

military service and the issuance of a waiver for acceptance.

June 11, 2001.

Patricia L. Toppings, Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Proposed Rule 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 13(c), 20 (b) and (c), 21 (b), 24, and 41(a) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment:

Proposed Revision to Rule 13(c)

Attorneys

Rule 13. Qualifications to Practice

(a) [Same]

(b) [Same]

(c) Each applicant shall file with the Clerk an application for admission on the form prescribed by the Court, together with an application fee in an amount prescribed by Court order, and a certificate from the presiding judge, clerk, or other appropriate officer of a court specified in (b) above \* \* \*

(d) [Same]

Proposed Revision to Rule 20(b) and (c)

Rule 20. Form of Petition for Grant of Review

\* \* \* \* \*

(b) Form to be used by an appellant's counsel. A petition for grant of review under Rule 18(a)(1) filed by counsel on behalf of an appellant will be substantially in the following form:

(Signature of counsel)

(Typed name of counsel)

(Address of counsel)

(Telephone no. of counsel)

(E-mail address, if any)

(Date and manner of filing—see Rules 36 and 39))

(c) An appellant or counsel on behalf of an appellant shall file a petition for

grant of review in the manner and within the time limits set forth in Rule 19(a). Upon receipt, the Clerk shall stamp the petition indicating the date it was received and, if filed by mail under Rule 36(c), shall retain the envelope showing the postmark thereon.

Proposed Revision to Rule 21(b)

Rule 21. Supplement to Petition for Grant of Review

(a) Review on petition for grant of review requires a showing of good cause. Good cause must be shown by the appellant in the supplement to the petition, which shall state with particularity the error(s) claimed to be materially prejudicial to the substantial rights of the appellant. See Article 59(a), UCMJ, 10 USC § 859(a).

(b) The supplement to the petition shall be filed in accordance with the applicable time limit set forth in Rule 19(a)(5)(A) or (B), shall include an Appendix required by Rule 24(a), shall conform to the provisions of Rules 24(b), 35A, and 37, and shall contain:

(1) A statement of the errors assigned for review by the Court;

(2) A statement of statutory jurisdiction, including;

(A) the statutory basis of the Court of Criminal Appeals jurisdiction;

(B) the statutory basis upon which this Court's jurisdiction is invoked;

(3) A statement of the case setting forth a concise chronology, including all relevant dates. The chronology shall specify: (A) the results of the trial; (B) the actions of the intermediate reviewing authorities and the Court of Criminal Appeals; (C) the disposition of a petition for reconsideration or rehearing, if filed; and (D) any other pertinent information regarding the proceedings, [including, if set forth in the record, the date when service upon the accused of the decision of the Court of Criminal Appeals was effected.];

(4) A statement of facts of the case material to the errors assigned, including specific page references to each relevant portion of the record of trial;

(5) A direct and concise argument showing why there is good cause to grant the petition, demonstrating with particularity why the errors assigned are materially prejudicial to the substantial rights of the appellant. Where applicable, the supplement to the petition shall also indicate whether the court below has:

(A) Decided a question of law which has not been, but should be, settled by this Court;

(B) Decided a question of law in a way in conflict with applicable decisions of

(i) this Court, (ii) the Supreme Court of the United States, (iii) another Court of Criminal Appeals, or (iv) another panel of the same Court of Criminal Appeals;

(C) Adopted a rule of law materially different from that generally recognized in the trial of criminal cases in the United States district courts;

(D) Decided the validity of a provision of the UCMJ or other act of Congress, the Manual for Courts-Martial, a service regulation, a rule of court or a custom of the service the validity of which was directly drawn into question in that court;

(E) Decided the case (i) en banc or (ii) by divided vote;

(F) So far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a court-martial or other person acting under the authority of the UCMJ, as to call for an exercise of this Court's power of supervision; or

(G) Taken inadequate corrective action after remand by the Court subsequent to grant of an earlier petition in the same case and that appellant wishes to States; and

(6) A certificate of filing and service in accordance with Rule 39(e).

(c)(1) Answer/reply in Article 62, UCMJ, appeals. An appellee's answer to the supplement to the petition for grant of review in an Article 62, UCMJ, 10 U.S.C § 862 (1983), case shall be filed no later than 10 days after the filing of such supplement. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer.

