COURTS OF CRIMINAL APPEALS

RULES OF PRACTICE AND PROCEDURE

1 MAY 1996

COURTS OF CRIMINAL APPEALS
RULES OF PRACTICE AND PROCEDURE

These rules of practice and procedure for courts of criminal appeals are hereby issued pursuant to Article 66(f), Uniform Code of Military Justice (10 U.S.C. § 866(f) (1994)). When the title "Judge Advocate General" is used, it includes the General Counsel of the Department of Transportation when the Coast Guard is not operating as a service in the Navy. The effective date of these rules is 1 May 1996.

Rule

1. Name and Seal
2. Jurisdiction
3. Scope of Review
4. Quorum
5. Place for Filing Papers
6. Signing of Papers
7. Computation of Time
8. Qualification of Counsel
9. Conduct of Counsel
10. Request for Appellate Defense Counsel
11. Assignment of Counsel.
12. Retention of Civilian Counsel
13. Notice of Appearance of Counsel
14. Waiver or Withdrawal of Appellate Review
15. Assignments of Error and Briefs
16. Oral Arguments
17. En Banc Proceedings
18. Orders and Decisions of the Court
19. Reconsideration
20. Petitions for Extraordinary Relief, Answer, and Reply
21. Appeals by the United States
22. Petitions for New Trial
23. Motions
24. Continuances and Interlocutory Matters
25. Suspension of Rules
26. Internal Rules
27. Recording, Photographing, Broadcasting, or Telecasting of Hearings
28. Amendments

Attachments

1. Formats for Direction for Review
2. Format for Assignment of Errors and Brief on Behalf of Accused (Rule 15)

Rule 1. NAME AND SEAL.

(a) The titles of the Courts of Criminal Appeals of the respective services are:

(1) "United States Army Court of Criminal Appeals."

(2) "United States Navy-Marine Corps Court of Criminal Appeals."

(3) "United States Air Force Court of Criminal Appeals."

(4) "United States Coast Guard Court of Criminal Appeals."

(b) Each Court is authorized a seal in the discretion of the Judge Advocate General concerned. The design of such seal shall include the title of the Court.

Rule 2. JURISDICTION.

(a) The jurisdiction of the Court is as follows:

(1) Review under Article 66. All cases of trial by court-martial in which the sentence as approved extends to:

(A) death; or

(B) dismissal of a commissioned officer, cadet or midshipman, dishonorable or bad-conduct discharge, or confinement for 1 year or longer; and in which the accused has not waived or withdrawn appellate review.

(2) Review upon Direction of the Judge Advocate General Under Article 69. All cases of trial by court-martial in which there has been a finding of guilty and a sentence:

(A) for which Article 66 does not otherwise provide appellate review, and

(B) which the Judge Advocate General forwards to the Court for review pursuant to Article 69(d), and

(C) in which the accused has not waived or withdrawn appellate review.

(3) Review under Article 62. All cases of trial by court-martial in which a punitive discharge may be adjudged and a military judge presides, and in which the government appeals an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification or excludes evidence that is substantial proof of a fact material to the proceedings, or directs the disclosure of classified information, imposes sanctions for nondisclosure of classified information, or refuses to issue or enforce a protective order sought by the United States to prevent the disclosure of classified information.

(4) Review under Article 73. All petitions for a new trial in cases of trial by court-martial which are referred to the Court by the Judge Advocate General.

(b) Extraordinary Writs. The Court may, in its discretion, entertain petitions for extraordinary relief including, but not limited to, writs of mandamus, writs of prohibition, writs of habeas corpus, and writs of error coram nobis.

(c) Effect of Rules on Jurisdiction. Nothing in these Rules shall be construed to extend or limit the jurisdiction of the Courts of Criminal Appeals as established by law.

Rule 3. SCOPE OF REVIEW. In cases referred to it for review pursuant to Article 66, the Court may act only with respect to the findings and sentence as approved by the convening authority. In reviewing a case or action under Article 69(d) or in determining an appeal under Article 62, the Court may act only with respect to matters of law. The Court may, in addition, review such other matters and take such other action as it determines to be proper under substantive law.

