

**United States Court of Appeals
for the Armed Forces
Washington, D.C.**

In re Change of Rules

ORDER

Upon careful consideration of certain proposed changes to the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces, which were presented to and reviewed by the Rules Advisory Committee of the United States Court of Appeals for the Armed Forces, and thereafter published in the Federal Register for comment, it is, by the Court, this 30th day of September, 2022,

ORDERED:

That effective October 1, 2022, Rules 9(e), 21A, 30A(c), and 36(a) and new Rule 36B is promulgated as provided in the Attachment to this order (deletions appear with strikethrough and changes appear in bold typeface).

For the Court,

Malcolm H. Squires, Jr.
Clerk of the Court

Attachment

Rule 9(e) – Clerk

(a) Location of Office. The Clerk’s office shall be located at the courthouse at 450 E Street, Northwest, Washington, D.C. 20442-0001

(b) Oath of Office. Before entering upon the execution of his office, the Clerk shall take the oath or affirmation prescribed in § 951 of Title 28, United States Code.

(c) Custodian of Records. The Clerk shall serve as custodian of the records of the Court and shall not permit any documents relative to a case to be taken from the courthouse except by order of a judge of the Court.

(d) Disposition of Procedural Matters. Notwithstanding the provisions of Rule 6, the Clerk, on behalf of the Court, may entertain and act on any motion seeking an enlargement of time not to exceed 30 days, leave to withdraw as counsel, or permission to file pleadings or other papers relative to a matter pending before the Court, provided such motion is not opposed and such action does not substantially affect the rights of the parties or the ultimate decision in the case. The order of the Clerk shall be deemed the order of the Court

(e) Hours. The Clerk’s office shall **maintain regular operating hours** ~~be open from 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 filing of pleadings and other papers.~~ A pleading or other paper may be filed **at any time** ~~outside of normal operating hours of the Clerk’s office~~ by delivery to Court security personnel on duty in the front lobby of the courthouse **or by electronically filing in accordance with the “Guidelines for Electronic Filings of Pleadings” available on the Court’s website.** Pleadings will be deemed filed on the date and time delivered to Court security personnel **or filed electronically.** Court security personnel will notify the Clerk of the filing in accordance with procedures **established** ~~provided~~ by the Clerk.

Rule 21A – Submissions Under *United States v. Grostefon*

(a) Issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), shall be presented in a separate Appendix to the supplement not to exceed 15 pages.

(b) *Grostefon* issues shall be identified by counsel with particularity **and, where pertinent, references to the record of trial must be to the specific page in the record. *Grostefon* issues shall be presented substantially in the following form:**

APPENDIX

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), appellant, through appellate defense counsel, personally requests that this Court consider the following matters:

[List issues and any argument for each issue.]

(c) *Grostefon* issues raised within 30 days of the filing of the supplement under Rule 19(a)(5)(c) are subject to and included within the 15-page limit in Rule 21A(a). **An appellee's answer to *Grostefon* issues may be filed no later than 20 days after the filing of such issues.**

Rule 30A(c) – Factfinding

(a) General. The Court will normally not consider any facts outside of the record established at the trial and the Court of Criminal Appeals. Requests to consider factual material that is not contained in the record shall be presented by a motion to supplement the record filed pursuant to Rule 30. The motion shall include statements explaining why the matter was not raised previously at trial or before the Court of Criminal Appeals and why it is appropriate to be considered for the first time in this Court. Motions filed pursuant to this rule will be granted only for good cause shown.

(b) Judicial Notice. In an appropriate case, the Court may take judicial notice of an indisputable adjudicative fact.

(c) Remand for Factfinding. If an issue concerning an unresolved material fact may affect the Court’s resolution of the case, a party may request, or the Court may *sua sponte* order, a remand of the case or the record to the Court of Criminal Appeals. If the record is remanded, the Court retains jurisdiction over the case. **See Article 66(f)(3), UCMJ, 10 USC §866(f)(3) (2018)**. If the case is remanded, the Court does not retain jurisdiction, and a new petition for grant of review or certificate for review will be necessary if a party seeks review of the proceedings conducted on remand.

(d) Stipulation by the Parties. If an issue concerning an unresolved material fact may affect the Court’s resolution of the case, the parties may stipulate to a factual matter, subject to the Court’s approval.

(e) Other Means. Where it is impracticable to remand a case to the Court of Criminal Appeals, the Court may order other means to develop relevant facts, including the appointment of a special master to hold hearings, if necessary, and to make such recommendations to the Court as are deemed appropriate.

Rule 36(a) – Filing of Pleadings

(a) In General. Pleadings or other papers relative to a case shall be filed in the Clerk’s office, 450 E Street, Northwest, Washington, D.C. 20442-001, either in person, by mail, by third-party commercial carrier, **or by electronic filing**. **See Rule 37(b)(2). Documents submitted online must conform to the “Guidelines for Electronic Filings of Pleadings” available on the Court’s website.**

(b) Filing in Person. If a pleading or other paper is filed in person, such filing shall consist of delivery to a member of the Clerk’s office during normal business hours. See Rule 9(e).

(c) Filing by Mail. If a pleading or other paper is filed by mail, such filing shall consist of depositing the pleading or other paper with the United States Postal Service, with no less than first-class postage prepaid, properly addressed to the Clerk’s office. If a pleading or other paper is filed through a third-party commercial carrier, such filing shall consist of delivery to the

commercial carrier for delivery within 3 calendar days.

(d) Time of Filing. Pleadings or other papers shall be deemed to have been filed on the date they are delivered to the Clerk's office under subsection (b) or on the date they are mailed or delivered to a commercial carrier under subsection (c). See Rules 37(b)(1) and 39(e).

(e) Non-Compliant Pleadings. If any pleading or other paper is not filed or offered for filing in compliance with these rules or an order of the Court, the Court may issue an order to show cause, dismiss the proceeding, or return the proffered pleading or paper on its own motion or the motion of a party. See Rule 37(b)(1).

Rule 36B – Citations to Primary Authorities

Any reference to the Uniform Code of Military Justice or the Manual for Courts-Martial, United States, in any pleading or other paper filed with the Court, shall cite the relevant version of the statute, rule, or other provision, by date of edition.