



MILITARY COMMISSIONS

TRIAL JUDICIARY

RULES OF COURT



MILITARY COMMISSIONS TRIAL JUDICIARY

4 May 2007

MILITARY COMMISSIONS RULES OF COURT

From: Chief Judge of the Military Commissions Trial Judiciary

Subject: Military Commissions Rules of Court

Reference: (a) Military Commissions Act of 2006, 10 U.S.C. §§948a, *et seq.*, (M.C.A.)
(b) Manual for Military Commissions, 2007, (M.M.C.)
(c) Regulation for Trial by Military Commission

1. **Purpose:** To prescribe rules of court consistent with the references.
2. **Background:** 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 rules are intended to facilitate the smooth and orderly trial of Military Commission cases and are specifically promulgated within the authority of Rule for Military Commissions (R.M.C.) 108. To the extent that inconsistencies are perceived, the rules contained within references (a) and (b) shall control.
3. **Action:**
 - a. The judges of the Military Commissions Trial Judiciary shall ensure enforcement of these Rules of Court.
 - b. All counsel practicing before Military Commissions shall become familiar with these Rules and shall comply with them.
4. **Effective Date:** These rules are effective upon publication and shall remain in effect until cancelled, superseded, or modified.

RALPH H. KOLHMANN
Colonel, U.S. Marine Corps
Chief Judge, Military Commissions Trial Judiciary

RULES OF COURT FOR MILITARY COMMISSIONS

TABLE OF CONTENTS

Rule 1. Scope, Short Form, Citations, Time.	1
4 May 2007	
Rule 2. Communications	2
4 May 2007	
Rule 3. Motions Practice	4
4 May 2007	
Rule 4. Appearance, Absence, and Excusal, Relief or Withdrawal of Counsel	13
4 May 2007	
Rule 5. Filings Inventory	20
4 May 2007	
Rule 6. Trial Exhibits	23
4 May 2007	
Rule 7. <i>Amicus Curiae</i> Briefs	31
4 May 2007	
Rule 8. Appellate Exhibits	35
4 May 2007	

Military Commissions Trial Judiciary

4 May 2007

Military Commissions Rules of Court

Rule 1. Scope, Short Form, Citations, Time

- 1.** These Rules of Court (RC) are established pursuant to Manual for Military Commissions (M.M.C.), 2007, Rules for Military Commissions (R.M.C.) 108 and 801(b) (1), and shall apply to all cases referred to trial by Military Commission.
- 2.** Rules of Court shall be interpreted to be consistent with the Military Commissions Act (M.C.A.), the M.M.C, and the Regulation for Trial by Military Commissions. In the event of any conflict between the M.C.A. or M.M.C. and the Rules of Court, the former two shall prevail.
- 3.** Rules of Court may be cited as RC followed by the Arabic numeral of the Section and then the Arabic paragraph number, and if applicable, subparagraph letters. For example, this Rule and paragraph may be cited as RC 1.3.
- 4.** The Rules of Court will be added to or modified on an as-required basis. Counsel and all other interested parties will be furnished any additions or modifications as soon as they are made.
- 5.** A Military Judge may modify, change, or determine that a certain Rule of Court or any portion thereof is not applicable to a given trial by Military Commission. Before taking such action, the Military Judge will so advise counsel in the case, other interested parties, the Chief Trial Judge, and Military Commission Trial Judiciary (MCTJ) Staff.
- 6.** In computing any period of time prescribed or allowed by these Rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. When a time (1630 hours, 4:30pm, 0900 hours) is used in these Rules, or in a message, order, email, or other directive from a Military Judge, that time refers to Washington, D.C. time, unless otherwise specifically stated.

Military Commissions Trial Judiciary

4 May 2007

Military Commissions Rules of Court

Rule 2. Communications

1. Purpose. This rule establishes general procedures for communications among counsel, the Military Judges and MCTJ Staff. These procedures are designed to avoid *ex parte* communications, to ensure that procedural matters leading to trial are handled efficiently, and to provide efficient and expeditious methods of communications. *Ex parte* communication by a party with the Military Judge or *vice versa* concerning the case is prohibited except as authorized by the M.C.A. or the M.M.C. (e.g., 10 USC Sec. 949d(f)(2)(C), R.M.C. 701-703 and Mil. Comm. R. Evid. 505).

2. The preferred, and most reliable, method of communication among the Military Judges and counsel is email with “Cc” to all opposing counsel, clerks and paralegals, the entire MCTJ Staff, and the Chief Prosecutor/Chief Defense Counsel and their chief legal clerks. The following email conventions will be followed. Failure to comply with these rules will result in the communication being returned for lack of compliance with these rules.

a. Do not send e-mail directly to the Military Judge. The Military Judge shall be listed as “Cc” only. The MCTJ Staff is the support staff for the Military Judges and is the clearing house through which their communications are routed. Communications sent directly to Military Judges will not be acted upon by the Military Judge, but will be forwarded to the MCTJ Staff for appropriate action. Communications will not be deemed to be received by a Military Judge unless and until the MCTJ Staff have been included on the e-mail.

b. All e-mail to the MCTJ Staff for action by a Military Judge shall be sent to all members of the MCTJ Staff. The email will also be “Cc” to counsel for both sides, the Chief Defense Counsel, the Chief Prosecutor, the Chief Legal Clerks for the Prosecution and Defense, and the paralegals assigned to the case.

c. Do not send classified information or Protected Information in the body of an email or as an attachment.

d. Keep emails to a single subject, and use a simple yet descriptive subject line. If the email is related to an item that has a filing designation (*see* RC 5), a pending motion, or item that is on the Filings Inventory (*see* RC 5), then a reference to the pending motion or item and the filing designation shall be included in the subject line.

e. Identify, in the body of the email, each attachment being sent.

f. Every paragraph and sub-paragraph of any email to the Military Judge or MCTJ Staff that contains more than one paragraph or sub-paragraph will be numbered or lettered to provide for easy reference. A logical numbering or lettering scheme will be used, such as: 12 a (1) (a) (i) (ii).

g. All attachments to a filing will be sent in the same email as the document to which it is an attachment. If such email would exceed the capabilities of the LAN, permission for an exception to send an attachment by separate email should be requested. (This practice will be used sparingly.)

h. Text attachments will be, in order of preference, in Microsoft Word, HTM/HTML, or RTF. Attachments will not be in “track changes” or “mark-up” format. If it is necessary to send images, JPG, BMP, or TIFF may be used. Consult the MCTJ Staff if you need to send other file formats.

i. Save all emails you send for your record copy of the communication.

j. Avoid archiving or compressing files (such as WinZip). Before sending an archived or compressed file, get permission from the MCTJ Staff.

k. If the Military Judge will need to know classified information to resolve the matter, that fact must be noted in the email and the location of the materials that he/she will need to review (if such facts or locations are not classified or Protected).

l. Given the potential number of counsel and changes in the trial teams, all parties must ensure that all who need the email receive a copy. If any addressee notices that an email was not “Cc” to a person who needs to have a copy, such addressee shall forward a copy to the person who needs that email and advise the sender and all other “Cc” recipients of the failure to include the person.

