

SYSTEM MANAGER(S) AND ADDRESS:

Area school district system manager addresses may be obtained from the Office of the Director, DoDEA, 4040 North Fairfax Drive, Arlington, VA 22203-1634 or by visiting the Web site www.dodea.edu.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to Area or District Systems Managers or the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203-1635.

Written requests for information should contain the full name, name used at time of school attendance, date of birth, identity and location of school attended, dates of attendance, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Area or District Systems Managers or the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203-1635.

Written requests for access should contain the full name, name used at time of school attendance, date of birth, identity and location of school attended, dates of attendance, and signature.

Parents or legal guardians of a student may be given access to the Children's School Program Files records without regard to who has custody of the child,

unless the child is age 18 or over, or a court has directed otherwise.

CONTESTING RECORDS PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, school teachers, principals and administrators; counselors, medical personnel, parents/guardians, occupational and physical therapists, testing materials and activities, other educational facilities, medical facilities, (examinations and assessments), military commanders and installation activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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DEPARTMENT OF DEFENSE**Office of the Secretary**

[DoD-2006-OS-0135]

U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

ACTION: Notice of proposed changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 9(e), 14, 19(a)(5), 19(b)(3), 19(g),

22(b)(3), 26(b), 37(c)(1), and 41(a) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment. New language is in bold print. Language to be deleted is marked by a strikethrough.

DATES: Comments on the proposed changes must be received by December 1, 2006.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of the Court, telephone (202) 761-1448, ext. 600.

Dated: October 25, 2006.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, DoD.

BILLING CODE 5001-06-M

PROPOSED REVISION TO RULE 9(e):

(e) Hours. The Clerk's office shall be open for the filing of pleadings and other papers from ~~9:00 a.m.~~ 8:00 a.m. to 5:00 p.m. every day except Saturdays, Sundays, and legal holidays, or as otherwise ordered by the Court. See Rule 36(a). The Court is always open for the filing of pleadings and other papers. A pleading or other paper may be filed outside of normal operating hours of the Clerk's office by delivery to the U.S. Marshal on duty in the front lobby of the courthouse. Pleadings will be deemed filed on the date and time delivered to the U.S. Marshal. The U.S. Marshal will notify the Clerk of the filing in accordance with procedures provided by the Clerk.

Comment: The amendment to Rule 9(e) is proposed to expand the hours in which parties may file pleadings with the Court. It establishes that documents may be filed when the Clerk's Office is closed by delivery to the U.S. Marshal on duty.

PROPOSED CHANGE TO RULE 14:~~RULE 14. HONORARY MEMBERSHIP~~

~~Honorary membership in the Bar of the Court may be granted from time to time to distinguished members of the legal profession of other nations who are knowledgeable in the fields of military justice or the law of war. A candidate for honorary membership will be presented at the Bar in person after the nomination has previously been approved by the Court. A certificate of honorary membership in the Bar will be presented to the person so honored.~~

Comment: This rule should be rescinded because honorary bar memberships are rarely, if ever, awarded, and there is no reason to have such a rule in place at this time.

New Rule 19(a)(5)(C):

(C) Grostefon Issues. Issues raised pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982), if not raised earlier, may be presented to the Court by motion filed pursuant to Rule 30(a) no later than 30 days following the filing of the supplement to the petition.

Comment: There is no time limit for when Grostefon issues may be raised before the Court. This lack of a deadline can create procedural problems when they are raised well after the supplement to the petition is filed. This rule would set a limit requiring such issues to be presented no later than thirty days after the supplement to the petition is filed. In light of this deadline, appellate defense counsel should advise their clients of this rule, and the need to raise Grostefon issues in a timely fashion. The new rule will integrate the litigation of Grostefon issues into the normal decisional process. In appropriate situations, such as where the appellant claims that counsel did not advise of the obligation to raise these issues as provided herein, the appellant may move to suspend the operation of this rule pursuant to Rule 33 for good cause shown.

PROPOSED REVISION TO RULE 19(B)(3):

(3) Other cases. In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review filed by the Judge Advocate General shall be filed either (a) no later than 30 days after the date of the decision of the Court of Criminal Appeals (see Rules 22 and 34(a)), or (b) no later than 30 days after a petition for grant of review is granted. In cases that involve both granted and certified issues, the Clerk may establish a consolidated briefing schedule for all issues. In cases that involve only certified issue(s), an appellant's brief shall be filed in accordance with Rule 24 no later than 30 days after the issuance by the Clerk of a notice of docketing of the certificate for review. An appellee's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

Comment: This amendment allows the Judge Advocate General to certify issues within 30 days of the granting of a petition for grant of review. This opportunity to certify issues is

believed to be appropriate because in some cases, the Judge Advocate General may be reluctant to certify issues and require review by this Court unless the Court will otherwise be reviewing the case at the appellant's request. Once review is granted, the Judge Advocate General should be able to certify additional issues and thereby maximize the Court's opportunity to provide complete review. It is not anticipated that this rule will produce a significant increase in the number of certified issues presented. Also, the rule provides a mechanism whereby cases involving certified and granted issues will be consolidated for purposes of briefing. This eliminates the need for separate briefing cycles for both sets of issues.

