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SUBCHAPTER E—REGULATIONS PERTAINING TO MILITARY JUSTICE

PART 150—COURTS OF CRIMINAL APPEALS RULES OF PRACTICE AND PROCEDURE

Sec.
150.1 Name and seal.
150.2 Jurisdiction.
150.3 Scope of review.
150.4 Quorum.
150.5 Place for filing papers.
150.6 Signing of papers.
150.7 Computation of time.
150.8 Qualification of counsel.
150.9 Conduct of counsel.
150.10 Request for appellate defense counsel.
150.11 Assignment of counsel.
150.12 Retention of civilian counsel.
150.13 Notice of appearance of counsel.
150.14 Waiver or withdrawal of appellate review.
150.15 Assignments of error and briefs.
150.16 Oral arguments.
150.17 En banc proceedings.
150.18 Orders and decisions of the Court.
150.19 Reconsideration.
150.20 Petitions for extraordinary relief, answer, and reply.
150.21 Appeals by the United States.
150.22 Petitions for new trial.
150.23 Motions.
150.24 Continuances and interlocutory matters.
150.25 Suspension of rules.
150.26 Internal rules.
150.27 Recording, photographing, broadcasting, or telecasting of hearings.
150.28 Amendments.

APPENDIX A TO PART 150—FORMAT FOR DIRECTION FOR REVIEW IN A COURT OF CRIMINAL APPEALS

APPENDIX B TO PART 150—FORMAT FOR ASSIGNMENT OF ERRORS AND BRIEF ON BEHALF OF ACCUSED (§150.15)

AUTHORITY: Article 66(f), Uniform Code of Military Justice (10 U.S.C. §866(f) (1994)).

SOURCE: 62 FR 2017, Jan. 15, 1997, unless otherwise noted.

§150.1 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.

§150.2 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:

(i) Death; or

(ii) 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dishonorable or bad-conduct discharge, or confinement for 1 year or longer; and in which the accused has not waived or withdrawn appellate review.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:

(i) For which Article 66 does not otherwise provide appellate review, and

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

(iii) 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 this part shall be construed to extend or limit the jurisdiction of the Courts of Criminal Appeals as established by law.

§ 150.3 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.e

§ 150.4 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 judge 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.

§ 150.5 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 this part, 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 § 150.26 may designate. If transmitted by mail or other means, they are not filed until received in such office.

§ 150.6 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.

§ 150.7 Computation of time.

In computing any period of time prescribed or allowed by this part, 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.

§ 150.8 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.

§ 150.9 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.

§ 150.10 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 paragraph (a) for this section and notice regarding civilian counsel under paragraph (b) of this section, or

(d) A waiver of representation by counsel.

§ 150.11 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 represented the accused; or

(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; or

(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 paragraph (a)(2) of this section, appellate defense counsel will represent the accused when the United States is represented by counsel before the Court.

§ 150.12 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.

§ 150.13 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.

§ 150.14 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.

§ 150.15 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 Appendix B to this part. 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 §150.23, *infra*, to attach any other matter.

§ 150.16 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.

§ 150.17 En banc proceedings.

(a)(1) 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:

(i) When consideration by the full Court is necessary to secure or maintain uniformity of decision, or

(ii) When the proceedings involve a question of exceptional importance, or

(iii) When a sentence being reviewed pursuant to Article 66 extends to death.

(2) 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 §150.15(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 §150.19 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.

§150.18 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.

§150.19 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 part shall not be extended under the authority of §§150.24 or 150.25 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.

§150.20 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 pleading 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.

§ 150.21 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 this part 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 in this paragraph:

(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 §150.15.

(2) Appellee shall prepare an answer in the manner prescribed by §150.15 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.

§150.22 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 §150.15 no later than 30 days after the filing of the petition or receipt of the notice required by paragraph (b) of this section, whichever is later. An appellate'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.

§150.23 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, pleading, 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 this part, shall be accompanied by a motion for leave to file such pleading.

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

§150.24 Continuances and interlocutory matters.

Except as otherwise provided in §150.19(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 this part, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case. See §150.4.

§150.25 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 this part in a particular case on petition of a party or on its own motion and may order proceedings in accordance with its direction.

§150.26 Internal rules.

The Chief Judge of the Court has the authority to prescribe internal rules for the Court.

§ 150.27 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.

§ 150.28 Amendments.

Proposed amendments to this part may be submitted to the Chief Judge of any Court named in §150.1 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.

APPENDIX A TO PART 150—FORMAT FOR DIRECTION FOR REVIEW IN A COURT OF CRIMINAL APPEALS

In the United States _____[1] Court of Criminal Appeals

United States v. _____
(Fulltyped name, rank, service, & service number of accused)
Direction for Review Case No. _____

Tried at (location), on (date(s)) before a (type in 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]

_____
The Judge Advocate General

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

_____
Appellate Government Counsel

_____
Address and telephone number

_____
Appellate Defense Counsel

_____
Address and telephone number

APPENDIX B TO PART 150—FORMAT FOR ASSIGNMENT OF ERRORS AND BRIEF ON BEHALF OF ACCUSED (§150.15)

In the United States _____[2] Court of Criminal Appeals

United States v. _____
(Full typed name, rank, service, & service number of accused), Appellant
Assignment of Errors and Brief on Behalf of Accused 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

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.]

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

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

Errors and Argument

[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)

PART 151—STATUS OF FORCES POLICIES AND INFORMATION

Sec.
151.1 Reissuance and purpose.
151.2 Applicability.
151.3 Policy.
151.4 Procedures and responsibilities.
151.5 Reports on the exercise of foreign criminal jurisdiction.
151.6 Resolution of ratification, with reservations, as agreed to by the Senate on July 15, 1953.
151.7 Fair trial guarantees.

