



STATE CAPITOL  
P.O. Box 110001  
Juneau, AK 99811-0001  
907-465-3500  
fax: 907-465-3532

550 West Seventh Avenue, Suite 1700  
Anchorage, AK 99501  
907-269-7450  
fax 907-269-7461  
www.Gov.Alaska.Gov  
Governor@Alaska.Gov

**Governor Bill Walker**  
**STATE OF ALASKA**

**ORDER APPROVING REGULATIONS**  
**OF THE DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS**

As Governor of the State of Alaska and Commander in Chief of the Armed Forces of the State of Alaska, and under the Alaska Constitution Article III, §1, Article III, §19, and AS 26.05.360(a), I approve the attached 14 pages of regulations, the "Alaska Manual for Courts Martial," dealing with the Rules for Procedure and Military Rules of Evidence for Alaska National Guard Courts-Martial.

The Alaska Manual for Courts Martial provide for the administration of military justice for members of the organized militia of the State of Alaska. The contents of the Alaska Manual for Courts Martial, to the extent practicable, apply the principles of law and the rules of evidence and procedure governing military criminal cases in the courts of the armed forces of the United States.

These regulations were adopted by Laurel J. Hummel, Commissioner and Adjutant General, Department of Military and Veteran's Affairs on June 1, 2018. By this order, the Alaska Manual for Courts-Martial shall take effect July 17, 2018.

Date: \_\_\_\_\_

7/17/18

A handwritten signature in blue ink that reads "Bill Walker".

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Governor Bill Walker  
Commander in Chief



## PREFACE

The Alaska Manual for Courts-Martial (AMCM) (2017 Edition) has been adopted by the Adjutant General and establishes the Alaska Rules of Courts-Martial (ARCM) and the Alaska Military Rules of Evidence (AMRE) for court martial and other proceedings within the organized militia of Alaska. The organized militia consists of the Alaska National Guard (Army and Air), the Alaska State Defense Force, and the Alaska Naval Militia except when in a Title 10 duty status. The AMCM includes provisions of the Alaska Code of Military Justice (ACMJ) (Article 2, Code of Military Justice, Chapter 26.05 of the Alaska Statutes), which establishes courts-martial within the organized militia. Any previous Manuals for Courts-Martial issued for any component of the organized militia are hereby repealed. The AMCM incorporates the latest version of the federal Manual for Courts-Martial, United States (MCM) unless otherwise specified herein or by Article 2 of Chapter 26.05 of the Alaska Statutes. The Alaska Code of Military Justice does not apply when these forces are on a Title 10 duty status.<sup>1</sup>

The source of all law governing all military forces of the United States derives from the United States Constitution. Article 1, Section 8, of the United States Constitution grants Congress the power to make all rules for the government and regulation of land and naval forces<sup>2</sup> and to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States. Congress has provided that the National Guard have courts-martial constituted similar to Title 10 courts-martial with the same jurisdiction and powers, except as to punishments (which shall be provided by state law), and that such courts shall follow the forms and procedures provided for Title 10 courts.<sup>3</sup> Alaska Statute 26.05.360(b)(2) provides that regulations consistent with Chapter 26.05 of the Alaska Statutes must, "as the adjutant general and the governor considers practicable, apply the principles of law and rules of evidence and procedure governing military criminal cases in the courts of the Armed Forces of the United States, but may not be contrary to or inconsistent with [Chapter 26.05] of the Alaska Statutes or the applicable Alaska Rules of Evidence." Thus, all acts of the Congress of the United States relating to military criminal cases are incorporated as the Alaska Manual for Courts-Martial so far as those federal rules are not inconsistent with Chapter 26.05 of the Alaska Statutes or the applicable Alaska Rules of Evidence. All rights, powers, authority, and reservations to the United States contained within the MCM are deemed to exist for the State of Alaska within this AMCM.

Rules for courts-martial and rules of evidence established in the ACMJ will not be repeated within the AMCM except when it is necessary for clarity or context.

This AMCM incorporates the MCM except for the modifications contained herein. Modifications include either an amendment to a provision of the MCM or an addition of a provision that is not contained in the MCM. If a provision of the MCM is contradicted by Alaska Statute or the Alaska Rules of Evidence, then the pertinent provision of the Alaska Statute shall apply. Nothing prohibits the use of federal forms applicable to the UCMJ, but such forms may be modified to apply to the ACMJ and the State of Alaska.