PROPOSED NEW RULE 19(g):

(g) Timely Motion for Reconsideration Before the Court of Criminal Appeals. If an appeal is filed in this Court before the expiration of time to file a motion for reconsideration in a Court of Criminal Appeals, this Court, upon the prompt filing of a motion to dismiss by a party stating that a timely motion for reconsideration is pending in a Court of Criminal Appeals, may dismiss the appeal without prejudice and remand the case to the Court of Criminal Appeals for resolution of the motion for reconsideration. Following a decision by the Court of Criminal Appeals on the motion for reconsideration, review may be sought in this Court under Article 67, Uniform Code of Military Justice.

Comment: The rules of the Courts of Criminal Appeals allow a party thirty days to seek reconsideration. That time may be cut short if the other party files a petition in this Court which cuts off jurisdiction to entertain a petition for reconsideration in the lower court. Rule 19(b), CCA Rules of Practice and Procedure, 44 M.J. LXXI. If that party wishes to resurrect the right to file, it would necessitate filing a motion with this Court seeking a remand to allow the lower court to consider the motion for reconsideration. This mechanism is cumbersome and rarely if ever used. Petitions for reconsideration give the deciding court the ability to correct errors without the need for review by a higher court. They are a desirable correcting mechanism that should not be foreclosed by the filing of an appeal in a higher court while the time for a petition for reconsideration is running. This amendment will provide an expeditious means of restoring the right to seek reconsideration in this situation.

PROPOSED REVISION TO RULE 22(b)(3):

(3) Other cases. In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review shall be filed either (a) no later than 30 days after the date of the decision of the Court of Criminal Appeals (see Rule 34(a)) or (b) no later than 30 days after a petition for grant of review is granted. In cases that involve both granted and certified issues, the Clerk may establish a consolidated briefing schedule for all issues. In cases that involve only certified issue(s), a brief in support of the certified issues shall be filed by the appellant in accordance with Rule 24 no later than 30 days after the issuance by the Clerk of a notice of docketing of the certificate for review. An appellee's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

Comment: See comment to Rule 19(b)(3) above.

PROPOSED REVISION TO RULE 26(b):

(b) Unless otherwise ordered by the Court, a brief of an amicus curiae in support of a party may ~~under subsection (a)(1) of this rule shall be~~ filed no later than 10 days after that party has filed its brief. If neither party is supported, the brief of an amicus curiae shall be filed no later than 10 days after the first brief is filed. ~~the filing of the answer by the appellee or respondent.~~

Comment: This rule would establish a filing deadline for all amicus briefs. As currently written, an appellate division of the armed services may file an amicus brief within ten days after the filing of the answer by the appellee or respondent. This structure does not give the appellee/respondent any opportunity to respond to the arguments raised by the amicus in the normal briefing cycle. Moreover, it sets no deadlines for amicus briefs filed by entities other than the appellate divisions. This amendment integrates amicus briefs in the general briefing scheme and eliminates the need for supplemental briefs and motions for leave to file them. Absent leave of the Court, the amicus must file within ten days of the filing of the brief by the party that the amicus supports and, if the amicus does not wholly support either side, (an occasion the current rule does not contemplate) it must file within ten days of the filing of the

first brief filed in the normal cycle. The rule applies to all amicus briefs, regardless of who is filing. This rule is consistent with the approach taken in other courts of appeals. The rule puts the burden on the amicus to seek special leave to file outside this cycle.

PROPOSED REVISION TO RULE 37(c)(1):

(1) All pleadings, that consist of ten or more pages, ~~presented to the Court shall,~~
~~unless they are less than 5 pages in length,~~ shall be preceded by a subject index of the matter contained therein, with page references, and a table of cases (alphabetically arranged with citations), textbooks, and statutes cited, with references to the pages where cited.

Comment: The rule as currently written requires a paginated subject index and a table of citations for all pleadings of five pages in length or longer. It is believed that the rule as written is too broad, and that tables should not be a requirement for pleadings of less than ten pages, and that the Court does not gain significant benefit from these tables with documents of less than ten pages.

PROPOSED REVISION TO RULE 41(a)

The photographing, televising, recording, or broadcasting of any session of the Court or other activity relating thereto is prohibited ~~within the confines of the courthouse~~ unless authorized by the Court.

Comment: As currently written, the Rule prohibits the photographing, televising, recording or broadcasting of any session of the Court or other related activity “within the confines of the courthouse” unless authorized by the Court. There is no prohibition in the Rule for such actions occurring outside the courthouse, such as on Project Outreach hearings. The rule should apply wherever the Court may be sitting because, in effect, that is the courthouse at that point in time. Deletion of the quoted language will eliminate any ambiguity and make it clear that when the Court sits at law schools, these activities may only take place with the permission of the Court.