AUTHORITY: 1 U.S.C. 133, 75 Stat. 517.

SOURCE: 45 FR 20465, Mar. 28, 1980, unless otherwise noted.

§ 151.1 Reissuance and purpose.

This part is reissued to update established DoD policy and procedures on trial by foreign courts and treatment in foreign prisons of U.S. military personnel, nationals of the U.S. serving with, employed by, or accompaning the Armed Forces of the United States, and the dependents of both (hereafter referred to as U.S. personnel); and provides uniform reporting on the exercise of foreign criminal jurisdiction.

§ 151.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, and the Unified and Specified Commands. As used herein, the term ''Military Services'' refers to the Army, Navy, Air Force, and Marine Corps.

§ 151.3 Policy.

It is the policy of the Department of Defense to protect, to the maximum extent possible, the rights of U.S. personnel who may be subject to criminal trial by foreign courts and imprisonment in foreign prisons.

§ 151.4 Procedures and responsibilities.

(a) *Application of Senate resolution on status of forces.* This directive implements the Senate Resolution accompanying the Senate's consent to ratification of the North Atlantic Treaty (NATO) Status of Forces Agreement (§ 151.6). Although the Senate Resolution applies only to countries where the NATO Status of Forces Agreement is in effect, the same procedures for safeguarding the interests of U.S. personnel subject to foreign jurisdiction shall be applied insofar as practicable in overseas areas where U.S. forces are regularly stationed.

(b) *Orientation of personnel.* The Military Services shall issue uniform regulations establishing an information and education policy on the laws and customs of the host country for personnel assigned to foreign areas.

(c) *Designated commanding officer.* Formal invocation of the Senate Resolution procedure shall be the responsibility of a single military commander in each foreign country where United States forces are stationed. Attache personnel and other military personnel serving under a chief of a diplomatic mission shall not be considered U.S. forces in this part.

(1) In the geographical areas for which a unified command exists, the commander shall designate within each country the ''Commanding Officer'' referred to in the Senate Resolution (§ 151.6).

(2) In areas where a unified command does not exist, a commanding officer in each country shall be nominated by the Military Departments. These recommendations shall be forwarded by the Judge Advocate General of the Army to the Secretary of Defense, for implementation through the Office of the Assistant Secretary of Defense (International Security Affairs). In designating the commanding officer to act for all the Military Departments, consideration must be given to the availability of legal officers and readiness of access to the seat of the foreign government. Such an officer may also be appointed by the Military Departments for countries where no U.S. forces are regularly stationed.

(d) *Country law studies.* (1) For each foreign country where U.S. forces are subject to the criminal jurisdiction of foreign authorities, the designated commanding officer for such country shall make and maintain a current study of the laws and legal procedures in effect. Studies of the laws of other countries shall be made when directed. This study shall be a general examination of the substantive and procedural criminal law of the foreign country, and shall contain a comparison thereof with the procedural safeguards of a fair trial in the State courts of the United States.

(2) Copies of these studies shall be forwarded by the designated commanding officer to each of the Judge Advocates General of the Military Services. Principal emphasis is to be placed on those safeguards that are of such a fundamental nature as to be guaranteed by the Constitution of the United States in all criminal trials in State courts of the United States. See §151.7 for enumeration of safeguards considered important. These country law studies shall be subject to a continuing review. Whenever there is a significant change in any country's criminal law, the change shall be forwarded by the designated commanding officer to each of the Military Service's Judge Advocates General.

(e) *Waivers of local jurisdiction—military personnel.* (1) In cases where it appears probable that release of jurisdiction over U.S. military personnel will not be obtained and the accused may not obtain a fair trial, the commander exercising general court-martial jurisdiction over the accused shall communicate directly with the designated commanding officer, report the full facts of the case, and supply a recommendation.

(2) The designated commanding officer shall determine, in the light of legal procedures in effect in that country, whether there is danger that the accused will not receive a fair trial. A trial shall not be considered unfair merely because it is not identical with trials held in the United States. Due regard, however, should be given to those United States trial rights listed in §151.7 that are relevant to the facts and circumstances of the trial in question.

(3) If the designated commanding officer determines there is risk of an unfair trial, the commanding officer shall decide, after consultation with the chief of the diplomatic mission, whether to press a request for waiver of jurisdiction through diplomatic channels. If the commanding officer so decides, the recommendation shall be submitted through the unified commander, if any, and The Judge Advocate General of the accused's service, to the Office of the Secretary of Defense. The objective in each case is to see that U.S. military personnel obtain a fair trial in the receiving state under all circumstances.

(f) *Request to foreign authorities not to exercise their criminal jurisdiction over civilians and dependents.* The following procedures shall be followed when it appears that foreign authorities may assume criminal jurisdiction over dependents of U.S. military personnel, civilian personnel, and their dependents:

(1) When the designated commanding officer determines, after a careful consideration of all the circumstances, that suitable corrective action can be taken under existing administrative regulations, the commanding officer may request the local foreign authorities to refrain from exercising their criminal jurisdiction.

(2) When it appears possible that release of jurisdiction will not be obtained and that the accused may not obtain a fair trial, the commander exercising general court-martial jurisdiction over the command in which such

personnel are located shall communicate directly with the designated commanding officer, reporting the full facts of the case and supplying a recommendation.

(3) The designated commanding officer shall then determine, in the light of legal procedures in effect in that country, whether there is danger that the accused will not receive a fair trial.

