



OFFICE OF THE SECRETARY OF DEFENSE
MILITARY COMMISSIONS TRIAL JUDICIARY
4800 Mark Center Drive, Suite 11F09-02
Alexandria, VA 22350-2100

OMC-TJ

2 March 2017

From: Chief Judge of the Military Commissions Trial Judiciary

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

Reference: (a) Military Commissions Act of 2009, 10 U.S.C. §§ 948a, et seq., (M.C.A.)
(b) Manual for Military Commissions, 2012, (M.M.C.)
(c) DoD Regulation for Trial by Military Commission (2011 Edition)

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

2. **Background.** The Rules of Court with CHANGE #1 are specifically promulgated pursuant to the authority of Rule for Military Commissions (R.M.C.) 108. The references authorize, and the sound administration of justice for Military Commissions requires, Rules of Court for the conduct of Military Commission proceedings. The enclosed changes to the rules are intended to facilitate the smooth and orderly trial of Military Commission cases and insure the utmost in public access while adhering to requirements of national security. To the extent that inconsistencies are perceived, the rules contained within references (a) and (b) shall control.

3. **Action.**

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

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

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 **Effective Date.** CHANGE #1, attached, is effective this date and shall remain in effect until cancelled, superseded, or modified.

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

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



RC 2.7. is added:

7. When a party submits a corrected or substituted filing IAW RC 3.5.g. or files an amended pleading or a corrected copy IAW RC 3.5.f. the filing party will inform the Chief Clerk of the changes in the pleading in the body of the e-mail to which the pleading is attached. This can be accomplished by identifying page, paragraph and line number of the change along with a statement describing the change.

RC 3.5.f. is changed as follows:

Allows for the filing of a CORRECTED COPY to correct minor clerical errors in an accepted filing instead of filing a Motion for Leave to File an Amendment to file the Amended copy of the original filing with the corrected clerical error.

f. Amending a Pleading: A party may amend an existing filing to correct a misstatement of fact or law or to correct a clerical error. An amendment may only be made with the permission of the Military Judge, unless the amendment is intended to correct a minor clerical error in the original filing. In such cases, the corrected copy will contain an asterisk next to the word "CORRECTED COPY" in the caption and a corresponding footnote to the asterisk will specify the correction made. The correction will also be made and underlined in the corrected copy.

RC 3.5.i. is changed as follows:

Changes Motion of Declination of Joinder to a Notice of Declination of Joinder

i. Joinder. Joinder occurs in a case with multiple accused, when one or more of the accused file a motion or one or more accused joins the original motion. Those accused not a signatory to a motion filed by another accused are presumed to have joined the motion.

(1) If an accused does not want to join a particular motion or a specific portion of a motion, the party must file a Notice of Declination of Joinder within seven (7) calendar days from the day the underlying motion is filed.

(2) If more than seven (7) calendar days elapse since the original motion was filed, the party must file a Motion for Leave to File Out of Time and receive permission from the Military Judge to file the proposed Notice of Declination of Joinder.

(3) A Certificate of Conference is not required for a Notice of Declination of Joinder or a Motion for Leave to File the Notice of Declination of Joinder Out of Time.

(4) A party otherwise joined to the original motion by operation of this rule who wishes to state a separate position on the motion or seeks separate relief may do so in its pleading declining joinder by clearly entitling the filing as a Notice of Declination of Joinder and Motion to Consider Other Arguments or for Other Relief. If the party who

originally filed the motion withdraws the motion, it is considered moot. The party stating a separate position or seeking separate relief on the motion must file a new motion **LAW** these rules to have it considered by the military commission and thus preserve the issue for the record.

RC 3.10.a.(1) is changed as follows:

Adds requirement for pleadings to be in the English language.

- (1) All pleadings will:
 - (a) have one inch (1") margins on all four sides of each page;
 - (b) be formatted for 8 ½" x 11" sized paper;
 - (c) be double-spaced;
 - (d) use Times New Roman 12 point font;
 - (e) use portrait mode for page orientation; and,
 - (f) be written using the English language. (See 3.10.a.(12) for guidance on submitting text in a foreign language as an attachment to a pleading).

- (2) All attachments to pleadings must:
 - (a) have one inch (1") margins on all four sides of each page;
 - (b) be formatted for 8 ½" x 11" sized paper;
 - (c) use portrait mode for page orientation and,
 - (d) be written using the English language. (See 3.10.a.(12) for guidance on submitting text in a foreign language as an attachment to a pleading).

If an attachment does not comply with these formatting rules, the filing party, prior to submitting the pleading to the Chief Clerk, will coordinate with the Chief Clerk to develop a solution.

RC 3.10.10.a(7) is changed as follows:

Change "tab(s)" to "attachment page(s)" in line 3 so as to read:

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

RC 3.10.a.(12) is added:

(12) If a party desires to include text in a foreign language as a part of a pleading, whether it is a document or a quote or otherwise, the party will submit the foreign language text as an attachment following the formatting rules of RC 3.10.a.(2) above. Along with the foreign language text the filing party will include in the attachment a translation of the foreign language text. In the body of the pleading itself the filing party will verify the accuracy of the translation with the signature of an attorney of record filing the pleading.

RC 3.10.b.(4) is added:

(4) AE numbers issued by the Chief Clerk will not be changed in form or format by a party.

RC 3.10.f.(4) is changed as follows:

Delete the word “different” from the 3rd line so as to read:

(4) **Joinder.** In a trial with multiple accused, withdrawal by the original filing party withdraws the motion from consideration by the Commission as to all parties. A party may file the motion as a new motion by following the procedures in RC 3.10. A new AE number must be requested and issued.