Whenever the President of the United States is given rights, responsibilities, obligations, and/or powers under the UCMJ and/or the MCM, then the same or similar rights, responsibilities, obligations, and/or powers are deemed as being given to the Governor of the State of Alaska, provided they are not inconsistent with the Alaska Statutes and Alaska Rules of Evidence in regard to matters related to the administration of military justice within the Alaska organized militia while not in federal service. Whenever the Secretary of Defense or Secretary of a Military

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<sup>1</sup> AS 26.05.370(1).

<sup>2</sup> Article 1, Section 8, Clause 15 of the MCM.

<sup>3</sup> 32 U.S.C. § 326.

Department (i.e., service) is given rights, responsibilities, obligations, and/or powers under the UCMJ and/or the MCM, then the same or similar rights, responsibilities, obligations and/or powers are deemed as being given to the adjutant general of the State of Alaska in regard to matters related to the administration of military justice within the Alaska organized militia while not in federal service, provided they are not inconsistent with Alaska Statutes and Alaska Rules of Evidence. This is consistent with usage and practice, and with the adjutant general's obligation to perform all of the duties prescribed by the laws of the applicable jurisdiction pursuant to 32 U.S.C. § 314(a).

The authority for the adoption of the AMCM is Alaska Statute 26.05.360. The AMCM is exempt from Chapter 44.62 (Administrative Procedures Act) of the Alaska Statutes.<sup>4</sup>

The language in this Preface is incorporated into and specifically made a part of the AMCM.

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<sup>4</sup> AS 26.05.360(c).

**ALASKA MANUAL FOR COURTS-MARTIAL  
(2017 EDITION)**

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**PART I  
PREAMBLE**

**Section 1. Sources of military jurisdiction** – This section is amended to read:

The sources of military jurisdiction in Alaska include the United States Constitution, the Alaska Code of Military Justice (ACMJ), and international law.

**Section 2. Exercise of military jurisdiction** – This section is amended to read:

(a) Kinds. Military jurisdiction is exercised by:

(1) A government in the exercise of that branch of the municipal law which regulates its military establishment; (Military law)

(2) A government temporarily governing the civil population within its territory or a portion of its territory through its military forces as necessity may require; (Martial law)

(3) A belligerent occupying enemy territory; (Military government) or

(4) A government with respect to offenses against the law of war.

(b) Agencies. The agencies through which military jurisdiction is exercised include:

(1) Courts-martial for the trial of offenses against military law and, in the case of general courts-martial, of persons who by the law of war are subject to trial by military tribunals. See Parts II, III, and IV of the MCM for rules governing courts-martial.

(2) Military commissions and provost courts for the trial of cases within their respective jurisdictions. Subject to any applicable rule of international law or to any regulations prescribed by the President or by other competent authority, military commissions and provost courts shall be guided by the appropriate principles of law and rules of procedures and evidence prescribed for courts-martial.

(3) Courts of inquiry for the investigation of any matter referred to such court by competent authority. See Article 135 of the MCM. The Secretary concerned may prescribe regulations governing courts of inquiry.

(4) Nonjudicial punishment proceedings of a commander or the adjutant general under Alaska Statute (AS) 26.05.380 and Alaska regulations governing nonjudicial punishment under Article 15 of the MCM.

**Section 3. Nature and purpose of military law** – This section is amended to read:

Military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the Governor and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of Alaska and the United States.

**Section 4. Structure and application of the Alaska Manual for Courts-Martial** – This section is amended to read:

The Alaska Manual for Courts-Martial shall consist of the Manual for Courts-Martial, United States, and this supplement thereto. This supplement shall be identified as “Alaska Manual for Courts-Martial Alaska (2017 Edition)” and abbreviated as the “AMCM.” Any changes to the Manual for Courts-Martial, United States, are hereby adopted as changes to the AMCM unless the Governor makes a specific finding that it is impracticable to conform to the change. (AS 26.05.360(b))

**PART II  
RULES FOR COURTS-MARTIAL**

**CHAPTER 1. GENERAL PROVISIONS**

**Rule 101. Scope, title** – The following section is amended to read:

(b) *Title.* These rules may be known and cited as the Alaska Rules for Courts-Martial (ARCM).

