

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

Rules Changes

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 9th day of March, 2023,

ORDERED:

That effective March 9, 2023, Rules 3A, 13(b), 13A, 15(b), 19(a)(7)(B), 21(b), 21(f), 24(b), 27(b), 36, 37(b)(2), 38(a), 39(a), and the Guidelines for Electronic Filing of Pleadings are promulgated as provided in the Attachment to this order (deletions appear with strikethrough and changes appear in bold typeface).

For the Court,

/s/

Malcolm H. Squires, Jr.
Clerk of the Court

Attachment

Rule 3A - Senior Judges

(a) With the Senior Judge's consent, and at the request of the Chief Judge, a Senior Judge may perform judicial duties with the Court if an active Judge of the Court is disabled or recused, ~~himself~~ or if there is a vacancy in an active judgeship on the Court. For the periods of time when performing judicial duties with the Court, a Senior Judge shall receive the same pay, per diem, and travel allowances as an active Judge. The periods of performance of judicial duties shall be certified by the Chief Judge and reported to the ~~Court Executive Clerk of the Court~~ **Clerk of the Court** who shall take appropriate steps so that the Senior Judge is paid in accordance with Article 142(e)(2), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 942(e)(2).

(b) In addition to the performance of judicial duties with the Court, a Senior Judge may, at the request of the Chief Judge and with the Senior Judge's consent, perform such other duties as the Chief Judge may request or the Court may direct. Such other duties may include, but are not limited to, service as a special master or as an adviser on Court operations, administration, and rules; representation of the Court at conferences, seminars, committee meetings, or other official or professional functions; coordination of or assistance with conferences being conducted by the Court; and assistance in the compilation of history or archives of the Court. A Senior Judge ~~shall~~ **may** not receive pay for the performance of such other duties with the Court but may be paid per diem and travel allowance to reimburse expenses incurred by the Senior Judge while performing such duties.

~~(c) Whether in the performance of judicial duties or other duties, a~~

~~Senior Judge shall be provided such administrative and secretarial assistance, office space, and access to the courthouse, other public buildings, court files, and related information, as the Chief Judge considers appropriate for the performance of those duties by the Senior Judge.~~

~~(d)~~ (c) The title of Senior Judge may not be used in any way for personal gain or in connection with any business activity, advertisement, or solicitation of funds. However, the title of a Senior Judge may be referred to in any professional biography or listing and may be used in connection with any judicial or other duties that the Chief Judge requests the Senior Judge to perform.

~~(e)~~ (d) No Senior Judge of the Court may engage in the practice of law in connection with any matter that involves an investigation or trial for any matter arising under the UCMJ or appellate review of any court-martial proceeding by a Court of Criminal Appeals, the United States Court of Appeals for the Armed Forces, or the Supreme Court of the United States.

~~(f)~~ (e) These rules shall apply to “senior judges” as defined by Article 142(e)(1), UCMJ, 10 USC § 942(e)(1), and are promulgated pursuant to Article 142(e)(5), UCMJ, 10 USC § 942(e)(5).

Rule 13(b) – Qualifications to Practice:

(b) It shall be a requisite to the admission of attorneys to the Bar of this Court that they be a member **in good standing** of the Bar of a ~~federal court or of the highest court of a State, the District of~~

Columbia, Territory, Commonwealth, or Possession of the United States and that their private and professional character shall appear to be good.

Rule 13A – Student Practice Rule

(c) Supervising Attorney Requirements. A supervising attorney must:

- (1) be an attorney of record in the case;
- (2) be a member in good standing of the Bar of this Court;
- (3) have been admitted to practice for a minimum of 2 years and have ~~appeared and argued in~~ at least 1 case before this Court or ~~appeared and argued in~~ at least 3 cases before state or federal appellate courts;
- (4) approve in writing the appearance by the law student and agree to supervise the student;**
- ~~(5)~~(4) not supervise more than 5 students at any one time;
- ~~(6)~~(5) appear with the student in any oral presentations before this Court;
- ~~(7)~~(6) read, approve, and sign all documents filed with this Court;
- ~~(8)~~(7) assume personal professional responsibility for the student's work in matters before this Court;
- ~~(8) be responsible to supplement the oral or written work of the student as necessary to ensure proper representation of the client;~~

~~(9) guide and assist the student in preparation to the extent necessary or appropriate under the circumstances;~~

~~(9)(10)~~ be available to consult with the client, **if applicable**;

and

~~(10)(11)~~ neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the services are rendered.

(d) Authorization and Certification.

(1) The party on whose behalf the student appears must consent to the representation by that student in writing.

~~(2) The supervising attorney must indicate in writing approval of the appearance by the law student and consent to supervise the student.~~

~~(3) The law student must be certified by the dean of the student's law school as being of good character and competent legal ability.~~

~~(2)(4)~~ Before commencing student representation in any case under this rule, the **prospective** supervising attorney ~~shall~~ **must** file a motion for leave to allow student representation in such case. The motion ~~should put forth~~ **must affirm** that the provisions of this rule have been met and that, in **the prospective** counsel's view, the case is an appropriate one for student representation. The written consent, approval,

and certification referred to above shall be attached to the motion. ~~A copy of the motion shall be served on opposing counsel, but no~~ **No** answer will be allowed except with leave of the Court. Once these documents are filed, the Court will decide, using its discretion on a case-by-case basis, whether to allow the student representation.