3. Because of potential changes to the composition of trial teams, the Military Judge or MCTJ Staff may elect to send an email to the Chief Defense Counsel or Chief Prosecutor, and/or their respective Chief Legal NCOs, for distribution to all counsel, or all counsel of a particular team. The MCTJ Staff and the Military Judge will be copied on the email that is forwarded to those to whom distribution was directed in compliance with these instructions.

4. When a telephonic conference is necessary, the Military Judge will designate the person to arrange the conference call. Conference calls will be in accordance with R.M.C. 802.

5. When authorized by these instructions, or directed by the Military Judge, any member of the MCTF Staff may sign for and issue directions, instructions, requests, or rulings to the parties and others “For the Military Judge” or “By Direction of the Military Judge.” Signatures “for” or “by direction of” carry the same force and effect as if signed by, or personally issued by, the Military Judge.

Military Commissions Trial Judiciary

4 May 2007

Military Commissions Rules of Court

Rule 3. Motions Practice

1. Purpose. This rule establishes the procedures for motions practice before Military Commissions.

2. Definitions.

a. A "motion" is an application to the Military Judge for particular relief or for the Military Judge to direct another to perform, or not perform, a specific act. A motion as used herein also specifically includes those motions addressed in R.M.C. 905, 906, and 907.

b. A "filing" includes a written motion, response, reply, supplement, notice of a motion, special request for relief, or other communication involved in resolving a motion.

c. A "response" is the opposing party's answer to a motion.

d. A "reply" is the moving party's answer to a response.

e. A "supplement" is a filing in regard to a motion other than a motion, response, or reply.

f. A "certificate of conference" is a statement by the moving party confirming that the moving party has conferred with the opposing party and whether the opposing party concurs with or objects to the requested relief.

3. How motions are made. Motions shall be made in writing in accordance with these instructions unless the Military Judge permits or directs otherwise. Should a matter come to the attention of a party at such a time or in a situation in which they have insufficient time to file a written motion, they shall immediately notify the Military Judge, all opposing counsel, and the MCTJ Staff of the nature of the motion, the nature of the relief sought, and the reasons why the motion cannot be made in writing. A motion must include a certificate of conference indicating that the moving party has conferred with the opposing party and whether the opposing party concurs or objects. When submitted by email, follow the instructions in RC 2.

4. Special requests for relief. A special request for relief relieves counsel of the specialized format for filings (motions, reply, and response) generally. A special request, and the responses and replies thereto, can be in the body of an email.

a. Ordinarily, requests for relief will be in the form of a motion using the format established herein. Counsel may at times have requests for relief that do not involve extensive facts or citations to authority. Common special requests for relief could address, for example, requests to: supplement a filing, for an extension to submit a filing, for an extension of a timing requirement, to adjust the date a filing was received, to append or attach documents to a previously made filing, or like matters that do not involve contested matters of law or fact.

b. A special request for relief must include a certificate of conference indicating that the moving party has conferred with the opposing party and whether the opposing party concurs or objects. If the moving party has made a best effort to confer with the opposing party and has not been able to do so through no fault of their own, the efforts made shall be listed.

c. The Military Judge, or on behalf of the Military Judge, a MCTJ Attorney Advisor may direct that a special request for relief be resubmitted as a motion before the matter will be considered by the Military Judge.

d. The content of a special request for relief will contain the name of the case, the precise nature of the relief requested, those facts necessary to decide the request, citations to authority if any, and why the relief is necessary.

e. A response may be submitted by the opposing party as soon as possible, but is not required.

5. Sending and receiving filings.

a. A filing is "sent" or "filed" when sent via email to the correct email address of the recipient(s). If there is a legitimate question whether the email system functioned correctly (undeliverable email notification for example), the sender shall again send the filing until satisfied it was transmitted or an email receipt is received.

b. A filing is "received" by the opposing party when it is sent to the proper parties, with the following exceptions:

(1) The recipient was OCONUS when the email was sent, in which case the filing is received on the first duty day following return from OCONUS.

(2) The filing was sent on a Friday after 4:30 p.m., Saturday, or Sunday when the recipient was not OCONUS, in which case the filing is received the following Monday. If the following Monday is a federal holiday, the filing is received on the following Tuesday.

(3) Upon request by the receiving party or the Chief Prosecutor or Chief Defense Counsel or their Deputies on behalf of their counsel, the Military Judge establishes a different "received date" to account for unusual circumstances. Requests to extend the time a filing was received shall be in the form of a special request for relief. In the alternative, a request for an extension may be filed.

6. Timing for filing motions, responses, and replies.

a. Motions.

(1) Timing. Motions addressed in R.M.C. 905(b)(1) – (5) must be raised and made by the time provided in R.M.C. 905(b) unless the Military Judge directs otherwise. As to other motions, the Military Judge will ordinarily establish a deadline for the filing of motions by way of an Order.

(2) Format of a motion: *See* Form 3-1.

(3) Waiver. Motions which are not made in a timely fashion are waived. Requests for exceptions to waiver must be addressed to the Military Judge with motion-specific reasons for failure to make the motion in a timely fashion.

b. Responses.

(1) Timing. Unless the Military Judge provides otherwise, a response is due within 7 calendar days after a motion is received.

(2) Format of a response: *See* Form 3-2.

c. Replies.

(1) Counsel may submit a reply to a response, however Counsel must take care that matters that should have been raised in the original motion are not being presented for the first time as a reply. Replies are unnecessary to simply state that the party disagrees with a response. If a reply is not filed, that indicates that the party stands on their motion or initial filing, and it does not indicate agreement with a response.

(2) Timing: Replies shall be filed within three days of receiving a response unless the party does not desire to file a response.