(4) If it is determined that there is such danger, the designated commanding officer shall decide, after consultation with the chief of the diplomatic mission, whether a request should be submitted through diplomatic channels to foreign authorities seeking their assurances of a fair trial for the accused or, in appropriate circumstances, that they forego their right to exercise jurisdiction over the accused. If the designated commanding officer so decides, a recommendation shall be submitted through the unified commander, if any, and The Judge Advocate General of the Military Service concerned, to the Office of the Secretary of Defense.

(g) *Trial observers and trial observer report.* (1) The designated commanding officer shall submit to the chief of the diplomatic mission a list of persons qualified to serve as U.S. observers at trials before courts of the receiving state. Nominees shall be lawyers, and shall be selected for maturity of judgment. The list shall include, where possible, representatives of all Military Services whose personnel are stationed in that country to enable the chief of the diplomatic mission to appoint an observer from the same Military Service as the accused. The requirement that nominees shall be lawyers may be waived in cases of minor offenses. Incidents that result in serious personal injury or that would normally result in sentences to confinement, whether or not suspended, shall not be considered minor offenses.

(2) Trial observers shall attend and prepare formal reports in all cases of trials of U.S. personnel by foreign courts or tribunals, except for minor offenses. In cases of minor offenses, the observer shall attend the trial at the discretion of the designated commanding officer, but shall not be required to make a formal report. These reports need not be classified, but shall be treated as For Official Use Only documents. They shall be forwarded intact to the designated commanding officer through such agencies as the designated commanding officer may prescribe for transmission to the Judge Advocate General of the accused's service, with any comments of the appropriate Military Service commander. These reports shall be forwarded immediately upon the completion of the trial in the lower court, and shall not be delayed because of the possibility of a new trial, rehearing or appeal, reports of which shall be forwarded in the same manner. Copies shall also be forwarded to the unified commander, if any, and to the chief of the diplomatic mission.

(3) The trial observer report shall contain a factual description or summary of the trial proceedings. It should enable an informed judgment to be made regarding: (i) Whether there was any failure to comply with the procedural safeguards secured by a pertinent status of forces agreement, and (ii) whether the accused received a fair trial under all the circumstances. The report shall specify the conclusions of the trial observer with respect to paragraph (g)(3)(i) of this section, and shall state in detail the basis for the conclusions. Unless the designated commanding officer directs otherwise, the report shall not contain conclusions with respect to paragraph (g)(3)(ii) of this section.

(4) The designated commanding officer, upon receipt of a trial observer report, shall be responsible for determining: (i) Whether there was any failure to comply with the procedural safeguards secured by the pertinent status of forces agreement, and (ii) whether the accused received a fair trial under all the circumstances. Due regard should be given to those fair trial rights listed in §151.7 that are relevant to the particular facts and circumstances of the trial. However, a trial shall not be found unfair merely because it is not identical with trials held in the United States. If the designated commanding officer is of the opinion that the procedural safeguards specified in pertinent agreements were denied or that the trial was otherwise

unjust, the commanding officer shall submit to the Office of the Secretary of Defense, through the unified commander and the Judge Advocate General of the Military Service concerned, a recommendation as to appropriate action to rectify the trial deficiencies and otherwise to protect the rights or interests of the accused. This shall include a statement of efforts taken or to be taken at the local level to protect the right of the accused. An information copy of the recommendation of the designated commanding officer shall be forwarded to the diplomatic or consular mission in the country concerned.

(h) *Counsel fees and related assistance.* When the Secretary of the Military Department concerned or designee considers such action to be in the best interests of the United States, representation by civilian counsel and other assistance described under 10 U.S.C. 1037 may be furnished at Government expense to U.S. personnel tried in foreign countries.

(i) *Treatment of U.S. personnel confined in foreign penal institutions.* (1) Insofar as practicable and subject to the laws and regulations of the country concerned and the provisions of any agreement therewith, the Department of Defense seeks to ensure that U.S. military personnel: (i) When in the custody of foreign authorities are fairly treated at all times and (ii) when confined (pretrial and post-trial) in foreign penal institutions are accorded the treatment and are entitled to all the rights, privileges, and protections of personnel confined in U.S. military facilities. Such rights, privileges, and protections are enunciated in present Military Service directives and regulations, and include, but are not limited to, legal assistance, visitation, medical attention, food, bedding, clothing, and other health and comfort supplies.

(2) In consonance with this policy, U.S. military personnel confined in foreign penal institutions shall be visited at least every 30 days, at which time the conditions of confinement and other matters relating to their health and welfare shall be observed. The Military Services shall maintain, on a current basis, records of these visits as reports by their respective commands. Records of each visit should contain the following information:

(i) Names of personnel conducting visit and date of visit.

(ii) Name of each prisoner visited, serial number, and sentence.

(iii) Name and location of prison.

(iv) Treatment of the individual prisoner by prison warden and other personnel (include a short description of the rehabilitation program, if any, as applied to the prisoner).

(v) Conditions existing in the prison, such as light, heat, sanitation, food, recreation, and religious activities.

(vi) Change in status of prisoner, conditions of confinement or transfer to another institution.

(vii) Condition of prisoner, physical and mental.

(viii) Assistance given to prisoner, such as legal, medical, food, bedding, clothing, and health and comfort supplies.

(ix) Action taken to have any deficiencies corrected, either by the local commander or through diplomatic or consular mission.

(x) Designation of command responsible for prisoner's welfare and reporting of visits.

(xi) Information as to discharge of a prisoner from the Military Service or termination of confinement.

(3) When it is impracticable for the individual's commanding officer or representative to make visits, the designated commanding officer should be requested to arrange that another unit be responsible for such visits or to request that the appropriate diplomatic or consular mission assume responsibility therefor. When necessary, a medical officer should participate in the visits and record the results of medical examinations. If reasonable requests for permission to visit U.S. military personnel are arbitrarily denied, or it is ascertained that the individual is being mistreated or that the conditions of custody or confinement are substandard, the case should be referred to the diplomatic or consular mission concerned for appropriate action.