Rule 4. QUORUM.

(a) In Panel. When sitting in panel, a majority of the judges assigned to that panel constitutes a quorum for the purpose of hearing or determining any matter referred to the panel. The determination of any matter referred to the panel shall be according to the opinion of a majority of the judges participating in the decision. However, any judge present for duty may issue all necessary orders concerning any proceedings pending on panel and any judge present for duty, or a clerk of court or commissioner to whom the Court has delegated authority, may act on uncontested motions, provided such action does not finally dispose of a petition, appeal, or case before the Court.

(b) En banc. When sitting as a whole, a majority of the judges of the Court constitutes a quorum for the purpose of hearing and determining any matter before

the Court. The determination of any matter before the Court shall be according to the opinion of a majority of the judges participating in the decision. In the absence of a quorum, any judge present for duty may issue all necessary orders concerning any proceedings pending in the Court preparatory to hearing or decision thereof.

Rule 5. PLACE FOR FILING PAPERS. When the filing of a notice of appearance, brief, or other paper in the office of a Judge Advocate General is required by these rules, such papers shall be filed in the office of the Judge Advocate General of the appropriate armed force or in such other place as the Judge Advocate General or rule promulgated pursuant to Rule 26 hereof may designate. If transmitted by mail or other means, they are not filed until received in such office.

Rule 6. SIGNING OF PAPERS. 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.

Rule 7. COMPUTATION OF TIME. In computing any period of time prescribed or allowed by these rules, by order of the Court, or by any applicable 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 court, a day on which the office of the Clerk of the Court is closed due to weather or other conditions or by order of the Chief Judge, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

Rule 8. QUALIFICATION OF COUNSEL.

(a) All Counsel. Counsel in any case before the Court shall be a member in good standing of the bar of a Federal Court, the highest court of a State or another recognized bar.

(b) Military Counsel. Assigned appellate defense and appellate government counsel shall, in addition, be qualified in accordance with Articles 27(b)(1) and 70(a), Uniform Code of Military Justice.

(c) Admission. Each Court may license counsel to appear before it. Otherwise, upon entering an appearance, counsel shall be deemed admitted *pro hac vice,* subject to

filing a certificate setting forth required qualifications if directed by the Court.

(d) Suspension. No counsel may appear in any proceeding before the Court while suspended from practice by the Judge Advocate General of the service concerned.

Rule 9. CONDUCT OF COUNSEL. The conduct of counsel appearing before the Court 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. However, the Court 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 Court to warrant consideration of suspension from practice or other professional discipline shall be reported by the Court to the Judge Advocate General concerned.

Rule 10. REQUEST FOR APPELLATE DEFENSE COUNSEL. An accused may be represented before the Court by appellate counsel detailed pursuant to Article 70(a) or by civilian counsel provided by the accused, or both. An accused who does not waive appellate review pursuant to Rule for Courts-Martial 1110 shall, within 10 days after service of a copy of the convening authority's action under Rule for Courts-Martial 1107(h), forward to the convening authority or the Judge Advocate General:

(a) A request for representation by military appellate defense counsel, or

(b) Notice that civilian counsel has been retained or that action has been taken to retain civilian counsel (must include name and address of civilian counsel), or

(c) Both a request for representation by military appellate defense counsel under Rule 10(a) and notice regarding civilian counsel under Rule 10(b), or

(d) A waiver of representation by counsel.

Rule 11. ASSIGNMENT OF COUNSEL.

(a) When a record of trial is referred to the Court--

(1) if the accused has requested representation by appellate defense counsel, pursuant to Article 70(c)(1), counsel detailed pursuant to Article 70(a) will be assigned to represent the accused;

(2) if the accused gives notice that he or she has retained or has taken action

to retain civilian counsel, appellate defense counsel shall be assigned to represent the interests of the accused pending appearance of civilian counsel. Assigned defense counsel will continue to assist after appearance by civilian counsel unless excused by the accused;

(3) if the accused has neither requested appellate counsel nor given notice of action to retain civilian counsel, but has not waived representation by counsel, appellate defense counsel will be assigned to represent the accused, subject to excusal by the accused or by direction of the Court.