(3) Format for a reply: *See* Form 3-3.

7. Burdens of proof and persuasion in motion practice.

a. As a general rule, the burden of proof (production of evidence and preponderance of evidence), and the burden of persuasion are on the moving party. (*See* R.M.C. 905(c)). In any motion in which the moving party does not believe that the general rule should apply, or believes that one or both of the burdens should change after a certain quantum of evidence is introduced, the party must provide in the filing:

(1) A statement of the burden of proof (production of evidence) in the particular motion;

(2) A statement of the burden of persuasion in the particular motion;

(3) The point, if any, at which either the burden of proof or the burden of persuasion is shifted to the non-moving party; and,

(4) The legal argument in support of the statement. (Stating merely that fairness requires shifting the burden of proof or persuasion is not sufficient legal argument.)

b. A response must address those matters concerning shifting of the burden(s) raised by the moving party.

8. Rulings on motions.

a. The Military Judge shall make final rulings on all motions submitted to him/her based upon the written filings of the parties submitted in accordance with this Rule, and the facts and law as determined by the Military Judge, unless:

(1) Material facts necessary to resolution of the motion are in dispute and require the taking of evidence; or,

(2) A party correctly asserts in a filing that the law does not permit a ruling on filings alone, accompanied by citation to the authority which prohibits the Military Judge from ruling on the filings alone.

b. The Military Judge, in his/her sole discretion, determines that oral argument is necessary to provide a full and fair trial.

c. *See also* R.M.C. 905(e).

Form 3-1 Format for a Motion

UNITED STATES OF AMERICA

v.

[Name of Accused]

[aka if any; not required]

Defense Motion

to Suppress Oct 5, 2002 Statement Allegedly Made by
the Accused to Joe Jones

[Date motion filed]

Note: Use bold as shown above.

Note: The caption above was created using a 2 column table. Counsel may use that method, or any other, that separates the name of the case from the name of the filing.

NOTE: The following will be included in **separately numbered paragraphs**. Use Arabic numbers.

1. A statement that the motion is being filed within the time frames and other established guidance or direction of the Military Judge.
2. A concise statement of the relief sought.
3. (Optional) An overview of the substance of the motion.
4. (May be required) Statement concerning burden of proof.
5. The facts, and the source of those facts (witness, document, physical exhibit, etc.). Each factual assertion will be in a separate, lettered sub-paragraph. This will permit responses to succinctly admit or deny the existence of facts alleged by the moving party. If the facts are, or the identity of the source is, protected or classified, that status will be noted.
6. Why the law requires the relief sought in light of the facts alleged, including proper citations to authority relied upon.
7. Whether oral argument is requested or required by law. If asserted that argument is required by law, citations to that authority, and why the position of the party cannot be made fully known by filings.
8. The identity of witnesses who will be required to testify on the matter in person, and/or evidentiary matters that will be required. Listing a witness is not a request for the witness. Requests for production of witnesses by the defense must be made separately, and in accordance with R.M.C. 703. Stating the evidence needed is not a discovery request or a request for access to evidence.
9. A certificate of conference indicating that the moving party has conferred with the opposing party and whether the opposing party concurs with or objects to the requested relief.

10. Additional information not required to be set forth as above.

11. A list of attachments.

Form 3-2 Format for a Response

UNITED STATES OF AMERICA

v.

[Name of Accused]

[aka if any; not required]

D-1 (*Filing Designation as assigned by MCTJ Staff*)

Government Response

To Defense Motion to Suppress Oct 5, 2002 Statement
Allegedly Made by the Accused to Joe Jones

[Date motion filed]

Note: Use bold as shown above.

NOTE: The following will be included in separately numbered paragraphs. Use Arabic numbers.

1. A statement that the response is being filed within the time frames and other established guidance or direction of the Military Judge.
2. Whether the responding party believes that the motion should be granted, denied, or granted in part. If granted in part, the response shall be explicit about what relief, if any, the responding party believes should be granted.
3. (Optional) Overview - This paragraph is not required even if the motion had an overview.
4. Those facts cited in the motion that the responding party agrees are correct. When a party agrees to a fact in motions practice, it shall constitute a good faith belief that the fact will be stipulated to for purposes of resolving a motion. The agreed upon facts will correspond to the subparagraph in the motion containing the facts involved.
5. The responding party's statement of the facts, and the source of those facts (witness, document, physical exhibit, etc.), insofar as they may differ from the motion. As much as possible, each factual assertion should be in a separate, lettered subparagraph. If the facts or identity of the source is protected or classified, that status will be noted. These factual assertions will correspond to the subparagraph in the motion containing the facts involved.
6. Why the law does not require or permit the relief sought in light of the facts alleged, including proper citations to authority relied upon.
7. (May be required) Address issue regarding burdens if addressed in the motion, or it is otherwise required to be addressed.
8. Whether oral argument is requested or required by law. If asserted that argument is required by law, citations to that authority, and why the position of the party cannot be made fully known by filings.
9. The identity of witnesses who will be required to testify on the matter in person, and/or evidentiary matters that will be required. Listing a witness is not a request for the witness. Requests for production of witnesses by the defense must be made separately, and in accordance

with R.M.C. 703. Stating the evidence needed is not a discovery request or a request for access to evidence.

10. Additional information not required to be set forth as above.

11. A list of attachments.

Form 3-3 Format for a Reply

UNITED STATES OF AMERICA

v.

[Name of Accused]

[aka if any; not required]

D-1 (*Filing Designation as assigned by MCTJ Staff*)

Defense Reply

to Government Response to Defense Motion to
Suppress Oct 5, 2002 Statement Allegedly Made by the
Accused to Joe Jones

[Date motion filed]

Note: Use bold as shown above.

NOTE: The following will be included in separately numbered paragraphs. Use Arabic numbers.

1. A statement that the reply is being filed within the time frames and other established guidance or direction of the Military Judge.
2. In separately numbered paragraphs, address the response as needed. When referring to the response, identify the paragraph in the response being addressed.
3. Citations to additional authority if necessary.
4. The identity of witnesses not previously mentioned in the motion or response who will be required to testify on the matter in person, and/or evidentiary matters not previously mentioned in the motion or response that will be required. Listing a witness is not a request for the witness. Requests for production of witnesses by the defense must be made separately, and in accordance with R.M.C. 703. Stating the evidence needed is not a discovery request or a request for access to evidence.
5. Additional information not required to be set forth as above.
6. A list of any additional attachments.