(4) To the extent possible, military commanders should seek to conclude local arrangements whereby U.S. military authorities may be permitted to

accord U.S. military personnel confined in foreign institutions the treatment, rights, privileges, and protection similar to those accorded such personnel confined in U.S. military facilities. The details of such arrangements should be submitted to the Judge Advocates General of the Military Services.

(5) The military commanders shall make appropriate arrangements with foreign authorities whereby custody of individuals who are members of the Armed Forces of the United States shall, when they are released from confinement by foreign authorities, be turned over to U.S. military authorities. In appropriate cases, diplomatic or consular officers should be requested to keep the military authorities advised as to the anticipated date of the release of such persons by the foreign authorities.

(6) In cooperation with the appropriate diplomatic or consular mission, military commanders shall, insofar as possible, ensure that dependents of U.S. military personnel, nationals of the United States serving with, employed by or accompanying the armed forces, and dependents of such nationals when in the custody of foreign authorities, or when confined (pretrial and post-trial) in foreign penal institutions receive the same treatment, rights, and support as would be extended to U.S. military personnel in comparable situations pursuant to the provisions of § 151.4(i).

(j) *Discharge.* U.S. military personnel confined in foreign prisons shall not be discharged from military service until the completion of the term of imprisonment and the return of the accused to the United States, except that in unusual cases such discharges may be accomplished upon prior authorization of the Secretary of the Military Department concerned.

(k) *Information policy.* It is the basic policy of the Department of Defense that the general public and the Congress must be provided promptly with the maximum information concerning status of forces matters that are consistent with the national interest. Information shall be coordinated and furnished to the public and the Congress in accordance with established procedures, including DoD Directive 5122.5,[1] ''Assistant Secretary of Defense (Public Affairs),'' July 10, 1961, and parts 286 and 286a of this title.

§ 151.5 Reports on the exercise of foreign criminal jurisdiction.

The following reporting system, which has been implemented by the Military Departments, shall be continued after revision in accordance with the provisions herein. The Department of the Army is designated as executive agent within the Department of Defense for maintaining and collating information received on the basis of the reports submitted.

(a) *Annual reports.* Annual reports, based on information furnished by the Military Departments covering the period December 1 through November 30 shall be prepared by the Department of the Army and submitted within such time as may be required but not later than 120 days after the close of the reporting period. The reports shall be submitted in one reproducible copy to the Office of the General Counsel, DoD, in accordance with departmental implementation of this part. The reporting content of this requirement shall be as follows:

(1) A statistical summary (DD Form 838) by country and type of offense of all cases involving U.S. personnel.

(2) A report signed by the appropriate Military Service commander in each country for which DD Form 838 is prepared, concerning the commander's personal evaluation of the impact, if any, the local jurisdictional arrangements have had upon accomplishment of the mission and upon the discipline and morale of the forces, together with specific facts or other information, where appropriate, substantiating the commanders' opinion.

(3) A report of the results of visits made and particular actions taken by appropriate military commanders under § 151.4(i).

(4) A report of the implementation of 10 U.S.C. 1037 showing by country and Military Service:

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 301.

(i) The total number of cases in which funds were expended and

(ii) Total expenditures in each of the following categories:

(A) Payment of counsel fees,

(B) Provision of bail,

(C) Court costs and other expenses.

(b) *Quarterly reports.* (1) Quarterly reports for the periods ending November 30, February 28, May 31, and August 31, consisting of lists of U.S. personnel imprisoned and released, shall be submitted, in accordance with departmental implementation of this part to the Department of the Army and by the Department of the Army, as executive agent, to the Director, Washington Headquarters Services, in four copies, on or before the 15th day following the report quarter as follows:

(i) An alphabetical list of U.S. personnel who were imprisoned during the reporting period under sentence of confinement imposed by a foreign country, indicating the individual's home address, grade, and serial number (where applicable), offense of which found guilty, date and place of confinement, length of sentence to confinement imposed, and estimated date of release from confinement.

(ii) A similar list of the names of prisoners released during the reporting period.

(2) An information copy of these lists shall be furnished by the appropriate Military Service commander to the diplomatic or consular mission in the country concerned.

(c) *Other reports.* (1) Each Military Department shall maintain, on a current basis, and submit monthly to the Director, Washington Headquarters Service, in four copies, a list of the most important cases pending, with a brief summary of the salient facts in each case. Selection of the cases to be included shall be left to the judgment of the appropriate officials of each Military Department. Instances of deficiency in the treatment or conditions of confinement in foreign penal institutions or arbitrary denial of permission to visit such personnel shall be considered important cases. Lists covering the previous month shall be submitted on the 6th day of the month following.

(2) Important new cases or important developments in pending cases shall be reported informally and immediately to the Office of the General Counsel, DoD.

