

Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: conduct a methodologically sound assessment of the failure rates of U.S. munitions in actual combat use; review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II), it has been determined

that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: June 8, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

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**BILLING CODE 5001-06-M**

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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.

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**SUMMARY:** This notice announces the following proposed changes to Rules 15, 21(b)(1), 24, 26, 37, and 38 of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notices and comment.

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

Dated: June 4, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register, Liaison Officer, DoD.*

**BILLING CODE 5001-06-M**

PROPOSED REVISION TO RULE 15ATTORNEYS~~RULE 15. DISCIPLINARY ACTIONS~~**Rule 15. DISBARMENT AND DISCIPLINARY ACTION**

~~(a) The Model Rules of Professional Conduct of the American Bar Association are hereby adopted as the rules of conduct for members of the Bar of this Court. After notice, investigation, and hearing as provided in this rule, the Court may take any disciplinary action it deems appropriate for failure to comply with the Model Rules of Professional Conduct.~~

~~(b) For purposes of this rule, the Court shall appoint an Investigations Committee consisting of 5 members of the Bar of this Court who shall be appointed for a period of 3 years. The Investigations Committee shall consider such complaints as may be referred to it for investigation, including the taking of evidence, and shall submit a report of such investigation to the Court.~~

~~(c) Upon receipt and docketing of a written complaint under oath of unprofessional conduct against a member of its Bar, the Court will cause a copy thereof to be served by certified mail, return receipt requested, on the attorney thus accused. The Clerk will, in addition, acknowledge by letter, to the person filing such complaint, the receipt thereof. The accused attorney will answer the complaint by~~

~~filing a formal pleading responsive to each allegation of misconduct within 30 days of receipt of the complaint, but extensions of time may be granted by order of the Court on the accused attorney's application. A complaint will be docketed only if the Court makes a preliminary determination that it is not frivolous.~~

~~(d) On consideration of the complaint and answer, and if it believes a substantial basis exists for the complaint, the Court will refer the matter to its Investigations Committee for consideration under subsection (b). Otherwise, the Court will dismiss the complaint. Any such investigation will be held privately, unless the accused attorney requests that it be opened to the public.~~

~~(e) On receiving the report of the Investigations Committee, the Court may dismiss the complaint or order the matter set down for hearing, giving due notice to the accused attorney. At the hearing, the accused attorney will be given opportunity to present such matters relevant to the complaint as he or she deems appropriate and to examine any witnesses against such attorney. All documents received in connection with a complaint under this rule shall be furnished to the accused attorney. A majority vote of the Court is necessary to find an attorney guilty of unprofessional conduct and to fix any penalty.~~

~~(f) (1) When it is shown to the Court that any member of its Bar has been disbarred or suspended from practice by any court, such member will be forthwith called upon to show cause within 30 days why similar action should not be taken by this Court. Upon the filing of the member's answer to an order to show cause, or upon expiration of 30 days if no answer is filed, the Court will enter an appropriate order; but no order of disbarment or suspension will be entered except with the concurrence of a majority of the judges participating.~~

~~(2) When it has been shown to the Court that a member of the Bar of the Court has been convicted by court-martial or by other court of competent jurisdiction of conduct which evidences a failure to comply with the Model Rules of Professional Conduct and such conviction has become final, the Court may, in lieu of the complaint and investigative procedures set forth in subsections (b) through (e), initiate a disciplinary action under this rule by issuance of an order to such person to show cause why the person should not be disbarred. Upon the filing of the member's answer to an order to show cause, or upon expiration of 30 days if no answer is filed, the Court will set the matter~~

~~for hearing, giving the member due notice thereof, or enter such other order as may be deemed appropriate; but no order of disbarment or suspension will be entered except with the concurrence of a majority of the judges participating.~~

~~(g) Penalties for unprofessional conduct may extend to reprimand, suspension, or disbarment.~~

~~(h) Except for an order of reprimand, suspension, or disbarment, no papers, pleadings, or other information relative to a complaint in a disciplinary proceeding will be published or released to the public without prior approval of the Court. The docket of matters arising under this rule shall not be available to the public.~~

[Amended July 16, 1990, effective August 15, 1990; amended March 26, 1998, effective May 1, 1998.]

(a) The Model Rules of Professional Conduct of the American Bar Association are hereby adopted as the rules of conduct for members of the Bar of this Court. To the extent that these rules are inconsistent with applicable service rules of professional conduct, the conduct of judge advocates will be reviewed under the rules of their service. To the extent that these rules are inconsistent with the rules of professional conduct which apply in the location where a civilian member of the bar maintains a principal office, the conduct of civilian counsel will be reviewed under the rules of their licensing jurisdiction.