Military Commissions Trial Judiciary

4 May 2007

Military Commissions Rules of Court

Rule 4. Appearance, Absence, and Excusal, Relief or Withdrawal of Counsel

1. Purpose. This rule governs the entry of appearance of counsel, absence, and excusal, relief or withdrawal of counsel.

2. Detailing and appearance.

a. Military Counsel.

(1) Military counsel have made an appearance on behalf of the United States or an accused when such counsel are detailed by proper authority to a case which has been referred for trial by a Military Commission.

(2) Upon being detailed to a case, counsel will provide copies of the detailing documents to the Military Judge and MCTJ Staff and, if known, to opposing counsel.

(3) Pursuant to R.M.C. 503, Detailed Defense Counsel (DDC) represents the interests of an accused upon detailing.

(4) Until the DDC is relieved or excused from his/her duty of representation by competent Authority, the DDC will continue to represent the interests of an accused.

(5) Under R.M.C.109 and 506, it is the responsibility of the Chief Defense Counsel (CDC) to provide representation for an accused at all times by detailing a qualified defense counsel. R.M.C. 502 outlines the qualifications and duties of personnel of Military Commissions; to include detailed defense counsel, associate or assistant defense counsel, and civilian defense counsel. (*See also* Regulation for Trial by Military Commissions, Chapter 9).

b. Civilian Defense Counsel (CC). A CC will be deemed to have entered an appearance with the Commission when the CC submits Form 4-1, the notice of appearance and agreement, including MC Form 9-2, Affidavit and Agreement by Civilian Defense Counsel, by email to the Military Judge through the MCTJ Staff.

c. Associate or Assistant Defense Counsel. An associate or assistant defense counsel may perform any act or duty which a defense counsel may perform under law, regulation, or custom of the service, under the supervision of the defense counsel. (*See* R.M.C. 502(d)(6)). DDC or CC, if they are lead counsel, should ensure that Assistant Defense Counsel are always afforded the appropriate supervision. Assistant Defense Counsel may not appear alone at any session of a Military Commission or a R.M.C. 802 conference, and may not submit motions

under only their signature. Assistant Defense Counsel have made an appearance when a written notice of detail is provided to the Military Judge by the detailing authority.

d. Other Assistants to Counsel. If a party has R.M.C. 506(d) assistant(s) who will be present at a commission session or trial, and the party desires the assistant's presence at counsel table, the party will notify the Military Judge, the MCTJ Staff, and opposing counsel of the identity of the assistant and the capacity in which the assistant will serve.

e. If any counsel believes that his/her participation in the Military Commissions or representation of an accused is or may be prohibited because of ethical or other considerations, he/she shall follow the procedures set forth in R.M.C.109.

3. Presence of counsel at Commission sessions. The following rules govern the presence of counsel at Commission sessions.

a. As a general rule, all counsel who have entered an appearance in a specific case must attend all sessions of that case before the Commission.

b. The Military Judge may authorize counsel's absence from a particular session with advanced waiver of that counsel's presence by their client. Any counsel seeking authorization for absence from a session will request permission from the Military Judge and provide written evidence of the waiver by the client. The requirements of paragraph 3.e below must be met. The "client" for the purposes of the prosecution shall be the Chief Prosecutor or the lead prosecutor. (*See* paragraph e(2) below).

c. Because a closed session may be required during any session and could occur without warning, at least one Detailed Military Defense Counsel must attend all Commission sessions.

d. If a counsel's presence is waived by the client and such absence has been authorized by the Military Judge, that absence will not limit the business that is scheduled to be accomplished at the session for which a counsel has been authorized to be absent. For example, if the Commission is scheduled to hear motions, the fact that a client has waived the appearance of a counsel would not allow a party to defer or avoid litigating a motion because said counsel is not present. Similarly, consideration of matters that arise during a session in which a counsel's presence has been waived will not be subject to deferral simply because of the absence of the counsel whose presence has been waived.

e. The notice of waiver to the Military Judge will be submitted by email through the MCTJ Staff and will contain the following information:

(1) In the case of the defense, a signed waiver by the accused must be provided to the Military Judge in advance of the scheduled session. The waiver must indicate that:

(a) The accused is expressly waiving the presence of a named counsel for the scheduled Commission session and be signed by the accused, DDC, and the lead defense

counsel, if other than the DDC. The waiver will be in English or, if the original is in a language other than English, translated into English.

(b) The accused and lead counsel for the defense and the counsel seeking permission to be absent are aware that absence of the counsel does not permit delay or deferral of business of the Commission because said counsel is absent, and that another counsel for the defense who will be present can fully address and litigate, if necessary, any business of the Commission.

(c) The accused understands that another of his defense counsel is responsible for ensuring all business of the Commission can be conducted at the session.

(d) The request is not for the purposes of seeking delay and will not, in fact, delay Commission proceedings.

(e) The format contained at Form 4-2, Waiver of Counsel, may be used by the defense.

(2) In the case of the prosecution, the waiver must be approved by the Chief Prosecutor or lead prosecutor. The absence of a prosecutor for a particular session will not limit the business to be conducted at that session, whether anticipated or not.

f. In lieu of the signed waiver (Form 4-2), the client may, at a session at which the civilian counsel is present, state that the civilian counsel's presence is waived for all subsequent sessions at which the civilian counsel does not appear. The client must state that he understands those matters addressed in paragraph 3.e(1)(b) above and specifically that he understands that other matters may be handled at such sessions which would normally have been handled by the civilian counsel and that he waives such advice and assistance.

g. In cases in which there has been an on-the-record or written waiver of the future presence of civilian counsel at sessions, the civilian counsel will not be required to be present at all sessions.

h. If, at any session, the accused seeks to revoke his written or on-the-record waiver of the presence of the civilian counsel, the civilian counsel will be required to be present at all subsequent trial terms of the Commission. Alternatively, the civilian counsel may request to withdraw from the case completely, and the request may be granted at the discretion of the Military Judge. Any such revocation of waiver by the accused during a given trial term will not require the civilian counsel's presence during the trial term at which the revocation of waiver was made.

4. Excusal, relief or withdrawal of counsel.

a. Excusal/Relief/Withdrawal: The termination of all representational responsibility of a detailed counsel or a qualified civilian counsel after entering an appearance.

b. Detailed Counsel: *See* R.M.C. 505(d) and 506(b)

c. Defense Counsel: *See* R.M.C. 506(b).