(2) Answer/reply in other appeals. An appellee's answer to the supplement to the petition for grant of review in all other appeal cases may be filed no later than 30 days after the filing of such supplement, see Rule 21(e); as a discretionary alternative in the event a formal answer is deemed unwarranted, an appellee may file with the Clerk of the Court a short letter, within 10 days after the filing of the appellant's supplement to the petition under Rule 21, setting forth one of the following alternative positions: (i) that the United States submits a general opposition to the assigned error(s) of law and relies on its brief filed with the Court of Criminal Appeals; or (ii) that the United States does not oppose the granting of the petition (for some specific reason, such as an error involving an unsettled area of the law). A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

(d) The Court may, in its discretion, examine the record in any case for the purpose of determining whether there appears to be plain error not assigned by the appellant. The Court may then

specify and grant review of any such errors as well as any assigned errors which merit review.

(e) Where no specific errors are assigned in the supplement to the petition, the Court will proceed to review the petition without awaiting an answer thereto. *See* Rule 19(a)(5).

(f) An appellant or counsel for an appellant may move to withdraw his petition at any time. *See* Rule 30. [Amended October 1, 1987; amended July 16, 1990, effective August 15, 1990; amended October 12, 1994; amended January 20, 1999, effective February 1, 1999.]

Proposed Revision to Rule 24

**Rule 24. Form, Content, and Page Limitations**

(a) **Form and content.** All briefs shall conform to the printing, copying, and style requirements of Rule 37, shall be legible, and shall be substantially as follows:

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

UNITED STATES,	)	
	(Appellee)	)
	(Appellant)	)
	(Respondent)	)
v.	)	BRIEF ON BEHALF
	)	OF (APPELLANT,
	)	APPELLEE, ETC.)
	)	
<hr style="width: 25%; margin-left: 0;"/>	)	
(Full typed name, rank,	)	Crim. App. Dkt. No. _____
& service of accused)	)	
(Service no. _____),	)	USCA Dkt. No. _____
(Appellant)	)	
(Appellee)	)	
(Petitioner)	)	

**Index of Brief**

[See Rule 37(c)(1)]

**Table of Cases, Statutes, and Other Authorities**

**Issue(s) Presented**

[Set forth, in a concise statement, each issue granted review by the Court, raised in the certificate for review or mandatory review case, or presented in the petition for extraordinary relief, writ-appeal petition, or petition for new trial. Issues presented will be set forth in upper case letters.]

**Statement of Statutory Jurisdiction**

[Set forth the statutory basis of the Court of Criminal Appeals jurisdiction and the statutory basis for this Court's jurisdiction.]

**Statement of the Case**

[Set forth a concise chronology, including all relevant dates, to include: (A) the results of the accused's trial, (B) actions of the intermediate reviewing authorities by the convening authority and the Court of Criminal Appeals; and as well as any other pertinent information regarding the proceedings, including, where applicable, the date the petition for review was granted.]

(C) the disposition of a petition for reconsideration or rehearing, if filed; and (D) any other pertinent information regarding the proceedings, including, where applicable, the date the petition for review was granted.]

#### **Statement of Facts**

[Set forth a concise statement of the facts of the case material to the issue or issues presented, including specific page references to each relevant portion of the record of trial. Answers may adopt the 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 the appellee's or respondent's viewpoint. The repetition of uncontroverted matters is not desired.]

#### **Summary of Argument**

[Each brief and answer shall contain a summary of argument, suitably paragraphed to correspond to each issue presented. The summary should be a succinct but accurate and clear condensation of the arguments made in the body of the brief.]

#### **Argument**

[Discuss briefly the point of law presented, citing and quoting such authorities as are deemed pertinent. The argument must also include for each issue presented a statement of the applicable standard of review. The standard of review may appear in the discussion of each issue or under a separate heading.]

#### **Conclusion**

[State the relief sought as to each issue presented, for example, reversal of the Court of Criminal Appeals decision and dismissal of the charges, grant of a new trial, the extraordinary relief sought, etc. No particular form of language is required, so long as the brief concludes with a clear prayer for specific Court action.]

## Appendix

[The brief of the appellant or petitioner shall include an appendix containing a copy of the Court of Criminal Appeals decision, unpublished opinions cited in the brief, and relevant extracts of rules and regulations. The appellee or respondent shall similarly file an appendix containing a copy of any additional unpublished opinions and relevant extracts of rules and regulations cited in the answer.]