(b) Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 30 days, why a disbarment order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

(c) If it appears that a member of the Bar of this Court has engaged in conduct unbecoming a member of the Bar, or failed to comply with this Rule or any other Rule or order of the Court, the Court may enter an order affording the member an opportunity to show cause, within 30 days, why disciplinary action should not be taken. If the member, in responding to the show cause order, raises material questions of fact, the Court may appoint a special master who shall hold a hearing and prepare proposed findings of fact and recommendations. After affording the member of the

bar a reasonable opportunity to prepare written objections to the proposed findings of fact and recommendations, the proposed findings and recommendations, together with any written objections thereto, shall be submitted to the Court. Upon due consideration thereof, the Court may take such disciplinary action as it deems appropriate against the member of the Bar.

**Explanatory Note for Rule 15 (Disbarment and Disciplinary Action):**

The current Rule 15 dates back to the early 1970's, and it mandates a cumbersome process for disciplining attorneys involving the appointment of a five-member Investigations Committee. There is no record that it has ever been used. The new proposal, taken largely from Rule 8 of the Rules of the Supreme Court of the United States, along with process provisions in federal courts of appeals local rules, is more efficient, and it will provide a tool for the Court to impose needed discipline in a more timely manner. Instead of a five-member committee, the Court may appoint a special master to conduct a hearing, consider questions of fact, and make recommendations to the Court. Insubstantial questions of fact that are not relevant to the Court's disposition of the matter will not be considered material for purposes of this rule. The member would be afforded a reasonable opportunity to prepare written objections to the proposed findings of fact. The proposal adopts the ABA's Model Rules of Professional Conduct to the extent that they are not inconsistent with service regulations or rules of civilian licensing jurisdictions.

PROPOSED REVISION TO RULE 21(b)(1)**RULE 21. SUPPLEMENT TO PETITION FOR GRANT OF REVIEW**

(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, **expressed concisely in relation to the circumstances of the case, without unnecessary detail. The assigned errors should be short and should not be argumentative or repetitive.**

**Explanatory Note for Rule 21(b)(1) (Supplement to Petition for Grant of Review):**

The added language is taken from Rule 14 of the Rules of the Supreme Court of the United States. Its purpose is to encourage counsel to be concise and clear in drafting issues for review. The rule recognizes, however, that conciseness is a relative term and the length of the statement of the errors assigned for review will vary, depending on the circumstances of each case. Nevertheless, within that framework, counsel should strive to make the statement of errors as precise as possible and avoid argumentative or repetitive language.

PROPOSED REVISION TO RULE 24(a)**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.)
	)	
<u>(Full typed name, rank,</u>	)	Crim.App. Dkt. No. _____
<u>&amp; service of accused)</u>	)	
<del>(Service no. _____),</del>	)	USCA Dkt. No. _____
	(Appellant)	)
	(Appellee)	)
	(Petitioner)	)

**Index of Brief**

[Same.]

**Table of Cases, Statutes, and Other Authorities****Issue(s) Presented**

[Same.]

**Statement of Statutory Jurisdiction**

[Same.]

**Statement of the Case**

[Same.]

**Statement of Facts**

[Same.]

**Summary of Argument**

[Same.]

**Argument**

[Same.]

**Conclusion**

[Same.]

**Appendix**

[Same.]

**(b) Page limitations.** Unless otherwise authorized by order of the Court, by motion of a party granted by the Court (see Rule 30), **or by Rule 24(c)**, 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 30 pages;**

(2) Answers of the appellees/petitioners **shall not exceed 30 pages;**

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

(c) **Type-volume limitations.**

(1) **A brief of the appellants/petitioners and an answer of the appellees/respondents is acceptable if:**

- **it contains no more than 14,000 words; or**
- **contains no more than 1,300 lines of text.**

(2) **A reply is acceptable if it contains no more than half of the type-volume specified in Rule 24(c)(1).**

(3) **Headings, footnotes, and quotations count toward the word and line limitations. The index, table of cases, statutes, and other authorities, the appendix and any certificates of counsel do not count toward the limitation.**

(d) **Certificate of Compliance. A brief submitted under Rule 24(c) must include a certificate stating that the brief complies with the type-volume limitation and Rule 37. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:**

- (i) **the number of words in the brief; or**
- (ii) **the number of lines of monospaced type in the brief.**

(e) Form of Certificate of Compliance.

CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

1. This brief complies with the type-volume limitation of Rule 24(d) because:

*[principal brief may not exceed 14,000 words or 1,300 lines; reply or amicus brief may not exceed 7,000 words or 650 lines; line count can be used only with monospaced type]*

This brief contains \_\_\_\_\_ [state the number of] words,

or

This brief contains \_\_\_\_\_ [state the number of] lines of text.

2. This brief complies with the typeface and type style requirements of Rule 37 because:

*[12-point font must be used with monospaced typeface, such as Courier or Courier New]*

This brief has been prepared in a monospaced typeface using \_\_\_\_\_  
[state name and version of word processing program, e.g., Microsoft Word Version 2000 with \_\_\_\_\_  
[state number of characters per inch and name of type style].

/s/ \_\_\_\_\_

Attorney for \_\_\_\_\_

Dated: \_\_\_\_\_

**Explanatory Note for Rule 24 (Form, Content and Page Limitations of Briefs):**

The proposal contains several changes. The first is to delete the requirement to include the appellant's service number (since 1972, the military has used the social security number). This change is recommended to protect privacy interests and is consistent with recent action of the Judicial Conference. It also anticipates the possible future privacy issue where pleadings are filed electronically and are available on line.

The Certificate of Compliance is to ensure that the briefs comply with Rule 24 and Rule 37 as to size and typeface. It is taken from a similar certificate used in the federal circuit courts of appeal. Counsel are reminded that the Court requires the use of monospaced typeface, e.g., Courier or Courier New, and that the use of proportional typeface, such as Times New Roman, is not authorized under these rules.

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PROPOSED REVISION TO RULE 26(d)**Rule 26. AMICUS CURIAE BRIEFS**

(d) ~~A brief of an amicus curiae shall not exceed 30 pages, excluding appendices.~~ Except by the Court's permission, a brief of an amicus curiae may be no more than one-half the maximum length authorized by Rule 24 for a brief for an appellant/petitioner. If the Court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

**Explanatory Note for Rule 26 (Amicus Curiae Briefs):**

The purpose of this change is to make Rule 26 consistent with the changes proposed in Rule 24. It follows Rule 29(d) of the Federal Rules of Appellate Procedure.

PROPOSED REVISION TO RULE 37**RULE 37. PRINTING, COPYING AND STYLE REQUIREMENTS**

**(a) Printing.** Except for records of trial and as otherwise provided by Rule 27(a)(4), all pleadings or other papers relative to a case shall be typewritten and double-spaced, printed on one side only on white unglazed paper, 8.5 by 11 inches in size, securely fastened in the top left corner. ~~"With the exception of footnotes, which may be 11 point proportionally spaced typeface, a~~All printed matter must appear in ~~non-proportional~~ **monospaced** typeface, **e.g., Courier or Courier New**, using 12-point type with no more than ten **and ½** characters per inch. **Margins must be at least 1 inch on all four sides. Page numbers may be placed in the margin but no text may appear in the margin.** ~~Headings, footnotes, and block quotations may be single-spaced, but should not be used excessively to avoid page limit requirements."~~

**Explanatory Note for Rule 37 (Printing, Copying, and Style Requirements of Pleadings):**

The rule on the number of characters per inch is changes from 10 to 10 ½, because some word processing programs use this standard and it is also acceptable to the Court. The rule on the size of the margin has been clarified so it is easier to understand. The previous rule referred to the size of the text, rather than the margins.

PROPOSED REVISION TO RULE 38**RULE 38. SIGNATURES**

(a) **General.** Except for documents filed in propria persona and those provided for in subsection (b), all original pleadings or other papers filed in a case will bear the signature of at least one counsel who is a member of this Court's Bar and who is participating in the case. The name, address, telephone number, **Court Bar number**, and rank, if any, of the person signing, together with the capacity in which such counsel signs the paper, will be included. This signature will constitute a certificate that the statements made in the pleading or paper are true and correct to the best of the counsel's knowledge, information, or belief, and that the pleading or paper is filed in good faith and not for the purpose of unnecessary delay. A counsel who signs a pleading "for" some other counsel whose name is typed under such signature must, in addition, affix their own signature in a separate signature block with their own name, address, telephone number, **Court Bar number**, and rank, if any, typed thereunder.

(b) [Same.]

**Explanatory Note for Rule 38 (Signatures on Pleadings):**

The proposed change to Rule 38 would mandate the inclusion of Court Bar numbers of attorneys signing pleadings filed with the Court. This requirement will provide a reminder of the rule that at least one attorney must be a member of the Court's Bar. There have been several recent instances of non-member attorneys filing pleadings with the Court who did not move to appear pro hac vice. Attorneys may obtain bar numbers from the Clerk's Office. This new rule would be consistent with the requirements of numerous other jurisdictions.