Form 4-1 Notice of Appearance and Agreement

UNITED STATES OF AMERICA)	CIVILIAN DEFENSE COUNSEL
)	NOTICE OF APPEARANCE
v.)	AND AGREEMENT
)	
NAME)	(DATE)
)	
)	
)	
)	

1. Pursuant to procedures of court/instruction for counsel, I, ATTORNEY’S FULL NAME, hereby provide notice to the Military Judge of my appearance on behalf of CLIENT’S FULL NAME. My office address, phone numbers, and email address are: ADDRESS, VOICE AND FAX PHONE NUMBERS, & EMAIL ADDRESS. I am an active member in good standing licensed to practice in the following jurisdictions: LIST BAR ADMISSIONS.

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

COUNSEL NAME

Form 4-2 Waiver of Presence of Counsel

UNITED STATES OF AMERICA)	WAIVER OF PRESENSE OF COUNSEL
)	
v.)	
)	(DATE)
NAME)	

1. I, ACCUSED’S FULL NAME, hereby provide notice to the Military Judge that I waive the presence of FULL NAME OF ATTORNEY, my defense counsel for the Commission session scheduled for DATE. By my signature below, I certify that:

a. I have fully discussed this waiver with my defense counsel, NAME OF COUNSEL WITH WHOM DISCUSSED, and he/she has fully advised me of, and I understand my right to, have my defense counsel present for Commission sessions. I have also been advised and understand that the absence of NAME OF ABSENT ATTORNEY will not delay or defer the business of the Commission, whether previously scheduled or arising during the Commission session. I further understand and agree that NAME OF COUNSEL WHO WILL BE PRESENT AT THE SESSION is/are competent and fully capable of representing me and litigating all matters that are scheduled for or may come up at the Commission session. I further certify that this waiver is not made in an attempt to delay the proceedings and in fact will not delay the proceedings.

b. I am voluntarily executing this waiver of counsel after being fully advised of my right to counsel and discussing that right with my defense counsel. No one has threatened me or in any way forced me to execute this waiver and I believe it is in my best interest to execute it.

ACCUSED

I/We, NAME OF DETAILED DEFENSE COUNSEL & LEAD DEFENSE COUNSEL (if other than DDC), by my/our signature below, certify to the Military Judge that:

1. I/we have fully discussed the substance of this waiver with the accused, NAME OF ACCUSED, and he fully understands its content and impact.

2. This waiver will not in any way delay or inhibit the business of the Commission, whether scheduled or that may arise at the next session, and this waiver is not offered to delay or defer the business of the Commission.

3. The Detailed Defense Counsel, NAME OF DDC TO BE PRESENT, is fully qualified and competent to litigate all matters that should arise at the scheduled Commission session.

4. I believe it is in the best interest of the accused that he execute this waiver.

Detailed Defense Counsel/Date

Lead Defense Counsel/Date

Military Commissions Trial Judiciary

4 May 2007

Military Commissions Rules of Court

Rule 5. Filings Inventory

1. Purpose. This rule establishes:

a. Requirements for the MCTJ Staff to maintain a Filings Inventory. The purpose of the Filings Inventory is to set forth which filings and other matters are before the Military Judge.

b. Responsibilities for counsel to use filing designations, once created, and to check the accuracy of a Filings Inventory, upon receipt, so that counsel are certain of those matters before the Military Judge.

2. Establishing the Filings Inventory. The MCTJ Staff shall establish and maintain a Filings Inventory for each case referred to the Commission, which reflects those filings pending before the Military Judge.

a. As soon as the first filing on an issue is received, the MCTJ Staff shall assign a *filing designation* using one of four categories below followed by a number:

P for a filing or series of filings initiated by the prosecution.

D for a filing or series of filings initiated by the defense.

MJ for a filing or series of filings initiated/directed by the Military Judge.

PO for protective orders issued by the Military Judge.

(The terms “filing number” and “filing designation” may be used interchangeably.)

b. The number following the category designation shall be the next unused number for the category and case. The *filing designation* (category and number e.g., P2, D4, PO1) shall be unique for each case and the designation shall not be reused in that case.

c. To identify a specific document, the filing designation will include a letter and the MCTJ Staff may, as required, add a simple description of the nature of the filing such as Motion, Response, Reply, Supplement, Answer, or other designation assigned, plus the name of the accused. For example, the second prosecution motion in Jones would be P2. The response would be P2A. The reply would be P2B. MCTJ Staff might also make the designation "P2B - Reply, Compel Discovery - Jones."

d. The Filings Inventory shall contain an Active Section which lists all filings currently before the Military Judge.

e. The Filings Inventory shall also contain a listing of all filings which are no longer pending before the Military Judge (matters which have been resolved in some fashion). These items shall be placed in the Inactive Section of the Filings Inventory.

3. Filing designation and future communications or filings.

a. Once a filing designation has been assigned, all future communications - whether in hard copy or by email - concerning that series of filings will use the filing designation as a reference in addition to the name of the filing. This includes adding the initial file designations to the style of all filings, the subject lines of emails, and the file names to ALL email attachments. Examples:

* An email subject line forwarding a response to P2 in US v Jones should read: “*P2 Jones - Defense Response - Motion to Exclude Statements of Mr. Smith.*” The filename of the filings shall be the same as the response being sent.

* The filename of a document that is an attachment to the response should read: “*P2 Jones - Defense Response - Motion to Exclude Statements of Mr. Smith - attachment - CV of Dr Smith.*”

b. Each of the designations or filenames listed above may also include other descriptions or information (date, when filed, etc.) the parties may wish to add to assist in their management of filings.

c. The names given to matters that may appear on the Filings Inventory - such as the subject of a motion - will not be classified or otherwise protected as the Filings Inventory is intended to be transmitted through unsecured networks. Counsel must therefore ensure that the names of their filings are not in themselves classified.