§ 151.6 Resolution of ratification, with reservations, as agreed to by the Senate on July 15, 1953.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of Executive T, Eighty-second Congress, second session, an agreement between the parties to the North Atlantic Treaty Regarding the Status of their Forces, signed at London on June 19, 1951. It is the understanding of the Senate, which understanding inheres in its advise and consent to the ratification of the Agreement, that nothing in the Agreement diminishes, abridges, or alters the right of the United States of America to safeguard its own security by excluding or removing persons whose presence in the United States is deemed prejudicial to its safety or security, and that no person whose presence in the United States is deemed prejudicial to its safety or security shall be permitted to enter or remain in the United States. In giving its advise and consent to ratification, it is the sense of the Senate that:

(a) The criminal jurisdiction provisions of Article VII do not constitute a precedent for future agreements;

(b) Where a person subject to the military jurisdiction of the United States is to be tried by the authorities of a receiving state, under the treaty the Commanding Officer of the armed forces of the United States in such state shall examine the laws of such state with particular reference to the procedural safeguards contained in the Constitution of the United States;

(c) If, in the opinion of such Commanding Officer, under all the circumstances of the case, there is danger that the accused will not be protected becase of the absence or denial of constitutional rights the accused would enjoy in the United States, the Commanding Officer shall request the authorities of the receiving State to waive jurisdiction in accordance with the provisions of paragraph 3(c) of Article VII (which requires the receiving

State to give ''sympathetic consideration'' to such request) and if such authorities refuse to waive jurisdiction, the commanding officer shall request the Department of State to press such request through diplomatic channels and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives;

(d) A representative of the United States to be appointed by the Chief of Diplomatic Mission with the advice of the senior U.S. military representative in the receiving State will attend the trial of any such person by the authorities of a receiving State under the agreement, and any failure to comply with the provisions of paragraph 9 of Article VII of the Agreement shall be reported to the commanding officer of the Armed Forces of the United States in such State who shall then request the Department of State to take appropriate action to protect the rights of the accused, and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives.

§ 151.7 Fair trial guarantees.

The following is a listing of ''fair trial'' safeguards or guarantees that are considered to be applicable to U.S. State court criminal proceedings, by virtue of the 14th Amendment as interpreted by the Supreme Court of the United States. The list is intended as a guide for the preparation of country law studies prescribed by § 151.4 and for the determinations made by the designated commanding officer under § 151.4(e) through § 151.4(g). Designated commanding officers should also consider other factors that could result in a violation of due process of law in State court proceedings in the United States.

(a) Criminal statute alleged to be violated must set forth specific and definite standards of guilt.

(b) Accused shall not be prosecuted under an *ex post facto* law.

(c) Accused shall not be punished by bills of attainder.

(d) Accused must be informed of the nature and cause of the accusation and have a reasonable time to prepare a defense.

(e) Accused is entitled to have the assistance of defense counsel.

(f) Accused is entitled to be present at the trial.

(g) Accused is entitled to be confronted with hostile witnesses.

(h) Accused is entitled to have compulsory process for obtaining favorable witnesses.

(i) Use of evidence against the accused obtained through unreasonable search or seizure or other illegal means is prohibited.

(j) Burden of proof is on the Government in all criminal trials.

(k) Accused is entitled to be tried by an impartial court.

(l) Accused may not be compelled to be a witness against him or herself; and shall be protected from the use of a confession obtained by torture, threats, violence, or the exertion of any improper influence.

(m) Accused shall not be subjected to cruel and unusual punishment.

(n) Accused is entitled to be tried without unreasonable (prejudicial) delay.

(o) Accused is entitled to a competent interpreter when the accused does not understand the language in which the trial is conducted and does not have counsel proficient in the language both of the court and of the accused.

(p) Accused is entitled to a public trial.

(q) Accused may not be subjected to consecutive trials for the same offense that are so vexatious as to indicate fundamental unfairness.

PART 152—REVIEW OF THE MANUAL FOR COURTS-MARTIAL

Sec.

152.1 Purpose.
152.2 Applicability.
152.3 Policy.
152.4 Responsibilities.
152.5 Implementation.
APPENDIX A TO PART 152—GUIDANCE TO THE JOINT SERVICE COMMITTEE (JSC)

AUTHORITY: E.O. 12473; 10 U.S.C. 47.

SOURCE: 68 FR 36916, June 20, 2003, unless otherwise noted.

§ 152.1 Purpose.

This part:

(a) Implements the requirement established by the President in Executive Order 12473 that the Manual for Courts-Martial (MCM), United States, 1984, and subsequent editions, be reviewed annually.

(b) Formalizes the Joint Service Committee (JSC) and defines the roles, responsibilities, and procedures of the JSC in reviewing and proposing changes to the MCM and proposing legislation to amend the Uniform Code of Military Justice (UCMJ) (10 U.S.C., Chapter 47).

(c) Provides for the designation of a Secretary of a Military Department to serve as the Executive Agent for the JSC.

§ 152.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard by agreement with the Department of Homeland Security when it is not operating as a Service of the Department of the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter collectively referred to as ''the DoD Components'').

§ 152.3. Policy.

To assist the President in fulfilling his responsibilities under the UCMJ, and to satisfy the requirements of Executive Order 12473, the Department of Defense shall review the Manual for Courts-Martial annually, and, as appropriate, propose legislation amending the UCMJ to ensure that the MCM and the UCMJ fulfill their fundamental purpose as a comprehensive body of military criminal law and procedure. The role of the JSC furthers these responsibilities. Under the direction of the General Counsel of the Department of Defense, the JSC is responsible for reviewing the MCM and proposing amendments to it and, as necessary, to the UCMJ.

§ 152.4. Responsibilities.

(a) The General Counsel to the Department of Defense shall:

(1) Administer this part, to include coordination on and approval of legislative proposals to amend the UCMJ, approval of the annual review of the MEM, and coordination of any proposed changes to the MCM under OMB Circular A–19.[1]

(2) Designate the Secretary of a Military Department to serve as the joint Service provider for the JSC. The joint Service provider shall act on behalf of the JSC for maintaining the JSC's files and historical records, and for publication of the updated editions of the MCM to be distributed throughout the Department of Defense, as appropriate.

(3) Invite the Secretary of Homeland Security to appoint representatives to the JSC.

(4) Invite the Chief Judge of the United States Court of Appeals for the Armed Forces to provide a staff member to serve as an advisor to the JSC.

