**Section 400.1055 Procedures for Rehearing, New Trials and Other Trials**

a) General

1) Definition. "Other trial" means another trial of a case in which the original proceedings were declared invalid because of lack of jurisdiction or failure of a charge to state an offense.

2) Rehearing in Full and New or Other Trials. In rehearings that require findings on all charges and specifications referred to a court-martial and in new or other trials, the procedure shall be the same as in an original trial except as otherwise provided in this Section.

3) Rehearing on Sentence Only. In a rehearing on sentence only, the procedure shall be the same as in an original trial, except that the portion of the procedure that ordinarily occurs after challenges, and through the findings, is omitted, and except as otherwise provided in this Section.

b) Contents of the Record. The contents of the record of the original trial consisting of evidence properly admitted on the merits relating to each offense of which the accused stands convicted but not sentenced may be established by any party whether or not testimony so read is otherwise admissible under Section 400.720(d) and whether or not it was given through an interpreter.

c) Plea. The accused at a rehearing only on sentence may not withdraw any plea of guilty upon which findings of guilty are based. However, if that plea is found to be improvident, the rehearing shall be suspended and the matter reported to the authority ordering the rehearing.

d) Combined Rehearings. When a rehearing on sentence is combined with a trial on the merits of one or more specifications referred to the court-martial, whether or not those specifications are being tried for the first time or reheard, the trial will proceed first on the merits, without reference to the offenses being reheard on sentence only. After findings on the merits are announced, the members, if any, shall be advised of the offenses on which the rehearing on sentence has been directed. Additional challenges for cause may be permitted, and the sentencing procedure shall be the same as at an original trial, except as otherwise provided in this Section. A single sentence shall be adjudged for all offenses.

e) Composition

1) Members. No member of the court-martial that previously heard the case may sit as a member of the court-martial at any rehearing, new trial or other trial of the same case.

2) Military Judge. The military judge at a rehearing may be the same military judge who presided over a previous trial of the same case. The existence or absence of a request for trial by military judge alone at a previous hearing shall have no effect on the composition of a court-martial on rehearing.

3) Accused's Election. The accused at a rehearing or new or other trial shall have the same right to request enlisted members or trial by military judge alone as the accused would have at an original trial.

f) Examination of Record of Former Proceedings. No member may, upon a rehearing or upon a new or other trial, examine the record of any former proceedings in the same case except:

1) When permitted to do so by the military judge after those matters have been received in evidence; or

2) That the president of a special court-martial without a military judge may examine that part of the record of former proceedings that relates to errors committed at the former proceedings when necessary to decide the admissibility of offered evidence or other questions of law, and that part of the record may be read to the members when necessary for them to consider a matter, subject to objection by any member

g) Sentence Limitations

1) General. Sentences at rehearings, new trials or other trials shall be adjudged within the limitations set forth in Code Sections 55 through 58, except as otherwise provided in subsection (g)(2). Offenses on which a rehearing, new trial or other trial has been ordered shall not be the basis for an approved sentence in excess of, or more severe than, the sentence ultimately approved by the convening or higher authority following the previous trial or hearing, unless the sentence prescribed for the offense is mandatory. When a rehearing or sentencing is combined with trial on new charges, the maximum punishment that may be approved by the convening authority shall be the maximum punishment under Code Sections 55 through 58 for the offenses being reheard (except as otherwise provided in subsection (g)(2)), plus the total maximum punishment under Code Sections 55 through 58 for any new charges of which the accused has been found guilty. In the case of an "other trial", no sentence limitations apply if the original trial was invalid because a summary or special court-martial improperly tried an offense involving mandatory punishment or otherwise considered capital.

2) Plea Agreement. If, after the earlier court martial, the sentence was approved in accordance with a plea agreement and at the rehearing the accused fails to comply with the pretrial agreement, by failing to enter a plea of guilty or otherwise, the approved sentence resulting at a rehearing of the affected charges and specifications may include any otherwise lawful punishment not in excess of, or more serious than, lawfully adjudged at the earlier court-martial.