4. Distribution of the Filings Inventory.

a. After making a filing, a party may request, by email, the filing designation that has been assigned by the MCTJ Staff.

b. At the request of any party or the Clerk of Court, Office of Military Commissions, the MCTJ Staff shall provide a copy of the current Filings Inventory as soon as practicable.

c. The MCTJ Staff shall from time to time, or when directed by the Military Judge, distribute copies of the Filings Inventory to the Military Judge, all counsel on the case, the Chief Prosecutor and Chief Defense Counsel (and their Deputies and Chief Legal NCOs,) and the Clerk of Court, Office of Military Commissions.

d. The Military Judge shall ensure that a copy of the current Filings Inventory is marked as an Appellate Exhibit at the beginning of each session of the Commission, so that parties may refer to filings by the filing designation.

e. At sessions of the Commission, counsel shall, whenever possible, refer to a filing by the filing designation so the record is clear concerning precisely which filing or issue is being addressed.

5. Counsel responsibility when receiving the Filings Inventory. The Filings Inventory is the only method by which counsel can be sure which filings have been received by the Military Judge, and which matters are before the Military Judge.

a. Counsel will examine each Filings Inventory as it is received and notify the MCTJ Staff, Military Judge, and opposing counsel of any discrepancies within one duty day.

b. If counsel believe they have submitted a filing which is not reflected on the Filings Inventory, they shall immediately send that filing - with all attachments - to the MCTJ Staff, Military Judge, and opposing counsel, noting the discrepancy.

c. If there is a discrepancy in the Filings Inventory and counsel fail to take the corrective action as indicated above and in paragraph 6 below, the Military Judge may elect not to consider that filing.

6. Effect of omission in Filings Inventory.

a. If a filing or other matter is not on the Filings Inventory, it is not before the Military Judge for decision. If a matter has been mistakenly left off the Filings Inventory, it is the responsibility of counsel to note the omission and advise the MCTJ Staff. (*See* paragraph 5, above).

b. If counsel believe that a matter should be on the Filings Inventory and have made that known to the MCTJ Staff, and the MCTJ Staff does not or fails to include the matter on the Filings Inventory, it is the responsibility of counsel to raise the matter with the Military Judge.

c. Failure to fulfill the responsibilities noted above constitutes waiver should the Military Judge not address or rule upon a matter that is not on the Filings Inventory.

Military Commissions Trial Judiciary

4 May 2007

Military Commissions Rules of Court

Rule 6. Trial Exhibits

1. Purpose. This rule establishes guidelines for marking, handling, and accounting for trial exhibits in Military Commission trials.

2. Definitions:

a. Exhibit:

(1) A document or object, appropriately marked, that is presented, given, mentioned, or shown to the Military Judge, any other Commission member, or a witness during a session of the Commission.

(2) A document or object, appropriately marked, that is offered or received into evidence during a session of the Commission, or referred to during a Commission session as an exhibit.

(3) Other documents or objects that the Military Judge directs be marked as an exhibit or are marked with the Military Judge's permission.

b. Prosecution or Defense Exhibits *for identification* are exhibits sponsored by a party and:

(1) Intended to be considered on the merits or sentencing, but either not offered into evidence, or offered into evidence and not received; or,

(2) Not intended to be considered on the merits or sentencing, but used in some other manner during the trial such as a statement used to refresh the recollection of a witness with no intent to offer the statement.

c. Prosecution or Defense Exhibits are exhibits that have been offered and received into evidence on the merits or sentencing.

d. Appellate Exhibits are those exhibits:

(1) Presented for or used on a matter other than the issue of guilt or innocence, or a sentence. Motions, briefs, responses, replies, checklists, written instructions by the Military Judge for the Commission members, findings and sentencing worksheets, and other writings used during motions practice are among the most common forms of Appellate Exhibits.

(2) The Military Judge may decline to have lengthy publications or documents marked as Appellate Exhibits when the precise nature of the document can be readily identified at the session and later on appeal or review. Examples would be well-known directives, rules, cases, regulations, etc.

(3) *See* Rule of Court 8 regarding marking, recording, and controlling Appellate Exhibits.

e. Dual use exhibits. An exhibit identified on the record that is needed for a purpose other than the reason for which it was originally marked. A dual use exhibit allows an exhibit to be used for more than one purpose without having to make additional copies for the record. Example 1: An Appellate Exhibit that a counsel wants the Commission to consider on the merits. Example 2: A counsel marks an exhibit for identification but does not offer it, and opposing counsel desires to offer that exhibit. An exhibit may be used for a dual use only with the permission of the Military Judge, and the exhibit must be properly marked to show both uses. If the dual use exhibit will be provided to the members, the members will be given a copy that does not reflect that the exhibit is also an Appellate Exhibit.

3. Rules pertaining to marking, handling, and referring to exhibits.

a. Any exhibit provided to the Military Judge, a Commission member, or a witness during a session of the Commission shall be properly marked.

b. Any document or other piece of evidence present in the courtroom which is referred to in a session before the Commission as an exhibit shall be properly marked.

c. Any document or other piece of evidence which is displayed for viewing by a witness, the Military Judge, or a Commission member during a session of the Commission shall be properly marked. In the case of an electronic presentation (slides, PowerPoint, video, audio or the like) the Military Judge shall direct the form of the exhibit to be marked for inclusion into the record. The parties should be prepared, at trial, to provide hard (paper) copies of PowerPoint presentations and transcripts of audio or audio/video exhibits.

d. When a party marks or offers an exhibit that in its original state was in a language other than English, and the party marking or offering the exhibit has translated it, has arranged for its translation, or is aware that it has been translated into English from its original language, that party shall also mark and provide to opposing counsel an exhibit containing the English translation along with a copy of the original un-translated document, recording, or other media in which the item was created, recorded, or produced.

e. Parties that mark or offer exhibits which cannot be included into the record or photocopied - such as an item of physical evidence - shall inquire of the Military Judge as to the form by which a tangible representation or substitution of the exhibit shall be included in the record.

f. Before an exhibit is referred to by a counsel for the first time, or handed to a witness, the Military Judge, or a member of the Commission, it shall be first shown to the opposing counsel so that opposing counsel knows the item and its marking, even if the counsel is certain opposing counsel is familiar with the exhibit and its marking.

4. How exhibits are to be marked. *See* Form 6-4.

5. Marking exhibits.

a. Before trial. Pre-marking of Prosecution or Defense Exhibits will only be done by the court reporter. Counsel are encouraged to provide to the court reporter any exhibits they intend to use at a session of the Commission in advance of that session. Numbers shall not be applied to Appellate Exhibits in advance of any session, except as directed by the Military Judge or the MCTJ Staff.

b. At trial. Counsel should confer with the court reporter regarding marking exhibits which they are offering. Counsel are not allowed to mark Appellate Exhibits. The court reporter or the Military Judge may mark any exhibits during trial. *See* Rule of Court 8 regarding marking, recording, and controlling Appellate Exhibits.