**Rule 103. Definitions and rules of construction** – The following definitions are amended to read:

(1) “Article” refers to the articles of ACMJ and UCMJ unless the context indicates otherwise. Punitive articles in the UCMJ shall be interpreted to refer to the corresponding articles in the ACMJ, incorporating as appropriate the commentary to the punitive articles of the UCMJ provided they are not inconsistent with the Alaska State Constitution, the ACMJ, or the Alaska Rules of Evidence.

(5) “Commander” means a commissioned officer in command or an officer in charge except if Part V of the MCM or unless the context indicates otherwise. “Commander” includes the Governor of the State of Alaska as ex officio commander of the militia (AS 26.05.060) and the Adjutant General (AS 26.05.170).

(15) “Military judge” means a presiding officer of a general or special court-martial described under AS 26.05.470. Except as otherwise expressly provided, in the context of a summary court-martial “military judge” includes the summary court-martial officer or in the context of a special court-martial without a military judge, the president. Unless otherwise indicated in the context, “the military judge” means the military judge detailed to the court-martial to which charges in a case have been referred for trial.

(16)(B) “Party” includes any trial or assistant trial counsel representing the State of Alaska in the prosecution of courts-martial, and agents of the trial counsel when acting on behalf of the trial counsel with respect to the court-martial in question.

(21) The definitions and rules of construction in 1 U.S.C. §§ 1 through 5 and in 10 U.S.C. § 101 are hereby incorporated into the AMCM unless they are inconsistent with the definitions of AS 26.05.900, the Alaska Rules of Evidence, or the definitions modified or supplemented in this Part II of the AMCM.

**Rule 103. Definitions and rules of construction** – The following definitions are added to read:

(22) "State Staff Judge Advocate" means the principal legal advisor as designated by the adjutant general of the State of Alaska on matters related to the administration of military justice and on all non-state law military issues. Wherever a Judge Advocate General is given rights, responsibilities, obligations, and/or powers under the UCMJ and/or the MCM, analogous rights, responsibilities, obligations and/or powers are deemed to exist in the State Staff Judge Advocate in regard to matters related to the administration of military justice within the organized militia when not in federal service. The State Staff Judge Advocate shall perform the duties stated in the ACMJ.

(23) "Alaska Military Appeals Commission" (AMAC) refers to the military court with jurisdiction to review and hear appeals of a judgment or sentence of an Alaska court-martial. Wherever the federal courts of criminal appeals for the military is given rights, responsibilities, obligations, and/or powers under the UCMJ and/or the MCM, provided not inconsistent with the state constitution or statutes, analogous similar rights, responsibilities, obligations and/or powers are deemed to exist in the Alaska Military Appeals Commission in regard to matters related to the administration of military justice within the organized militia when not in federal service.

**Rule 106. Delivery of military offenders to civilian authorities** – This rule is amended to read:

Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civilian authority may be delivered, upon request, to the civilian authority for trial. A member may be placed in restraint by military authorities for this purpose only upon receipt of a duly issued warrant for the apprehension of the member or upon receipt of information establishing probable cause that the member committed an offense, and upon reasonable belief that such restraint is necessary. Such restraint may continue only for such time as is reasonably necessary to effect the delivery. Whenever any person subject to the ACMJ is accused of the commission of a crime under the ACMJ or Alaska civilian law, that person shall be delivered, upon request, by his or her supervisor officer to the proper civil authorities for trial, pursuant to AS 26.05.410.

## CHAPTER II. JURISDICTION

**Rule 201. Jurisdiction in general** – The following sections of this rule are amended to read:

(a)(2) The ACMJ applies pursuant to AS 26.05.370 and 26.05.380.

(c) *Contempt*. A court-martial may punish for contempt of any person who uses any menacing word, sign, or gesture, or who disturbs its proceedings by any riot or disorder, as provided for in AS 26.05.555.