\_\_\_\_\_  
(Signature of counsel)

\_\_\_\_\_  
(Typed name of counsel)

\_\_\_\_\_  
(Address of counsel)

\_\_\_\_\_  
(Telephone no. of counsel)

### Certificate of Filing and Service

I certify that a copy of the foregoing was [mailed] [delivered] to the Court and [mailed] [delivered] to (enter name of each counsel of record) on

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(Typed name and signature)

\_\_\_\_\_  
(Address and telephone no.)

**(b) Page limitations.** Unless otherwise authorized by order of the Court or by motion of a party granted by the Court (*see* Rule 30), the page limitations for briefs filed with the Court, not including appendices, shall be as follows:

(1) Briefs of the appellants/petitioners shall not exceed 50 pages;

(2) Answers of the appellees/respondents shall not exceed 50 pages;

(3) Replies of the appellants/petitioners shall not exceed 15 pages.

Proposed Revision to Rule 41(a)

### Rule 41. Photographing, Televising, Recording, or Broadcasting of Hearings

**(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.

**(b)** Any violation of this rule will be deemed a contempt of this Court and, after due notice and hearing, may be punished accordingly. See 18 U.S.C. Sec. 401.

**DATES:** Comments on the proposed changes must be received by (60 days from date of publication).

**ADDRESSES:** Forward written comments to William A. DeCicco, Clerk of the Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442-0001.

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

### Rules Advisory Committee Comment on Rule 13(c)

The current rule requires payment of \$25.00 for admission to the Court's Bar. Due to an increase in the cost of printing bar admission certificates, the fee needs to be changed. Rather than simply changing the

amount in the Rule, however, an easier solution is to allow the Court to modify the amount of the fee by court order instead of a formal rule change. This procedure is similar to that of other courts and will make future changes less cumbersome. It will also give the Court more flexibility.

### Rules Advisory Committee Comment on Rule 20(b) and (c)

The proposed revision to Rule 20(b) will require counsel to include on the petition for grant of review an e-mail address, if any, and information regarding the date and manner of filing. Having counsel's e-mail address will aid the Court in contacting counsel should questions arise while the case is pending. Requiring the date and manner of filing will clarify exactly when the petition was filed and whether it was mailed or delivered by hand to the Court. The proposed revision to Rule 20(c) requires the Clerk to stamp the petition with the date it was received and, for petitions filed by mail, to retain the envelope showing the postmark thereon. This change will better enable the Court to record the filing date of the petition in case the timeliness of filing becomes an issue in the case.

### Rules Advisory Committee Comment on Rule 21(b)

Revised subsection (b)(2) is based upon Supreme Court Rule 14(e)(iv) and Federal Rule of Appellate Procedure 28(a)(4). Its purpose is to demonstrate that the petition is based upon a decision or order from which review may be sought and that the petition falls within the ambit of the Court's jurisdictional authority to grant review.

An example of a statement of statutory jurisdiction under this subsection would read as follows:

The jurisdictional of the [service] Court of Criminal Appeals rested upon Article 66(b)(1), UCMJ. This Court's jurisdiction is revoked under Article 67(a)(3), UCMJ.

The purpose of the revision to the extent subsection (b)(2) is to provident a concise but comprehensive summary of the history of the case with respect to which review is sought. The changes will make more information available to the Court, including the statutory basis for invoking the jurisdiction of the Court. To the extent that dates relevant to the jurisdiction of the Court are established in the record, they are to be included in this section.

### Rules Advisory Committee Comment on Rule 24

This revision is based upon Supreme Court Rule 24(e) and Federal Rule of Appellate Procedure 28(a)(4). As in the case of the amendment to Rule 21(b), its purpose is to set out the statutory authorities vesting this Court with jurisdiction.

The "Statement of the Case" is modified to require a brief but comprehensive summary of the prior disposition of the case.

### Rules Advisory Committee Comment on Rule 41

This revision adds a prohibition on the recording of appellate sessions within the confines of the courthouse unless authorized by the Court. This is consistent with the

practice of other appellate courts and includes both video and audio record of proceedings.

Dated: June 25, 2001.

**L.M. Bynum,**  
*Alternate OSD Federal Register Liaison Officer, DoD.*

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**BILLING CODE 5001-08-M**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 2, 2001.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address [Lauren\\_Wittenberg@omb.eop.gov](mailto:Lauren_Wittenberg@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or