6. Marked exhibits not offered at trial and out of order exhibits.

a. Counsel are not required to mark, offer, or refer to exhibits in the numerical or alphabetical order in which they have been marked. Example: The Defense pre-marked Defense Exhibits A, B, and C all for identification. At trial, the Defense wishes to refer to or offer Defense Exhibit C for identification before Defense Exhibit A or B for identification has been offered or mentioned. That sequence *is* permissible.

b. If an exhibit is pre-marked but not mentioned on the record or offered, counsel are responsible for ensuring that the record properly reflects exhibits by letter or number that were marked but not mentioned or offered. This is ordinarily done at the close of the last session of the day. Counsel may either do this on the record or may coordinate with the court reporter immediately after the session to ensure that the official log of exhibits is correct. (*See* paragraph 8, below.) If counsel chooses to do this on the record, an example of the correct procedure is: “Let the record reflect that the Prosecution marked, but did not offer, display, or mention, the following Prosecution Exhibits: 3, 6, and 11.” The party will ensure that the court reporter is given and retains the marked exhibit, even though it has not been admitted into evidence.

c. Exhibit for identification marking as compared to the exhibit received. If an exhibit for identification is received into evidence, the received exhibit shall carry the same letter or number. Example: Offered into evidence are Prosecution Exhibits 1, 2, and 3 for Identification. Prosecution Exhibit 1 and 3 for Identification are not received. Prosecution Exhibit 2 for Identification is received. Once received, what was Prosecution Exhibit 2 for Identification is now “Prosecution Exhibit 2.” The court reporter will mark the words “for Identification” off of the exhibit.

d. Form 6-4 is a guide for marking trial exhibits.

7. How exhibits are offered.

a. Prosecution and Defense Exhibits. In the interests of economy, to offer an exhibit, it is only necessary for counsel to say, “[(We) (The Defense) (The Prosecution)] offer(s) into evidence what has been marked as [(Prosecution Exhibit 2 for identification) (Defense Exhibit D for identification).]”

b. Appellate Exhibits. Appellate Exhibits are not offered. They become part of the record once the Military Judge has directed that they be marked.

8. Confirming the status of an exhibit. The court reporter and Military Judge together shall keep the official log of exhibits that have been marked, and, in addition, with respect to Prosecution and Defense Exhibits, an annotation showing whether an exhibit has been offered and/or received. Before departing the courtroom after the last session of every day, counsel for both sides shall confer with the court reporter to ensure the log is properly annotated, is correct, and that all exhibits are accounted for.

9. Control of exhibits. During trial, and unless being used by counsel, a witness, the Military Judge, or other members of the Commission, all exhibits that have been marked shall be placed on the evidence table in the courtroom consistent with any regulations concerning the control of classified, privileged, or Protected Information. After the end of each session, the court reporter and the Security Officer, as directed by the Clerk of Court, Office of the Military Commissions, shall secure all classified exhibits until the next session. As to unclassified exhibits, the court reporter will inventory all exhibits and maintain control over such exhibits until the next session.

10. Sample forms.

- a. Form 6-1: Appellate Exhibits.
- b. Form 6-2: Prosecution Exhibits.
- c. Form 6-3: Defense Exhibits.
- d. Form 6-4: Marking Exhibits.

Form 6-1 Appellate Exhibits Log

US v. _____ Page ____ of ____ Pages

Arabic Number	Description	Mark X if classified or protected	Filings Inventory number (if applicable)

Form 6-2 Prosecution Exhibits Log

US v. _____ Page ____ of ____ Pages

Arabic Number	Description	Mark X if classified or protected	Offered	Received

Form 6-3 Defense Exhibits Log

US v. _____ Page ___ of ___ Pages

Letter	Description	Mark X if classified or protected	Offered	Received

Form 6-4 Marking Exhibits

I. Unclassified Exhibits and Exhibits that are not Protected Information

Type of Exhibit	Examples	
	First Page - Single Page Exhibit	Multiple Page Exhibits
Prosecution Exhibits for Identification. Use Arabic numerals	Prosecution Exhibit 1 for Identification <i>OR</i> PE 1 for identification <i>OR</i> PE 1 for ID	<i>First page:</i> PE 1 for ID Page, 1 of 24 <i>Subsequent pages:</i> 2 of 24, 3 of 24 etc.
Defense Exhibits for Identification. Use letters. After the letter Z is used, the next exhibit shall be AA.	Defense Exhibit A for Identification <i>OR</i> DE A for identification <i>OR</i> DE A for ID	<i>First page:</i> DE A for ID, Page 1 of 24 <i>Subsequent pages:</i> 2 of 24, 3 of 24 etc.
Prosecution Exhibits and Defense Exhibits	Military Judge or Reporter will mark through for Identification <i>OR</i> for ID.	<i>First page:</i> Mark through on first page. <i>Subsequent pages:</i> No markings necessary if properly marked as above.
Appellate Exhibits Use Arabic numbers	Appellate Exhibit 1 <i>OR</i> AE 1	<i>First page:</i> AE 1, Page 1 of 24 <i>Subsequent pages:</i> 2 of 24, 3 of 24 etc.
Attachments Letters or numbers depending on how indexed in the Appellate Exhibits	Attachment 1 to AE 3 <i>OR</i> Attachment A to AE 3	<i>First page:</i> Attachment 1 to AE 3, page 1 of 3 <i>Subsequent pages:</i> 2 of 3, 3 of 3.

II. Classified Exhibits

Mark the same as I, and in addition, adhere to directives regarding the proper markings and cover sheets.

III. Unclassified, Privileged, or Protected Exhibits

Mark the same as I, above, adding the words on the first page or cover sheet “Privileged Information” or “Protected Information.”

Military Commissions Trial Judiciary

4 May 2007

Military Commissions Rules of Court

Rule 7. *Amicus Curiae* Briefs

1. Purpose. This rule establishes general procedures for submitting an *amicus curiae* brief. An *amicus* brief, which logically addresses an important matter not previously considered by the Commission, or addresses an important matter in a way that another brief filed with the Commission does not, might be of benefit. Briefs that do not meet this standard would not assist the Commission.