(d)(2) An act or omission that violates both the ACMJ and one or more Alaska Statutes may be tried by a court-martial or otherwise adjudicated by military authorities only after a civilian authority has dismissed or declined to prosecute the charge or charges, provided jeopardy has not attached. Jurisdiction over "attempt" crimes, "conspiracy to commit" crimes, "solicitation", and "accessory" or "aids or abets" crimes must be determined by the underlying offense. These jurisdictional requirements do not apply to nonjudicial punishment or administrative action taken by military authorities.

**Rule 204. Jurisdiction over certain reserve component personnel** – The following section is amended to read:

(c) *Applicability.* Members of the organized militia of the State of Alaska, including members of the Alaska Army National Guard, Alaska Air National Guard, Alaska State Defense Forces and Alaska Naval Militia when not in federal service, are subject to both the AMCM and ACMJ.

### **CHAPTER III. INITIATION OF CHARGES; APPREHENSION; PRETRIAL RESTRAINT; RELATED MATTERS**

**Rule 302. Apprehension** – The following section is added to read:

(f) This rule shall be applied consistent with AS 26.05.390 – AS 26.05.405.

**Rule 304. Pretrial restraint** – The following section is added to read:

(i) This rule shall be applied consistent with AS 26.05.390 – AS 26.05.405.

**Rule 305. Pretrial confinement** – The following section is added to read:

(o) This rule shall be applied consistent with AS 26.05.390 – AS 26.05.405.

### **CHAPTER IV. FORWARDING AND DISPOSITION OF CHARGES AND GRAND JURY REQUIREMENT**

**Rule 405. Pretrial investigation, preliminary hearing** – The following section is added to read:

(l) This rule shall be applied consistent with AS 26.05.500.

**Rule 408. Grand jury requirement** – This rule is added to read:

A general court-martial in which the member of the militia is accused of committing an offense that is punishable by confinement of more than one year requires the convening of a grand jury pursuant to AS 26.05.440 – AS 26.05.445.

### **CHAPTER V. COURTS-MARTIAL COMPOSITION AND PERSONNEL; CONVENING COURTS-MARTIAL**

**Rule 501. Composition and personnel of courts-martial** – The following section is added to read:

(a)(3) In addition to the composition requirements of (1) and (2) of this rule, an alternate member is required pursuant to AS 26.05.415.

**Rule 502. Qualifications and duties of personnel of courts-martial** – The following sections are amended to read:

(c) *Qualifications of military judge.* A military judge shall be:

(1) an active or retired commissioned officer of the militia of a state or of an active or reserve component of the armed forces or another uniformed service of the United States;

(2) licensed to practice law in a state or a member of the bar of a federal court for at least five years; or

(3) certified as qualified for duty as a military judge by a senior force judge advocate who is in the same force as the accused.

(4) As used in this subsection, "military judge" does not include the president of a special court-martial without a military judge.

(d) *Qualified counsel required.* Judge advocates shall meet the qualifications pursuant to AS 26.05.385.

**Rule 503. Detailing members, military judge, and counsel** – The following sections are added to read:

(a)(4) Membership shall be consistent with AS 26.05.465.

(c)(4) Military judge requirements shall be consistent and pursuant to AS 26.05.475.

**Rule 504. Convening Courts-Martial** – This rule is amended to read:

A court-martial is created by a convening authority pursuant to AS 26.05.450 (general courts-martial), AS 26.05.455 (special courts-martial), or AS 26.05.460 (summary courts-martial).

## **CHAPTER VI. REFERRAL, SERVICE, AMENDMENT, AND WITHDRAWAL OF CHARGES**

**Rule 601. Referral** – This section is added to read:

(d)(2)(C) The grand jury requirement is fulfilled pursuant to ARCM 408.

## **CHAPTER VII. PRETRIAL MATTERS**

**Rule 703. Production of witnesses and evidence** – The following section is amended to read:

(e)(2)(D) *Service.* A subpoena may be served by the person authorized by this rule to issue it; any peace officer; any officer or enlisted person appointed by the court to serve the same, or any other person who is not less than 18 years of age. Service shall be made by delivering a copy of the subpoena to the person named and by tendering to the person named in the subpoena any fees required to be tendered in accordance with the service of a witness subpoena under Alaska law.