(b) In any case--

(1) the Court may request counsel when counsel have not been assigned;

(2) pursuant to Article 70(c)(2), and subject to Rule 11(a)(2), appellate defense counsel will represent the accused when the United States is represented by counsel before the Court.

Rule 12. RETENTION OF CIVILIAN COUNSEL. When civilian counsel represents an accused before the Court, the Court will notify counsel when the record of trial is received. If both civilian and assigned appellate defense counsel represent the accused, the Court will regard civilian counsel as primary counsel unless notified otherwise. Ordinarily, civilian counsel will use the accused's copy of the record. Civilian counsel may reproduce, at no expense to the government, appellate defense counsel's copy of the record.

Rule 13. NOTICE OF APPEARANCE OF COUNSEL. Military and civilian appellate counsel shall file a written notice of appearance with the Court. The filing of any pleading relative to a case which contains the signature of counsel constitutes notice of appearance of such counsel.

Rule 14. WAIVER OR WITHDRAWAL OF APPELLATE REVIEW. Withdrawals from appellate review, and waivers of appellate review filed after expiration of the period prescribed by the Rule for Courts-Martial 1110(f)(1), will be referred to the Court for consideration. At its discretion, the Court may require the filing of a motion for withdrawal, issue a show cause order, or grant the withdrawal without further action, as may be appropriate. The Court will return the record of trial, in a case withdrawn from appellate review, to the Judge Advocate General for action pursuant to Rule for Courts-Martial 1112.

Rule 15. ASSIGNMENTS OF ERROR AND BRIEFS.

(a) General Provisions. Appellate counsel for the accused may file an assignment of error if any are to be alleged, setting forth separately each error asserted. The assignment of errors should be included in a brief for the accused in the format set forth in Attachment 2. An original of all assignments of error and briefs, and as many additional copies as shall be prescribed by the Court, shall be submitted. Briefs and assignments of errors 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 accused.

(b) Time for Filing and Number of Briefs. Any brief for an accused shall be filed within 60 days after appellate counsel has been notified of the receipt of the record in the Office of the Judge Advocate General. If the Judge Advocate General has directed appellate government counsel to represent the United States, such counsel shall file an answer on behalf of the government within 30 days after any brief and assignment of errors has been filed on behalf of an accused. Appellate counsel for an accused may file a reply brief no later than 7 days after the filing of a response brief on behalf of the government. If no brief is filed on behalf of an accused, a brief on behalf of the government may be filed within 30 days after expiration of the time allowed for the filing of a brief on behalf of the accused.

(c) Appendix. The brief of either party may include an appendix. If an unpublished opinion is cited in the brief, a copy shall be attached in an appendix. The appendix may also include extracts of statutes, rules, or regulations. A motion must be filed under Rule 23, *infra*, to attach any other matter.

Rule 16. ORAL ARGUMENTS. Oral arguments may be heard in the discretion of the Court upon motion by either party or when otherwise ordered by the Court. The motion of a party for oral argument shall be made no later than 7 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 Court may, on its own motion, identify the issue(s) upon which it wishes argument.

Rule 17. EN BANC PROCEEDINGS.

(a) A party may suggest the appropriateness of consideration or reconsideration by the Court as a whole. Such consideration or reconsideration ordinarily will not be ordered except (1) when consideration by the full Court is necessary to secure or maintain uniformity of decision, or (2) when the proceedings involve a question of exceptional importance, or (3) when a sentence being reviewed pursuant to Article 66 extends to death. In cases being reviewed pursuant to Article 66, a party's suggestion that a matter be considered initially by the Court as a whole must be

filed with the Court within 7 days after the government files its answer to the assignment of errors, or the appellant files a reply under Rule 15(b). In other proceedings, the suggestion must be filed with the party's initial petition or other initial pleading, or within 7 days after the response thereto is filed. A suggestion for reconsideration by the Court as a whole must be made within the time prescribed by Rule 19 for filing a motion for reconsideration. No response to a suggestion for consideration or reconsideration by the Court as a whole may be filed unless the Court shall so order.