(5) Invite the Chairman of the Joint Chiefs of Staff to provide a staff member from the Chairman's Office of Legal Counsel to serve as an advisor to the JSC.

(6) Ensure that the Associate Deputy General Counsel (Military Justice and Personnel Policy), Office of the General Counsel, Department of Defense, shall serve as the General Counsel's representative to the JSC in a non-voting capacity. In addition, the United States Court of Appeals for the Armed Forces (USCAAF) and the Legal Counsel to the Chairman of the Joint Chiefs of Staff shall be invited to provide a staff member to serve as an advisor to the JSC in a non-voting capacity.

(b) The Secretaries of the Military Departments shall ensure that the Judge Advocates General of the Military Departments and the Staff Judge Advocate to the Commandant of the Marine Corps appoint representatives to the JSC.

(c) The JSC shall further the DoD policy established in section 3 of this part and perform additional studies or other duties related to the administration of military justice, as the General Counsel of the Department of Defense may direct. (See DoD Directive 5105.18,

[1] Available at *http://www.whitehouse.gov/omb/circulars/index.html.*

''DoD Committee Management Program''.[2]) The membership of the JSC shall consist of one representative of each of the following, who shall comprise the JSC Voting Group:

(1) The Judge Advocate General of the Army.

(2) The Judge Advocate General of the Navy.

(3) The Judge Advocate General of the Air Force.

(4) The Staff Judge Advocate to the Commandant of the Marine Corps; and

(5) By agreement with the Department of Homeland Security, the Chief Counsel, United States Coast Guard.

(d) The JSC Working Group (WG) shall assist the JSC Voting Group in fulfilling its responsibilities under this part. The WG consists of non-voting representatives from each of the Services and may include the representatives from the USCAAF, and the Office of the Legal Counsel to the Chairman of the Joint Chiefs of Staff.

(e) The JSC chairmanship rotates biennially among the Services in the following order: The Army, the Air Force, the Marine Corps, the Navy, and the Coast Guard. Due to its size and manning constraints, a Coast Guard's request not to be considered for JSC chairmanship shall be honored. The Military Service of the JSC Chairman shall provide an Executive Secretary for the JSC.

§ 152.5. Implementation.

The foregoing policies and procedures providing guidelines for implementation of this part, as well as those contained in the appendix, are intended exclusively for the guidance of military personnel and civilian employees of the Department of Defense, and the United States Coast Guard by agreement of the Department of Homeland Security. These guidelines are intended to improve the internal management of the Federal Government and are not intended to create any right, privilege, or benefit, substantive of procedural, to any person or enforceable at law by any party against the United States, its agencies, its officers, or any person.

[2] Available at *http://www.dtic.mil/whs/directives.*

APPENDIX A TO PART 152—GUIDANCE TO THE JOINT SERVICE COMMITTEE (JSCA)

(a) *Review the Manual for Courts-Martial.* (1) The Joint Service Committee (JSC) shall conduct an annual review of the Manual for Courts-Martial (MCM), in light of judicial and legislative developments in military and civilian practice, to ensure:

(i) The MCM implements the Uniform Code of Military Justice (UCMJ) and reflects current military practice and judicial precedent.

(ii) The rules and procedures of the MCM are uniform insofar as practicable.

(iii) The MCM applies, to the extent practicable, the principles of law and the rules of evidence generally recognized in the trial of criminal cases in United States district courts, but which are not contrary to or inconsistent with the UCMJ.

(iv) The MCM is workable throughout the worldwide jurisdiction of the UCMJ; and,

(v) The MCM is workable across the spectrum of circumstances in which courts-martial are conducted, including combat conditions.

(2) During this review, any JSC voting member may propose for the Voting Group's consideration an amendment to the MCM. Proposed amendments to the MCM shall ordinarily be referred to the JSC Working Group (WG) for study. The WG assists the JSC in staffing various proposals, conducting studies of proposals and other military justice related topics at the JSC's direction, and making reports to the JSC. Any proposed amendment to the MCM, if approved by a majority of the JSC voting members, becomes a part of the annual review.

(3) The JSC shall prepare a draft of the annual review of the MCM and forward it to the General Counsel of the Department of Defense, on or about December 31st. The General Counsel of the Department of Defense may submit the draft of the annual review to the Code Committee established by Article 146 of the UCMJ, with an invitation to submit comments.

(4) The draft of the annual review shall set forth any specific recommendations for changes to the MCM, including, if not adequately addressed in the accompanying discussion or analysis, a concise statement of the basis and purpose of any proposed change. If no changes are recommended, the draft review shall so state. If the JSC recommends changes to the MCM, the draft review shall so state. If the JSC recommends changes to the MCM, the public notice procedures of paragraph (d)(3) of this appendix are applicable.

(b) *Changes to the Manual for Courts-Martial.* (1) By January 1st of each year, the JSC voting members shall ensure that a solicitation for proposed changes to the MCM is sent

to appropriate agencies within their respective Services that includes, but is not limited to, the judiciary, the trial counsel and defense counsel organizations, and the judge advocate general schools.

(2) The FEDERAL REGISTER announcement of each year's annual review of proposed changes to the MCM shall also invite members of the public to submit any new proposals for JSC consideration during subsequent JSC annual reviews.

(3) When the JSC receives proposed changes to the MCM either by solicitation or FEDERAL REGISTER notice, the JSC shall determine whether the proposal should be considered under paragraph (a)(2) of this appendix by determining if one or more of the JSC voting member(s) intends to sponsor the proposed change. The JSC shall determine when such sponsored proposals should be considered under the annual review process, taking into account any other proposals under consideration and any other reviews or studies directed by the General Counsel of the Department of Defense.

