, but the materials subject to a motion to seal will be held under seal pending the Court's disposition of the motion.

(f) Filing of confidential and sealed material.

(1) Record of trial. MMC Rule 1104(d) describes the process for assembling a record of trial that includes classified materials.

(2) Appendices: When sealed material is included in an appendix to a brief or motion, it must be segregated from other portions of the appendix and filed in a separate, sealed volume of the appendix.

(3) Briefs, Motions, and Other Documents: When sealed material is included in a brief, motion, or any document other than an appendix, two versions of the document must be filed:

(i) a complete version under seal in which the sealed material has been distinctively marked and

(ii) a redacted version of the same document for the public file.

(4) Personal data identifying information: Personal data identifying information, such as an individual's social security number, an individual's tax

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identification number, a minor's name, a person's birth date, a financial account number, and (in a criminal case) a person's home address, shall be filed in accordance with section 205(c)(3) of the E-Government Act of 2002 and rules adopted there under. Names of witnesses should not be included in motions or briefs intended for public filing absent the consent of the witness.

(5) Marking of sealed material: The first page of any appendix, brief, motion, or other document tendered or filed under seal shall be conspicuously marked SEALED and all copies shall be placed in an envelope marked SEALED.

(6) Number of copies: Only one copy of a sealed appendix, brief, motion, or other document shall be filed, with one copy of the certificate of confidentiality or motion to seal. Unsealed volumes of the appendix and redacted copies of the public brief, motion, or other document shall be filed in conformity with the rules governing appendices, briefs, motions, and other documents.

(7) Responsibility for Compliance: The responsibility for following the required procedures in filing confidential and sealed material rests solely with counsel and the parties. The Clerk will not review each filing for compliance with this rule.

(g) **Public access.**³¹ Parties must remember that any personal information not otherwise protected by sealing or redaction may be made available over the internet. Counsel should notify clients and witnesses of these facts so that informed decisions may be made on what information is to be included in a document filed with the Court. Absent consent, the names of witnesses should be considered protected or sensitive information, and accordingly redacted from the public version of the filed brief, motion, appendix or other document.

(h) **Delay prior to public release of documents.** After a document is filed by the other party, either party within 48 hours may file a motion to seal, classify or redact the document. A party should immediately notify the clerk if the other party files a document that should be classified, and then file the supporting motion. A motion to seal, classify or redact a document must include:

(1) A statement as to why sealing or redacting is necessary, and why another procedure will not suffice;

(2) References to governing law or regulation; and

³¹ See *In Re Associated Press*, 172 Fed. Appx. 1 (4th Cir. 2006) (discussing First Amendment's requirements for timely release of trial-level documents).

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(3) Unless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and as to how the matter is to be handled upon unsealing. The proposed order shall recite the findings required by governing law or regulation to support the proposed sealing.

(4) This rule should not be construed to limit the effect of more restrictive protective orders governing the filing and review of matters before the Court.

(i) Security Clearances. Security clearances for all Judges and personnel on the staff of the Court will be obtained by the Court Security Officer in accordance with the Department of Defense and Service Information Security Program Directives, Instructions and Regulations as well as Director of Central Intelligence Directive 6/4, "Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information (SCI)."

(j) Additional rules. The CMCR may adopt additional rules to protect the security interests of the United States or any other nation or interest.

RULE 30. PUBLIC RELEASE OF CMCR FILINGS AND DECISIONS³²

(a) The Clerk of Court is authorized to release unclassified filings with the CMCR and CMCR decisions. Filings and decisions will be available at:
<http://www.defenselink.mil/news/commissions.html>.

(b) Responses to media inquiries that cannot be answered by release of documents under Rule 30(a) will be referred to the Assistant Secretary of Defense for Public Affairs in accordance with Regulation ¶ 19-3.

³² This Rule discloses to the public the process for release of CMCR filings and decisions.

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APPENDIX 1. FORMAT FOR BRIEF ON BEHALF OF (APPELLANT) (APPELLEE)³³

UNITED STATES) IN THE COURT OF MILITARY
) COMMISSION REVIEW
)
) BRIEF ON BEHALF OF
) (APPELLANT) (APPELLEE)
)
 v.) Case No. 00000000
)
) Tried at Guantanamo, Cuba
 (Full typed name and alias, if any)) on (dates)
) before a Military Commission
) convened by _____
)
)
) Presiding Military Judge
) Colonel _____

**TO THE HONORABLE, THE JUDGES OF THE COURT OF MILITARY
COMMISSION REVIEW**

Table of Contents

[If the brief exceeds ten pages, a table of contents and a table of cited authorities (i.e., cases alphabetically arranged, constitutional provisions, statutes, treatises, and other materials) with references to the pages in the document where such authorities are cited is required.]³⁴

Issue(s) Presented

[Set forth, in a concise statement, each issue to presented to the CMCR. Issues presented will be set forth in upper case letters.]

³³ This Appendix is from Appendix 1 of the ACCA Rules.

³⁴ The Table of Contents is from Supreme Court Rule 34.2. A Table of Contents is not required under Army Court of Criminal Appeals rules unless the brief exceeds 50 pages.

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Statement of Statutory Jurisdiction

[Set forth the statutory basis of the CMCR's jurisdiction.]

Statement of the Case

[Set forth a concise summary of the chronology of the case, including the general nature of the charges, the pleas of the appellant, the findings and sentence at trial, and any other pertinent information regarding the proceedings.]