(b) The suggestion of a party for consideration or reconsideration by the Court as a whole shall be transmitted to each judge of the Court who is present for duty, but a vote need not be taken to determine whether the cause shall be considered or reconsidered by the Court as a whole on such a suggestion made by a party unless a judge requests a vote.

(c) A majority of the judges present for duty may order that any appeal or other proceeding be considered or reconsidered by the Court sitting as a whole. However, en banc reconsideration of an en banc decision will not be held unless at least one member of the original majority concurs in a vote for reconsideration.

(d) This rule does not affect the power of the Court *sua sponte* to consider or reconsider any case sitting as a whole.

Rule 18. ORDERS AND DECISIONS OF THE COURT.

The Court shall give notice of its orders and decisions by immediately serving them, when rendered, on appellate defense counsel, including civilian counsel, if any, government counsel and the Judge Advocate General, or designee, as appropriate.

Rule 19. RECONSIDERATION.

(a) The Court may, in its discretion and on its own motion, enter an order announcing its intent to reconsider its decision or order in any case not later than 30 days after service of such decision or order on appellate defense counsel or on the appellant, if the appellant is not represented by counsel, provided a petition for grant of review or certificate for review has not been filed with the United States Court of Appeals for the Armed Forces, or a record of trial for review under Article 67(b) has not been received by that Court. No briefs or arguments shall be received unless the order so directs.

(b) Provided a petition for grant of review or certificate for review has not been filed with the United States Court of Appeals for the Armed Forces, or a record of trial

for review under Article 67(b) or writ appeal has not been received by the United States Court of Appeals for the Armed Forces, the Court may, in its discretion, reconsider its decision or order in any case upon motion filed either:

(1) By appellate defense counsel within 30 days after receipt by counsel, or by the appellant if the appellant is not represented by counsel, of a decision or order, or

(2) By appellate government counsel within 30 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 showing jurisdiction in the Court. A reply to the motion for reconsideration will be received by the Court only if filed within 7 days of receipt of a copy of the motion. Oral arguments shall not be heard on a motion for reconsideration unless ordered by the Court. The original of the motion filed with the Court 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 24 or Rule 25 beyond the expiration of the time for filing a petition for review or writ appeal with the United States Court of Appeals for the Armed Forces, except that the time for filing briefs by either party may be extended for good cause.

Rule 20. PETITIONS FOR EXTRAORDINARY RELIEF, ANSWER, AND REPLY.

(a) Petition for Extraordinary Relief. 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, military grade and service number of each named party 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, military grade and service number by the petitioner and shall be designated as the real party in interest.

(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 when 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 Judge Advocate General. Immediately upon receipt of any petition, the clerk shall forward a copy of the petition to the appropriate Judge Advocate General or designee.

(e) Briefs. Each petition for extraordinary relief must be accompanied by a brief in support of the petition unless it is filed in propria persona. 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.

(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.

Rule 21. APPEALS BY THE UNITED STATES.

(a) Restricted Filing. Only a representative of the government designated by the Judge Advocate General of the respective service may file an appeal by the United States under Article 62.

(b) Counsel. Counsel must be qualified and appointed, and give notice of appearance in accordance with these rules and those of the Judge Advocate General concerned.

(c) Form of Appeal. The appeal must include those documents specified by Rule for Courts-Martial 908 and by applicable regulations of the Secretary concerned. A certificate of the Notice of Appeal described in Rule for Courts-Martial 908(b)(3) must be included. The certificate of service must reflect the date and time of the military judge's ruling or order from which the appeal is taken, and the time and date of service upon the military judge.