(4) Changes to the MCM shall be proposed as part of the annual review conducted under paragraph (a) of this appendix. When earlier implementation is required, the JSC may send proposed changes to the General Counsel of the Department of Defense, for coordination under DoD Directive 5500.1.[3]

(c) *Proposals to Amend the Uniform Code of Military Justice.* The JSC may determine that the efficient administration of military justice within the Armed Services requires amendments to the UCMJ, or that a desired amendment to the MCM makes necessary an amendment to the UCMJ. In such cases, the JSC shall forward to the General Counsel of the Department of Defense, a legislative proposal to change the UCMJ. The General Counsel of the Department of Defense may direct that the JSC forward any such legislative proposal to the Code Committee for its consideration under Article 146, UCMJ.

(d) *Public Notice and Meeting.* (1) Proposals to amend the UCMJ are not governed by the procedures set out in this paragraph. (See DoD Directive 5105. 18. This paragraph applies only to the JSC recommendations to amend the MCM.)

(2) It is DoD policy to encourage public participation in the JSC's review of the MCM. Notice that the Department of Defense, through the JSC, intends to propose changes to the MCM normally shall be published in the FEDERAL REGISTER before submission of such changes to the President. This notice is not required when the Secretary of Defense in his sole and unreviewable discretion proposes that the President issue the change without such notice on the basis that public notice procedures, as set forth in this part, are unnecessary or contrary to the sound administration of military justice, or a MCM change corresponding to legislation is expeditiously required to keep the MCM current and consistent with changes in applicable law.

(3) The Office of General Counsel of the Department of Defense shall facilitate publishing the FEDERAL REGISTER notice required under this paragraph.

(4) The notice under this paragraph shall consist of the publication of the full text of the proposed changes, including discussion and analysis, unless the General Counsel of the Department of Defense determines that such publication in full would unduly burden the Federal Register, the time and place where a copy of the proposed change may be examined, and the procedure for obtaining access to or a copy of the proposed change.

(5) A period of not fewer than 60 days after publication of notice normally shall be allowed for public comment, but a shorter period may be authorized when the General Counsel of the Department of Defense determines that a 60-day period is unnecessary or is contrary to the sound administration of military justice. The FEDERAL REGISTER notice shall normally indicate that public comments shall be submitted to the Executive Secretary of the JSC.

(6) The JSC shall provide notice in the FEDERAL REGISTER and hold a public meeting during the public comments period, where interested persons shall be given a reasonable opportunity to submit views on any of the proposed changes contained in the annual review. Public proposals and comments to the JSC should include a reference to the specific provision to be changed, a rational for the proposed change, and specific and detailed proposed language to replace the current language. Incomplete submissions might be insufficient to receive the consideration desired. The JSC shall seek to consider all views presented at the public meeting as well as any written comments submitted during the 60-day period when determining the final form of any proposed amendments to the MCM.

(E) *Internal Rules and Record-Keeping.* (1) In furthering DoD policy, studying issues, or performing other duties relating to the administration of military justice, the JSC may establish internal rules governing its operation.

(2) The JSC shall create a file system and maintain appropriate JSC records.

[3] Available at *http://www.dtic.mil/whs/directives.*

PART 153—LEGAL ASSISTANCE MATTERS

Sec.
153.1 Purpose.
153.2 Applicability.

153.3 Definitions.
153.4 Policy.
153.5 Responsibilities.
APPENDIX A TO PART 153—MILITARY TESTAMENTARY PREAMBLE
APPENDIX B TO PART 153—MILITARY TESTAMENTARY INSTRUMENT SELF-PROVING AFFIDAVIT
APPENDIX C TO PART 153—MILITARY POWER OF ATTORNEY PREAMBLE
APPENDIX D TO PART 153—MILITARY ADVANCE MEDICAL DIRECTIVE PREAMBLE

AUTHORITY: 10 U.S.C. 301.

SOURCE: 66 FR 45169, Aug. 28, 2001, unless otherwise noted.

§ 153.1 Purpose.

This part implements 10 U.S.C. 301 for persons eligible for military legal assistance by establishing a uniform approach for the execution of military testamentary instruments.

§ 153.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as ''the DoD Components''). The term ''Military Services,'' as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps, and the Coast Guard when it is operating as a service in the Department of the Navy.

§ 153.3 Definitions.

Estate planning. The continuing process of arranging for the use, conservation, and transfer of one's property and wealth during life and upon death. The process produces a plan that may include some or all of these: A testator/testatrix will, military testamentary instrument, a trust, life insurance, an advance medical directive, a healthcare power of attorney, designation of anatomical gifts, and other dispositive documents.

Military advance medical directive. A written document, prepared in accordance with this Part, which explains one's wishes about medical treatment if one becomes incompetent or unable to communicate, or which governs the withholding or withdrawal of life-sustaining treatment from the maker of the document in the event of an incurable or irreversible condition that will cause death within a relatively short period of time, and when the maker is no longer able/competent to make decisions regarding his/her medical treatment.

Military legal assistance counsel. A judge advocate, as defined in 10 U.S.C. 801(13) or a civilian attorney serving as a legal assistance officer, under the provisions of 10 U.S.C. 1044.

Military power of attorney. A written instrument prepared in accordance with this part, whereby one person, as principal, appoints another as his/her agent and confers authority to perform certain specified acts, kinds of acts or full authority to act on behalf of the principal.

Military testamentary instrument. An instrument that is prepared with testamentary intent in accordance with this part and that:

(a) Is executed in accordance with this part (§ 153.4 (b)) by (or on behalf of) a person, as a testator/testatrix, who is eligible for military legal assistance.

(b) Makes a disposition of property of the testator/testatrix, and takes effect upon the death of the testator/testatrix. It has the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate. However, it is exempt from any requirement of form, formality, or recording before probate that is provided for testamentary instruments under the laws of a State.