2. Submitting *amicus* briefs. A person individually, or on behalf of an organization or entity, may provide an *amicus* brief to the Clerk of Court, Office of Military Commissions by sending the brief as an attachment to the following email address: CCMC@dodgc.osd.mil. The person submitting the brief must meet the following qualifications, and such qualifications shall be stated in the first paragraph of the brief.

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

b. If the submitter is a party to any Commission case in any capacity, has an attorney-client relationship with any person whose case has been referred to a Military Commission, is currently or is seeking to be *habeas* counsel for any such person, or is currently or is seeking to be next-friend for such person, the submitter must so state and further state the submission is only to be considered for its value as an *amicus* brief and not for any other purpose to include as a brief on behalf of any specific party to any Commission proceeding.

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

3. Format. Any *amicus* brief submitted to the Clerk of Court, Office of Military Commissions shall comport with the following:

a. The brief must be in PDF (Adobe Acrobat) format as an attachment to the email submitting the brief to the Clerk of Court, Office of Military Commissions.

b. The brief, when printed, will contain one inch margins on 8 1/2 x 11 paper and be in a 12 point type face. The brief will be double-spaced and will not exceed 25 pages.

c. The brief may use URLs (web links) as cites to legal authority not generally available through legal research services such as LEXIS or Westlaw. URL matters are not part of the brief, and the brief will be rejected by the Clerk of Court, Office of Military Commissions or the Military Judge, if URL matters are viewed as an attempt to exceed page limitations. Parties submitting briefs are responsible for ensuring that the URL is functional on the date of submission.

d. The brief must follow the format set forth in Form 7-1.

4. Action by the Clerk of Court, Office of Military Commissions. When received by the Clerk of Court, Office of Military Commissions, he or she shall:

a. Send a copy to the MCTJ Staff;

b. Send a copy to the Chief Defense Counsel and Chief Prosecutor who may, in turn, forward such briefs to other counsel associated with the case.

5. Consideration by a Military Commission.

a. An *amicus* brief may be considered by a Military Commission only if:

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

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

(3) The *amicus* brief, the certification, and its manner of submission meet the criteria in paragraphs 2 and 3 above.

b. The Military Judge may consider an *amicus* brief *sua sponte*, regardless of the provisions of this paragraph.

6. Other matters.

a. No person may argue an *amicus* brief before the Military Judge without specific, prior leave from the Military Judge. However, any party may invite the attention of the Military Judge to an *amicus* brief cited in the party's motion or response or in oral argument when such argument is permitted.

b. The submission, processing, and consideration of *amicus* briefs will not be allowed to delay the Commission.

7. Timeframe exceptions.

a. If a significant *amicus* brief has been made available as provided in paragraph 4, above, after a party has filed a motion, response, or reply on the same or a substantially similar

issue, and before the Military Judge has issued a ruling on the record or in writing, a party may request the Military Judge consider the *amicus* brief by:

(1) Requesting in the body of an email that the Military Judge consider the brief and attaching the brief; *and*,

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

b. If the Military Judge agrees to consider the brief, the Military Judge may allow the opposing party to file a response. If so, the Military Judge will advise the opposing party of the time limit. As a general rule, no reply to that response will be permitted. No adverse inferences will be drawn from an election by the opposing party not to respond to an *amicus* brief.

Form 7-1 Format for an Amicus Brief

UNITED STATES v. (Name of Accused)

**BEFORE A MILITARY COMMISSION
CONVENED PURSUANT TO THE
MILITARY COMMISSIONS ACT OF 2006**

*(Date brief is sent to the Clerk of Court, Office of
Military Commissions)*

*Amicus Brief filed by
(person filing the brief)
[on behalf of (if applicable, indicate the entity on
whose behalf the brief is submitted)]*

NOTE: The following will be included in separately numbered paragraphs. Use Arabic numbers. Sub paragraphs will be numbered or lettered.

1. (Required in every brief.). My name is _____. I certify that I am licensed to practice before the (state jurisdiction). I further certify:

a. I am not a party to any Commission case in any capacity, I do not have an attorney-client relationship with any person whose case has been referred to a Military Commission, I am not currently nor I am seeking to be *habeas* counsel for any such person, and I am not currently nor am I seeking to be next-friend for such person. **OR,**

b. I am (describe the condition listed in paragraph 1a above and the specific individual case involved) and I further state the submission is only to be considered for its value as an *amicus* brief and not for any other purpose to include as a brief on behalf of any specific party to any Commission proceeding.

c. I certify my good faith belief as a licensed attorney that the law in the attached brief is accurately stated, that I have read and verified the accuracy of all points of law cited in the brief, and that I am not aware of any contrary authority not cited to in the brief or substantially addressed by the contrary authority cited to in the brief.

2. Issue(s) Presented. [Set forth, in a concise statement, each issue presented.]

3. Statement of Facts. [Set forth accurately all facts pertinent to the issues raised.]

4. The law.

5. Argument. (Optional.)

Signature Block
Office Address
Email Address
Phone Number

Military Commissions Trial Judiciary

4 May 2007

Military Commissions Rules of Court

Rule 8. Appellate Exhibits

- 1. Purpose.** This rule establishes guidance regarding marking and maintaining Appellate Exhibits.
- 2.** The MCTJ Staff will preserve the communications and filings of the parties marking them as Appellate Exhibits (AE), as directed by the Military Judge, and keeping an index of Appellate Exhibits. Copies of all Appellate Exhibits (except in the case of material requiring special handling) will be made available to counsel for both sides and in the courtroom during any session. Once a session has been held, the original copy of each Appellate Exhibit will be provided to the court reporter for safekeeping and future availability. The Clerk of Court, Office of Military Commissions will determine whether the original or a duplicate original is required for purposes of the Record of Trial.
- 3.** Once marked and approved by the Military Judge, electronic copies of the Appellate Exhibits will be provided to the court reporter. Neither the Military Judge nor the MCTJ Staff will perform any security or other review for classified, Privacy Act, or Sensitive But Unclassified information. As a general rule, the Military Judge takes no position on whether an Appellate Exhibit may be publicly released. However, if the Military Judge determines that an Appellate Exhibit should not be released in the interests of ensuring the parties receive a fair trial or for other reasons, the Military Judge will direct that a particular exhibit be sealed or not released to the public for a certain period. The Military Judge's decision to seal or not authorize the release of an Appellate Exhibit, or a portion thereof, will be communicated to counsel for both sides and to the court reporter and the Clerk of Court, Office of Military Commissions.