



DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
2200 ARMY PENTAGON
WASHINGTON DC 20310-2200

DAJA-ZA

31 JUL 2020

MEMORANDUM FOR JUDGE ADVOCATE LEGAL SERVICES PERSONNEL

SUBJECT: **POLICY MEMORANDUM 20-02** - Consolidation of Rehearings, New Trials, Other Trials, and Remands

1. Rehearings, new trials, other trials (per R.C.M. 810), and remands often have unique challenges that require particularized experience and expertise. Establishing a single location for the prosecution and defense of these cases enables the Army to maximize opportunities to develop and maintain this critical expertise.
2. I direct the Clerk of Court, U.S. Army Court of Criminal Appeals, to refer the records of trial of cases under order of remand to the Commander, Combined Arms Center, Fort Leavenworth, Kansas, subject to the procedures and exceptions listed in the enclosed business rules.
3. My intent in establishing this policy is two-fold. First, consolidation enables the development of subject matter experts in the complex procedures involved in the prosecution and defense of rehearings, new trials, other trials (per R.C.M. 810), and remands. Second, consolidation will facilitate efficiency in the processing of cases referred for a rehearing, new trial, other trial (per R.C.M. 810), or remand.
4. Nothing in this policy or enclosed business rules is to be construed to affect courts-martial convening authorities' independent discretion to dispose of any case or class of cases referred for action or to confer any procedural or substantive right upon any accused.

Be Ready!

Encl
Business Rules

A handwritten signature in blue ink, appearing to read "C. Peede".

CHARLES N. PEDE
Lieutenant General, USA
The Judge Advocate General



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Rehearing Consolidation

SUBJECT: Rehearing Consolidation Business Rules

1. Overview. All rehearings, new trials, other trials, and remands, regardless of the alleged offense or offenses, will be returned to Fort Leavenworth, Kansas (FLKS) for disposition, subject to the limitations in these rules. The purpose of consolidation is to standardize and enhance the processing, prosecution, and defense of rehearings and other remanded cases. The FLKS Office of the Staff Judge Advocate (OSJA), as augmented with additional Judge Advocate Legal Services (JALS) personnel for the purpose of rehearing prosecution, will serve as the U.S. Army's subject matter experts on the complex procedures involved in undertaking a rehearing, new trial, or other trial as defined in Rule for Court-Martial (R.C.M.) 810.

2. Responsibilities

a. Clerk of Court, USACCA. Acts on behalf of TJAG in accordance with AR 27-10, para. 12-10b.

b. Staff Judge Advocate (SJA), FLKS. With resources provided and within the construct of the Military Justice Redesign, manages the task of rehearing consolidation in the FLKS Office of the Staff Judge Advocate. Ensures Judge Advocate Legal Services (JALS) personnel assigned to the FLKS OSJA are trained and prepared to meet the complexities of rehearings and limited hearings. Provides supervision for all personnel assigned to the FLKS OSJA, including those personnel assigned to FLKS for the purpose of prosecuting rehearings or representing the government in limited hearings.

c. Chief, Trial Defense Service (TDS). Provide technical oversight, subject matter expertise, and assistance to the Trial Defense Service personnel assigned to defend personnel in rehearings or limited hearings, including through the Defense Assistance Program.

d. Chief, Government Appellate Division (GAD). Consider requests to provide government appellate counsel for the purpose of conducting a limited hearing under Art. 66(f)(3).

e. Chief, Defense Appellate Division (DAD). Consider requests to provide defense appellate counsel for the purpose of conducting a limited hearing under Art. 66(f)(3).

f. Chief, Trial Counsel Assistance Program (TCAP). Provide technical oversight, subject matter expertise, and assistance to the personnel assigned to prosecute rehearings.

g. Rehearing Cell Officer-In-Charge. Responsible for the supervision of all personnel assigned to the rehearing cell. Also serves as the Special Victim Prosecutor (SVP), FLKS.

3. Rehearing Consolidation Procedures

a. The Clerk of Court, USACCA, has the authority under AR 27-10 to act on an order of remand from USACCA and refer records of trial to a convening authority with necessary instructions for compliance with the mandate or decision. Ordinarily, this convening authority will be the Commanding General, Combined Arms Center, FLKS, subject to the exceptions listed in subparagraph b, *infra*. Whether an exception to this general rule applies, and the convening authority to whom the record of trial is referred, is within the discretion of the Clerk of Court, USACCA.

b. Exceptions

(1) Cases in which an appellate authority has only directed a new action by the convening authority without ordering a rehearing. Instructions deemed necessary to carry out the decision of the court will ordinarily be transmitted to the original convening authority.

(2) The SJA of the original convening authority has requested that the case be returned to the original convening authority.

(3) There is a compelling interest in conducting the rehearing of a remanded case at a particular installation or by an appropriate authority. Compelling interests include, but are not limited to, the location of the victim or victims in the case, the presence of critical witnesses located outside the subpoena power of the United States, the presence of members of the original prosecution team at the OSJA of the original convening authority, the location or assignment of the accused, or other interests of justice or good order and discipline.