(d) Time for Filing. All procedural Rules of the Court shall apply except as noted herein:

> (1) The representative of the government designated by the Judge Advocate General shall decide whether to file the appeal with the Court. The trial counsel shall have 20 days from the date written notice to appeal is filed with the trial court to forward the appeal, including an original and two copies of the record of trial, to the representative of the government designated by the Judge Advocate General. The person designated by the Judge Advocate General shall promptly file the original record with the Clerk of the Court and forward one copy to opposing counsel. Appellate government counsel shall have 20 days (or more upon a showing of good cause made by motion for enlargement within the 20 days) from the date the record is filed with the Court to file the appeal with supporting brief with the Court. Should the government decide to withdraw the appeal after the record is received by the Court, appellate government counsel shall notify the Court in writing. Appellate brief(s) shall be prepared in the manner prescribed by Rule 15.
>
> (2) Appellee shall prepare an answer in the manner prescribed by Rule 15 and shall file such answer within 20 days after any filing of the government brief.

(e) The government shall diligently prosecute all appeals by the United States and the Court will give such appeals priority over all other proceedings where practicable.

Rule 22. PETITIONS FOR NEW TRIAL.

(a) Whether submitted to the Judge Advocate General by the accused in propria persona or by counsel for the accused, a petition for new trial submitted while the accused's case is undergoing review by a Court of Criminal Appeals shall be filed with an original and two copies and shall comply with the requirements of Rule for Courts-Martial 1210(c).

(b) Upon receipt of a petition for new trial submitted by other than appellate defense counsel, the Court will notify all counsel of record of such fact.

(c) A brief in support of a petition for new trial, unless expressly incorporated in or filed with the petition, will be filed substantially in the format specified by Rule 15 no later than 30 days after the filing of the petition or receipt of the notice required by subsection (b) of this Rule, whichever is later. An appellee's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed no later than 10 days after the filing of the appellee's answer.

Rule 23. MOTIONS.

(a) Content. All motions, unless made during the course of a hearing, shall state with particularity the relief sought and the grounds therefor. Motions, pleadings, and other papers desired to be filed with the Court may be combined in the same document, with the heading indicating, for example "MOTION TO FILE (SUPPLEMENTAL ASSIGNMENT OF ERRORS) (CERTIFICATE OF CORRECTION) (SUPPLEMENTAL PLEADING)", or "ASSIGNMENT OF ERRORS AND MOTION TO FILE ATTACHED REPORT OF MEDICAL BOARD".

(b) Motions to Attach Documents. If a party desires to attach a statement of a person to the record for consideration by the Court on any matter, 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 7 days after receipt by the opposing party of service of the motion.

(d) Leave to File. Any pleading not authorized or 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.

Rule 24. CONTINUANCES AND INTERLOCUTORY MATTERS. Except as otherwise provided in Rule 19(d), the Court, in its discretion, may extend any time limits prescribed and 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 Rule 4.

Rule 25. SUSPENSION OF RULES. For good cause shown, the Court acting as a whole or in panel may suspend the requirements or provisions of any of these rules in a particular case on petition of a party or on its own motion and may order proceedings in accordance with its direction.

Rule 26. INTERNAL RULES. The Chief Judge of the Court has the authority to prescribe internal rules for the Court.

Rule 27. RECORDING, PHOTOGRAPHING, BROADCASTING, OR TELECASTING OF HEARINGS. The recording, photographing, broadcasting, or televising of any session of the Court or other activity relating thereto is prohibited unless specifically authorized by the Court.

Rule 28. AMENDMENTS.

Proposed amendments to these rules may be submitted to the Chief Judge of any Court named in Rule 1 or to a Judge Advocate General. Before acting on any proposed amendments not received from the Chief Judges, the Judge Advocates General shall refer them to the Chief Judges of the Courts for comment. The Chief

Judges shall confer on any proposed changes, and shall report to the Judge Advocates General as to the suitability of proposed changes and their impact on the operation of the Courts and on appellate justice.