Statement of Facts

[Set forth accurately all facts pertinent to the issues raised, including specific page references and exhibit designations. Assertions of fact must be supported by specific citations to the record of trial, exhibits, or, when appropriate, papers accompanying the record of trial (allied or related papers). Any inference a party wishes the CMCR to draw from the facts of record should be clearly identified and the facts supporting that inference set out. If counsel elect not to make a separate statement of facts, but to include them within the particular assignment of error, the pertinent facts should be set forth in one or more paragraphs distinct from the statement of law and argument thereon. Answers may adopt appellant's statement of facts if there is no dispute, or, if there is a dispute, may restate the facts as they appear from appellee's viewpoint. The repetition of uncontroverted matters is not desired.]

Errors and Argument

[Set forth each assignment of error in upper case letters, followed by separate argument for each error unless two or more assignments of error are consolidated for purposes of argument. Arguments must discuss briefly the question presented, citing and quoting such authorities as are deemed pertinent. Each argument must include a statement of the applicable standard of review, and must be followed by a prayer for the specific relief requested.]

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Appendix

[An appendix may set forth matters for the convenience of the CMCR, such as extracts from the record of trial, statutes, rules, or regulations; copies of decisions of other courts; and unpublished decisions. See Rules 14(d) and 20. Appendices must not be used to submit extra-record factual matter, which must instead be submitted to the CMCR by Motion to Admit (Defense)(Government) Appellate Exhibit (Letter or Numerical Designation), Motion to Judicially Notice (Description), or other appropriate motion.]

(Signature of counsel)

(Name, grade, branch, and title of military counsel, or name, address, email address of all counsel, and telephone number, including fax number, of civilian counsel, of all counsel should be included)

CERTIFICATE OF COMPLIANCE WITH RULE 14(i)

1. This brief complies with the type-volume limitation of Rule 14(i) because:

[principal brief may not exceed 14,000 words or 1,300 lines; reply brief may not exceed 7,000 words or 650 lines; line count can be used only with monospaced type]

This brief contains _____ *[state the number of]* words,

or

This brief contains _____ *[state the number of]* lines of text.

2. This brief complies with the typeface and type style requirements of Rule 14(e) because:

[12-point font must be used with monospaced typeface, such as Times New Roman or Courier New]

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This brief has been prepared in a monospaced typeface using _____ [state name and version of word processing program, e.g., Microsoft Word Version 2000 with _____ [state number of characters per inch and name of type style].

/s/ _____
Attorney for _____
Dated: _____

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was (mailed) (emailed) (delivered) (sent via _____) to _____ on the _____ day of _____ 20____.

(Signature of counsel)

(Name, grade, branch, and title of military counsel, or name, address, email address of all counsel, and telephone number, including fax number, of civilian counsel, of all counsel should be included)

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APPENDIX 2. FORMAT FOR APPLICATION FOR ADMISSION TO THE BAR OF THE COURT OF MILITARY COMMISSION REVIEW

**Clerk of Court, Court of Military Commission Review
(Address TBD)**

The undersigned hereby makes application for admission to the Bar of the Court of Military Commission Review pursuant to Rule 8, Rules of Practice for Court of Military Commission Review.

NAME _____ SSN _____

MILITARY RANK (if applicable) _____

PRESENT OCCUPATION: Name of firm or military unit, address and telephone number:

HOME ADDRESS (permanent) and TELEPHONE NUMBER:

LAW SCHOOL: Name, location, and degree with year granted:

Name all jurisdictions and courts in which you have been admitted to practice law. Give year admitted to practice:

JURISDICTION:

COURTS (with year admitted)

_____	_____
_____	_____
_____	_____
_____	_____

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If you are currently certified by a Judge Advocate General pursuant to Article 27(b)(2), UCMJ, 10 U.S.C. § 827(b)(2)state the armed force and date:

Have you been disbarred, suspended, reprimanded, censured, or otherwise disciplined as an attorney? Yes or No: _____. If so, state the name and address of the authority in possession of the record thereof:

Are there any charges or complaints now pending concerning your conduct as an attorney? Yes or no: _____. If so, state the address of the authority in possession of the record thereof:

I have read the foregoing document and have answered all questions fully and frankly. The answers are complete and are true of my own knowledge.

DATE_____ **SIGNATURE**_____

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ADMISSION REQUIREMENTS

a. To be eligible for admission to the Bar of the CMCR, an attorney must be a member in good standing of the Bar of the highest court of a state, territory, commonwealth, or possession of the United States, the District of Columbia, or of the Bar of a Federal Court.

b. Except for persons currently certified by a Judge Advocate General pursuant to Article 26(b) or 27(b)(1), UCMJ, 10 U.S.C. § 826(b) or 827(b)(1), the application must be accompanied by a current original certificate of admission and good standing before the Bar of the highest court of a state, territory, commonwealth, possession, or District of Columbia, or of the Bar of a Federal Court. (A certificate from the highest court of a State or similar jurisdiction is preferred.) The certificate is current if it is dated not more than one year before the date of admission. When admission is sought on the basis of certification under Article 26(b) or 27(b)(1), UCMJ proof may be required at the discretion of the CMCR.

c. Similarly qualified attorneys of foreign nations may be admitted to honorary membership in the Bar.

ADMISSION PROCEDURES: Admission procedures are set out in Rule 8. Applications should be mailed to: **Clerk of Court, Court of Military Commission Review, 875 North Randolph Street, Suite 8000, Arlington, VA 22203.**

FEE: There is no fee for admission to the Bar of the CMCR.

REPORTING PROFESSIONAL DISCIPLINE: Any attorney admitted to practice before the CMCR who is subjected to public discipline by any court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth, or possession of the United States, or is suspended from practice in courts-martial, or in another United States military court, commission or tribunal, or whose certification pursuant to Article 26(b) or 27(b)(1), UCMJ, is withdrawn, shall promptly inform the Clerk of Court of such action. Foreign lawyers will notify the Clerk of Court if they are subjected to public discipline or suspended from practice in their licensing jurisdictions.