(4) Other exceptions as the Clerk of Court, USACCA, deems appropriate in the interests of justice and efficiency.

c. Notwithstanding any organizational structure, manning documents, or personnel slotting, personnel assigned to FLKS for the purpose of prosecuting rehearings or representing the government in limited hearings are subject to the direction of and management by the FLKS SJA in accordance with the Military Justice Redesign and are not exclusively limited to performing duties on these types of cases. This does not

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include government or defense appellate counsel provided for the purpose of assisting in a limited hearing. Special Victim Prosecution (SVP) Teams, Special Victims' Counsel (SVC), and TDS personnel assigned to FLKS remain subject to existing policies and procedures governing personnel assigned to these programs.

d. Rating Scheme

(1) Personnel assigned or attached to the FLKS OSJA. All personnel attached to the FLKS OSJA for the purpose of prosecuting rehearings, new trials, or other trials, or representing the government in remanded limited hearings but are assigned to the Trial Counsel Assistance Program (TCAP) will be rated in the same manner as other personnel assigned to TCAP but whom perform duty at OSJAs (e.g., SVP, Special Victims Noncommissioned Officer, and Special Victim-Witness Liaison, per TJAG Policy Memorandum 17-05).

(2) TDS personnel. As determined by the policies of the Chief, TDS.

(3) SVC personnel. As determined by the policies of the Special Victim Counsel Program Manager.

e. The purpose of these rules is to develop a specialized expertise in these types of cases which will standardize, improve, and enhance the processing, command advice, prosecution, and defense of reheard and remanded cases. Nothing in these rules should be construed to impede or intrude upon on the independent discretion of the Commander, Combined Arms Center, with respect to the disposition decision for any rehearing, new trial, other trial, or remand.

4. Execution

a. Rehearings, New Trials, and Other Trials Under R.C.M. 810

(1) The Clerk of Court, USACCA, may assign both special-victims and general-crimes cases to the convening authority at FLKS.

(2) The pending assignment and arrival of personnel for the purpose of conducting rehearings will not preclude the referral of remanded cases to the FLKS convening authority. The FLKS SJA will use existing assets within the FLKS OSJA to support rehearings pending the arrival of those personnel. However, the unavailability of these personnel may factor into the decision of the Clerk of Court, USACCA, in granting an exception in accordance with paragraph 4(c)(2), above.

(3) Cases having already been referred to other installations by the Clerk, USACCA, upon the approval of this policy will remain at the installation to which the Clerk, USACCA, referred the case.

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(4) JALS personnel assigned to the rehearing mission at FLKS may prosecute rehearings, assist in the prosecution of, rehearings, or provide subject-matter expertise in the prosecution of rehearings, when these rules permit the prosecution of a rehearing at a location other than FLKS. This will occur only upon coordination with and approval of the FLKS SJA and the Chief, Trial Counsel Assistance Program (TCAP). The supported command will fund all travel requirements arising from such support.

(5) Notwithstanding TJAG Policy Memorandum 17-05, Chief, TCAP, will not assign the Rehearing Cell OIC to special-victims cases outside of FLKS while the Rehearing Cell OIC also serves as an SVP, absent an exceptional need and only with the approval of the FLKS SJA. As an exception to TJAG Policy Memorandum 17-05, the SVP serving as the Rehearing Cell OIC may be detailed to general-crimes cases with the approval of the FLKS Staff Judge Advocate.

b. Limited Hearings Remanded under Art. 66(f)(3), UCMJ

(1) USACCA may order fact-finding hearings (previously called *DuBay* hearings) related to appellate matters that do not impact the findings and sentence or require referral of the charges to a new court-martial.

(2) In such cases, the Chiefs of GAD and DAD may desire to have appellate counsel litigate the issues before the hearing court to ensure the hearing fully addresses matters necessary to resolve appellate issues and for the efficient administration of justice. These cases should be coordinated amongst the FLKS SJA, Chief of GAD, FLKS Senior/Regional Defense Counsel, and Chief of DAD to facilitate the appointment of counsel.

c. Special Victims' Counsel Support. Until an SVC authorization is provided to the FLKS OSJA, the Fort Riley, Kansas OSJA will continue to utilize one SVC authorization to support the FLKS OSJA. SVC support will include rehearings and limited hearings.

5. Aside from funding already mentioned in these business rules, funding for expenses related to personnel, logistical requirements, and the conduct of rehearings and limited hearings remains in accordance with AR 27-1 and AR 27-10.

6. Nothing in these business rules is to be construed to affect courts-martial convening authorities' independent discretion to dispose of any case or class of cases referred for action or to confer any procedural or substantive right upon any accused.

7. The point of contact for these business rules is the Chief, Criminal Law Division, Office of the Judge Advocate General.

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