**Rule 703. Production of witnesses and evidence** – The following section is amended to read:

(e)(2)(E)(i) *Place of service, in general.* A subpoena requiring the attendance of a witness at a deposition, court-martial, or court of inquiry may be served at any place within the State of Alaska.

**Rule 703. Production of witnesses and evidence** – The following section is amended to read:

(e)(2)(G)(iv) *Execution*. A material witness warrant of an Alaska court-martial may be directed to any peace officer; an Alaska state trooper; an Alaska police officer of any city, town or village or tribe; or any officer or enlisted person appointed by the court to serve the same. Only such non-deadly force as may be necessary to bring the witness before the court-martial or other proceeding may be used to execute the warrant. A witness attached under this rule shall be brought before the court-martial or proceeding without delay and shall testify as soon as practicable and be released.

**Rule 703. Production of witnesses and evidence** – The following section is added to read:

(g) This rule shall be applied consistent with the subpoena process outlined in AS 26.05.550.

**Rule 706. Lack of mental capacity or mental responsibility; commitment of accused for examination and treatment** – The following section is amended to read:

(a) *Initial action*. If it appears to any commander who considers the disposition of charges or to any investigating officer, trial counsel, defense counsel, military judge, or member that there is reason to believe that the accused lacked mental responsibility for any offense charged or lack capacity to stand trial, then the procedures outlined in AS 26.05.565 shall be applied.

## CHAPTER VIII. TRIAL PROCEDURE GENERALLY

**Rule 805. Presence of military judge, members and counsel** – The following section is added to read:

(e) This rule shall be applied consistent with absent and additional member provisions pursuant to AS 26.05.485.

**Rule 808. Record of trial** – This rule is amended to read:

The trial counsel of a general or special court-martial take such action as may be necessary to ensure that a record of trial will meet the requirements of AS 26.05.580.

**Rule 809. Contempt proceedings** – The following section is amended to read:

(a) *In general*. An Alaska court-martial may exercise contempt powers under AS 26.05.555.

## CHAPTER IX. TRIAL PROCEDURES THROUGH FINDINGS

**Rule 909. Capacity of the accused to stand trial by court-martial** – The following sections are amended to read:

(a) *In general*. No person may be brought to trial by court-martial if that person is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings against them or to conduct or cooperate intelligently in the defense of the case. If it appears to any commander who considers the disposition of charges or to any investigating officer, trial counsel, defense counsel, military judge, or member that there is reason to believe that the accused lacked mental responsibility for any offense charged or lacks capacity to stand trial, then the procedures outlined in AS 26.05.565 and Rule 909 of the federal Rules for Courts-Martial (R.C.M.) shall be applied.

(e)(3) If the military judge finds that the accused is incompetent to stand trial, the judge shall report the finding to the convening authority, who shall comply with AS 26.05.565(c) through (i).

**Rule 909. Capacity of the accused to stand trial by court-martial** – Section (f) of this rule is deleted.

**Rule 921. Deliberations and voting on findings** – The following sections are amended to read:

(c)(3) *Acquittal.* A person may not be convicted of an offense under this chapter that is tried by a court-martial unless by the unanimous verdict of the members of the court present at the time the vote is taken.

(c)(4) *Not guilty only by reason of lack of mental responsibility.* Pursuant to AS 26.05.560(d), the accused may be found not guilty by reason of insanity if a majority of the members of the court-martial present at the time the vote is taken determine that the defense of insanity has been established.

(c)(6)(C) *Tie votes.* A tie vote on any other question is a determination in favor of the accused pursuant to AS 26.05.575.

## CHAPTER X. SENTENCING

**Rule 1002. Sentence determination** – The following section is amended to read:

(a) *Generally.* The authorized punishments and maximum limits for any proceeding shall be in accordance with AS 26.05.590 and R.C.M. 1003.

**Rule 1003. Punishments** – The following section is added to read:

(e) No punishments shall be inconsistent with the ACMJ or exceed the maximum limits of punishments for offenses of which the accused has been convicted, as prescribed by the ACMJ.

**Rule 1006. Deliberations and voting on sentence** – The following section is amended to read:

(d)(4) *Number of votes required.* A sentence may be adjudged only if a majority of the members present vote for that sentence.

**Rule 1006. Deliberations and voting on sentence** – The following section is added to read:

(f) This section shall be applied consistently with AS 26.05.570.