BY ORDER OF THE JUDGE ADVOCATES GENERAL OF THE AIR FORCE, THE ARMY, THE NAVY, AND THE GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION

BRYAN G. HAWLEY
Major General, USAF
The Judge Advocate General

MICHAEL J. NARDOTTI, JR.
Major General, USA
The Judge Advocate General

HAROLD E. GRANT
Rear Admiral, JAGC, U.S. Navy
Judge Advocate General

NANCY E. McFADDEN
General Counsel
Department of Transportation

Attachment 1: FORMAT FOR DIRECTION FOR REVIEW IN A COURT OF CRIMINAL APPEALS

IN THE UNITED STATES _____[1]
COURT OF CRIMINAL APPEALS

UNITED STATES

v.

_____
(*Full typed name, rank, service, & service number of accused*)

DIRECTION FOR REVIEW
Case No. _____

Tried at (*location*), on (*date(s)*)
before a (*type of court-martial*)
appointed by (*convening authority*)

TO THE HONORABLE THE JUDGES OF THE UNITED STATES _____
COURT OF CRIMINAL APPEALS

1. Pursuant to Article 69 of the Uniform Code of Military Justice, 10 U.S.C. §869 (1994) and the Rules of Practice and Procedure for Courts of Criminal Appeals, Rule 2(b), the record of trial in the above-entitled case is forwarded for review.

2. The accused was found guilty by a (*type of court-martial*) of a violation of Article(s) _____ of the Uniform Code of Military Justice, and was sentenced to (*include entire adjudged sentence*) on (*insert trial date*). The convening authority (approved the sentence as adjudged) (approved the following findings and sentence: _____). The officer exercising general court-martial jurisdiction (where applicable) took the following action: _____. The case was received for review pursuant to Article 69 on (*date*).

3. In review, pursuant to Uniform Code of Military Justice, Article 66, It is requested that action be taken with respect to the following issues:

[set out issues here]

---

[1] Use "Army," "Navy-Marine Corps," "Air Force," or "Coast Guard," as applicable.

_____
The Judge Advocate General

Received a copy of the foregoing Direction for Review this _____*(date)*.

_____	_____
Appellate Government Counsel	Appellate Defense Counsel
_____	_____
Address and telephone number	Address and telephone number

Attachment 2. FORMAT FOR ASSIGNMENT OF ERRORS AND BRIEF ON BEHALF OF ACCUSED (RULE 15)

IN THE UNITED STATES _____ [2]
COURT OF CRIMINAL APPEALS

UNITED STATES	ASSIGNMENT OF ERRORS AND BRIEF ON BEHALF OF ACCUSED
v.	Case No. _____
_____	Tried at (*location*), on (*date(s)*)
(*Full typed name, rank, service, & service number of accused*), Appellant	before a (*type of court-martial*) appointed by (*convening authority*)

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
_____ COURT OF CRIMINAL APPEALS

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 accused, the findings and sentence at trial, the action by the convening authority, and any other pertinent information regarding the proceedings.]

Statement of Facts

[Set forth those facts necessary to a disposition of the assigned errors, including specific page references and exhibit numbers. Answers may adopt appellant's or petitioner's statement of facts if there is no dispute, may state additional facts, or, if there is a dispute, may restate the facts as they appear from appellee's or respondent's viewpoint. The repetition of uncontroverted matters is not desired.]

Errors and Argument

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[2] Use "Army," "Navy-Marine Corps," "Air Force," or "Coast Guard," as applicable.

[Set forth each error alleged in upper case letters, followed by separate arguments for each error. Arguments shall discuss briefly the question presented, citing and quoting such authorities as are deemed pertinent. Each argument shall include a statement of the applicable standard of review, and shall be followed by a specific prayer for the relief requested.]

Appendix

[The brief of either party may include an appendix containing copies of unpublished opinions cited in the brief, and extracts of statutes, rules or regulations pertinent to the assigned errors.]