Testator/Testatrix. A person who makes a will or military testamentary instrument disposing of his or her property at death.

Will. A written instrument prepared consistent with State law for a testator/testatrix to dispose of the testator/testatrix property upon the testator/testatrix death. A will is often the principal document in an individual's estate plan.

§ 153.4 Policy.

It is DoD policy that:

(a) *General.* (1) Although not every person needs a will or military testamentary instrument, all military personnel shall consider the advisability of making either. Whether a will or military testamentary instrument is necessary or desirable, and its form and execution, depend on the individual's desires, circumstances and the intestate succession laws of the appropriate State. Ultimately, those eligible for legal assistance must decide for themselves whether to prepare any estate planning document(s).

(2) The Military Departments, within the limits of available resources and expertise, shall inform and educate persons eligible for legal assistance on estate planning generally, and the advisability of preparing a will or military testamentary instrument. It is especially important that military personnel be educated with respect to these matters before mobilization, deployment, or similar actions.

(3) All commanding officers shall urge military personnel to seek legal counsel regarding an estate plan well before mobilization, deployment, or similar activities. However, any testamentary instrument, to be legally effective, must be the free and voluntary act of the person making it.

(b) *Military testamentary instrument.* A military testamentary instrument shall:

(1) Be executed by the testator/testatrix (or, if the testator/testatrix is unable to execute the instrument personally, executed in the presence of, by the direction of, and on behalf of the testator/testatrix).

(2) Be executed in the presence of a military legal assistance counsel acting as presiding attorney.

(3) Be executed in the presence of at least two disinterested witnesses (in addition to the presiding attorney), each of whom attests to witnessing the testator/testatrix execution of the instrument by signing it.

(4) Include a statement or preamble in form and content, substantially as outlined at appendix A to this part.

(5) Include (or have attached to it), a self-proving affidavit, in a form and content, substantially as outlined at appendix B to this part

(c) *Military power of attorney.* 10 U.S.C. 1044b requires recognition of powers of attorney prepared for persons eligible for legal assistance. If prepared, such documents will include a statement or preamble in form and content, substantially as outlined at appendix C to this part.

(d) *Military advance medical directive.* Section 1044c of 10 U.S.C. requires recognition of military advance medical directives prepared for persons eligible for legal assistance. If prepared, such documents will include a statement or preamble in form and content, substantially as outlined at enclosure 4.

(e) *Reserve component members.* Subject to the availability of legal staff resources, the Secretaries of the Military Departments may provide legal assistance in connection with their personal civil legal affairs to members of Reserve components and their dependents, following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority (as determined by the Secretary of Defense). Eligibility for such legal assistance shall be for a period of time that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty.

§ 153.5 Responsibilities.

(a) The Under Secretary of Defense (Personnel and Readiness) shall manage implementation of this part.

(b) The Secretaries of the Military Departments shall insure compliance with this part and establish policies and procedures to implement this part.

APPENDIX A TO PART 153—MILITARY TESTAMENTARY PREAMBLE

This is a MILITARY TESTAMENTARY INSTRUMENT prepared pursuant to section 1044d of title 10, United States Code, and executed by a person authorized to receive legal assistance from the Military Services. Federal law exempts this document from any requirement of form, formality, or recording that is provided for testamentary instruments under the laws of a State, the District of Columbia, or a commonwealth, territory, or possession of the United States. Federal law specifies that this document shall receive the same legal effect as a testamentary

instrument prepared and executed in accordance with the laws of the State in which it is presented for probate. It shall remain valid unless and until the testator revokes it.

APPENDIX B TO PART 153—MILITARY TESTAMENTARY INSTRUMENT SELF-PROVING AFFIDAVIT

Affidavit with the Armed Forces at__ _____

We, the testator/testatrix and the witnesses, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that in the presence of a military legal assistance counsel and the witnesses the testator/testatrix signed and executed the instrument as the testator/testatrix military testamentary instrument and that [he][she] had signed willingly (or willingly directed another to sign for [him][her], and that [he][she] executed it as [his][her] free and voluntary act for the purposes therein expressed. It is further declared that each of the witnesses, in the presence and hearing of the testator/testatrix and a military legal assistance counsel, signed the military testamentary instrument as witness and that to the best of [his][her] knowledge the testator/testatrix was at that time eighteen years of age or older or emancipated, of sound mind, and under no constraint or undue influence.

_____
Testator/Testatrix

_____
Print Name

_____
Witness Signature

_____
Print Name

_____
Witness Signature

_____
Print Name

Subscribed, sworn to and acknowledged before me by the testator/testatrix, and subscribed and sworn to before me by the witnesses, this date _____.

(Signed)

_____

_____
(Official Capacity of Person Administering the Oath)

APPENDIX C TO PART 153—MILITARY POWER OF ATTORNEY PREAMBLE

This is a military Power of Attorney prepared pursuant to section 1044b of title 10, United States Code, and executed by a person authorized to receive legal assistance from the Military Service. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney by the laws of a State, the District of Columbia, or a commonwealth, territory, or possession of the United States. Federal law specifies that this power of attorney shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented.

APPENDIX D TO PART 153—MILITARY ADVANCE MEDICAL DIRECTIVE

This is a military advance medical directive prepared pursuant to section 1044c of title 10, United States Code. It was prepared by an attorney authorized to provide legal assistance for an individual eligible to receive legal assistance under section 1044 of title 10, United States Code. Federal law exempts this advance medical directive from any requirement of form, substance, formality, or recording that is provided for advance medical directives under the laws of a State. Federal law specifies that this advance medical directive shall be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the State concerned.