**Rule 1009. Reconsideration of sentence** – The following section is amended to read:

(e)(3)(B) *With a view to decreasing.* Members may reconsider a sentence with a view to decreasing it if a majority of the panel grants reconsideration pursuant to AS 26.05.575(b).

## CHAPTER XI. POST-TRIAL PROCEDURE

**Rule 1105. Matters submitted by the accused** – The following sections are amended to read:

(c)(1) *General and special courts-martial.* After an Alaska general or special court-martial, the accused may submit matters under this rule within the later of 30 days after a copy of the authenticated record of trial is served; or if applicable, the recommendation of the staff judge advocate or legal officer, or an addendum to the recommendation containing new matter is served on the accused. If, within the 30-day period, the accused shows that additional time is required for the accused to submit such matters, the convening authority or that authority's staff judge advocate may, for good cause, extend the 30-day period for not more than 30 additional days; however, only the convening authority may deny a request for such an extension.

(c)(2) *Summary courts-martial.* After a summary court-martial, the accused may submit matters under this rule within 30 days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such comments, the convening authority may, for good cause, extend the period in which comments may be submitted for up to 30 additional days.

**Rule 1106. Recommendation of the staff judge advocate or legal officer** – The following sections are amended to read:

(f)(5) *Time period.* Counsel for the accused shall be given 30 days from service of the record of trial under R.C.M. 1104(b) or receipt of the recommendation, whichever is later, in which to submit comments on the recommendation. The convening authority may, for good cause, extend the period in which comments may be submitted for up to 30 additional days.

(f)(7) *New matter in addendum to recommendation.* The staff judge advocate or legal officer may supplement the recommendation after the accused and counsel for the accused have been served with the recommendation and given an opportunity to comment. When new matter is introduced after the accused and counsel for the accused have examined the recommendation, however, the accused and counsel for the accused must be served with the new matter and given 15 days from service of the addendum in which to submit comments. Substitute service of the accused's copy of the addendum upon counsel for the accused is permitted in accordance with the procedures outlined in R.C.M. 1106(f)(1).

**Rule 1107. Action by convening authority** – The following section is added to read:

(d)(6) This rule shall be consistent with AS 26.05.595.

**Rule 1109. Vacation of suspension of sentence** – The following section is added to read:

(h) Vacation of suspension of sentence shall be consistent with AS 26.05.620.

**Rule 1110. Waiver or withdrawal of appellate review** – The following section is amended to read:

(f)(1) *Waiver.* The accused may sign a waiver of appellate review at any time after the sentence is announced. The waiver must be filed within 30 days after the accused or defense counsel is served with a copy of the action under R.C.M. 1107(h). Upon a written application of the accused, the convening authority may extend this period for good cause, for not more than 30 additional days.

## CHAPTER XII. APPEALS AND REVIEW

**Rule 1203. Review by a Court of Criminal Appeals** – This rule is amended to read:

Review by Alaska Military Appeals Commission (AMAC). The AMAC shall review appellate cases pursuant to its authority under AS 26.05.640.

**Rule 1204. Review by the Court of Appeals for the Armed Forces** – This rule is amended to read:

There is no right to appeal to the Court of Appeals for the Armed Forces. Any references to the Court of Appeals for the Armed Forces in the UCMJ is to be read as a reference to the Alaska Military Appeals Commission (AMAC), except that no provision will be read in a manner that would produce a result which would cause the AMAC to be its own appellate authority.

**Rule 1205. Review by the Supreme Court** – This rule is amended to read:

After exhausting all remedies available under the ACMJ, a party may file a petition for review in the Alaska Supreme Court pursuant to AS 26.05.645.

**Rule 1208. Restoration** – The following section is added to read:

(c) Restoration shall be consistent with AS 26.05.630.

### **PART III ALASKA MILITARY RULES OF EVIDENCE**

**Rule 101. Scope** – The following section is amended to read:

(a) *Scope*. The rules of evidence must be applied in accordance with the principles of law and the rules of evidence and procedure governing military criminal cases in the courts of the armed forces of the United States, but may not be contrary to or inconsistent with this chapter or the applicable Alaska Rules of Evidence.