_____
(Signature of counsel)

_____
Name (and rank) of counsel, address and telephone number

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was mailed or delivered to the Court and opposing counsel on (*date*).

_____
Name (rank) (and signature)

_____
Address and telephone number

_____(Date)

SUMMARY OF CHANGES

Rule 1. The courts were renamed on October 5, 1994, by Public Law No. 103-337, §924, 108 Stat. 2663.

Rule 2. Paragraph (a)(2) was revised to conform to law. Article 69(d), UCMJ, 10 U.S.C. § 869(d), permits a Judge Advocate General to direct review of summary and special courts-martial by the respective Court of Criminal Appeals. Paragraph (a)(3) was revised to conform to the change in Article 62, UCMJ, 10 U.S.C. § 862, made by the FY 96 Defense Authorization Act, which permits appeal of certain orders relating to classified material.

Rule 3. The added language clarifies that Article 69(e), 10 U.S.C. § 869(e), limits judicial review of cases referred by the Judge Advocate General under Article 69(d) to questions of law.

Rule 5. The rule on filing location was revised so that a court may designate a place for filing papers by internal rule.

Rule 7. The method of computing filing dates was revised to improve clarity. All times are now computed in consecutive days. This causes no change in due dates. The added clause in the second sentence addresses unexpected closures such as "snow days" at the Clerk's office.

Rule 9. The rewording is for clarity, with no intent to effect a substantive change.

Rule 11. The rewording is for clarity, with no intent to effect a substantive change.

Rule 15. In Paragraph (a), "typed or printed" replaces "typewritten" to reflect current practice. Paragraph (b) consolidates the former Paragraphs (b) and (c), with two changes. The time for filing an assignment of errors and brief has been extended from 30 to 60 days, and the appellant may file a reply brief without having to file a motion for leave to do so. Paragraph (c) prescribes the contents of an appendix. It makes clear that affidavits may not be simply appended to a brief, but must be filed by separate motion.

Rule 16. The change reflects that the courts have authority to limit argument and requires counsel to specify issues to be argued.

Rule 17. The Rule was completely reorganized to clarify that limitations on seeking en banc consideration of a case apply only to parties, and do not limit the courts.

Rule 18. The Rule was changed to make clear that all counsel, civilian and military, must be given a copy of the court's orders and decisions.

Rule 19. The Rule was substantially revised. Paragraphs (a) and (d) were revised for clarity, and to add writ appeals, authorized since 1 July 1983. Paragraphs (a), (b), and (d) were revised to reflect the new name of the Court of Appeals. Paragraph (d) was revised to correct a syntax error.

Rule 20. Paragraph (c) was updated in terms to permit petitions for extraordinary relief to be filed by a variety of electronic means, such as e-mail.

Rule 21. Paragraph (d) was revised to reduce the number of copies of the record required for government appeals from three to two.

Rule 22. This is a complete revision. The previous Rule 22 was based the assumption that most petitions would be submitted without benefit of counsel. In current practice, most petitions are filed by counsel. The change requires a brief in support of a petition for new trial before the government responds.

Rule 23. Paragraph (b) is new. It requires statements filed by motion to be sworn, and matter in a language other than English to have a certified translation.

Rule 27. The Rule was changed to allow each Court to determine, by internal rule, its own procedure for suspending the operation of this Rule.

Rule 28 is new. Under Article 66(f), UCMJ, 10 U.S.C. § 866(f), the Judge Advocates General promulgate rules for the Courts. While preserving that authority, this rule encourages submission of proposed changes first to the Chief Judges of the Courts for evaluation and comment.

The Attachments were revised to conform to changes in the Rules. In addition, both were revised to conform substantially to the formats recently issued by the Court of Appeals for the Armed Forces. Some differences remain: issues raised are called "Assignments of Error," a "Summary of Argument" is not required, and a separate "Conclusion" is not required. Unnecessarily detailed examples were removed from both Attachments.