(e) Activities. Upon fulfilling the requirements of this rule, the student may enter an appearance in a case and:

(1) assist in the preparation of briefs and other documents to be filed in this Court, ~~but such briefs or documents must also be signed by the supervising attorney;~~ **and**

(2) participate in oral argument, but only in the presence of the supervising attorney; ~~and.~~

~~(3) take part in other activities in connection with the case, subject to the direction of the supervising attorney.~~

~~(f) Termination. The dean's certification of the student:~~

~~(1) shall remain in effect, unless sooner withdrawn, until the publication of the results of the first bar examination taken by such student following the student's graduation. For any student who passes that examination, the certification shall continue in effect until the date the student is admitted to the bar;~~

~~(2) may be withdrawn by the Court at any time; and~~

~~(3) may be withdrawn by the dean at any time.~~

~~(f)(g)~~ Exceptions.

~~(1) This rule does not apply to an appearance or an oral argument by a law student on behalf of an amicus curiae. See Rule 26.~~

~~(1)(2)~~ Nothing in this rule shall preclude the Government or any agency, firm, or organization from compensating a law student for services rendered under such rule.

~~(2)(3)~~ The Court retains the authority, on good cause shown, to establish exceptions to these procedures in any case. See Rule 33.

~~(h) Time for Filing. An amicus brief submitted under this Rule is not subject to the time limitation in Rule 26, but such brief shall be filed no less than 14 days before the scheduled date of oral argument. Both the appellant and the appellee may file a reply to such brief within 7 days of the filing thereof, subject to the limitations specified in Rule 24 (b) and (e).~~

Rule 15(b) – Disbarment and Disciplinary Actions

(b) Attorneys must report suspension, disbarment, or final disciplinary action in the bars of other courts to the Bar of this Court within 30 days following said action. Whenever a member of the Bar of this Court has been disbarred or suspended from practice in

any court of record, the Court ~~will~~ **must** enter an order **temporarily** 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.

Rule 19(a)(7)(b) – Time Limits

(B) Other Appeals. Where a petition has been granted in all other appeal cases, **to include cases returned by mandate from the United States Supreme Court**, ~~and briefs have been ordered,~~ **the Clerk of Court will issue a briefing order within 30 days to provide the appropriate timing and sequence of filings** ~~an appellant's brief shall be filed in accordance with Rule 24 no later than 30 days after the date of the order granting the petition. 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.~~

Rule 21(b) – 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)~~ **and** shall include an Appendix containing a copy of the decision of the Court of Criminal Appeals, unpublished opinions cited in the brief, relevant extracts of rules and regulations, and shall conform to the provisions of

Rules ~~24(b)~~, 35A, and 37. Unless authorized by Order of the Court or by motion of a party granted by the Court, the supplement and any answer thereto may ~~contain no more than~~ **not exceed** 9,000 words ~~or 900 lines of text is also acceptable~~. Any reply to the answer shall ~~shall~~ **may** not exceed 10 pages, ~~except that a reply containing 4,000~~ **4,500** words ~~or 400 lines of text is also acceptable~~. The supplement shall contain:

Rule 21(f) – Supplement to Petition for Grant of Review

(f) An appellant ~~or counsel for an appellant~~ may move to withdraw a his petition at any time by filing a motion pursuant to Rule 30. Such a motion shall ~~must~~ **must** substantially comply with the requirements of Rule ~~for Courts Martial 1110~~, and be accompanied by a written request for withdrawal that includes the following:

Rule 24(b) – Form, Content, and **Page Type-Volume** Limitations

(b) **Page Type-Volume** limitations. Unless otherwise authorized by order of the court or by motion of a party granted by the Court (*see* Rule 30), or by Rule 24(c), the ~~page~~ **type-volume** 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/respondents shall not exceed 30 pages;~~
- ~~(3) Replies of the appellants/petitioners shall not exceed 15~~

pages

(1) A brief of the appellants/petitioners and an answer of the appellees/respondents may not exceed 14,000 words.

(2) A reply may not exceed more than half of the words (7,000) specified in Rule 24(b)(1).

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

~~(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~~

~~it 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~~

(c)(d)-Certificate of Compliance. A brief submitted under Rule 24(eb) must include a certificate stating that **the number of words in the brief** ~~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 in the brief.~~

~~(d)~~(e) Form of Certificate of Compliance.

CERTIFICATE OF COMPLIANCE WITH RULE 24~~(d)~~(b)

***This brief complies with the type-volume limitation of Rule 24(b) because:

~~[The principal brief may not exceed 14,000 words or 1,300 lines; a reply or amicus brief may not exceed 7,000 words or 650 lines]~~

This brief contains [state the number of] words, ~~or This brief contains [state the number of] lines of text.~~

~~(e)~~(f) Joint Appendix. The appellant or petitioner shall be responsible for filing eight copies of a joint appendix, which shall be a separate document filed contemporaneously with the brief.

(2) Format. The joint appendix will be produced on 8.5 by 11 inch white paper, be bound in a manner that is secure and does not obscure the text, and will permit the contents to lie reasonably flat when open. The cover must be white and contain the caption of the case and docket number. The cover shall be followed by a table of contents. Pages in the joint appendix shall be sequentially numbered in a manner that does not obscure any page numbers reflected in the record of trial. If the joint appendix consists of less than 100 pages, it may be reproduced by single-sided or double-sided copying. If it consists of 100 pages or more, the joint appendix shall use double-sided copying. **Audio and video recordings may be filed electronically or produced on a CD or DVD. See the**

Guidelines for Electronic Filing of Pleadings § 1(e). Classified material or matters under seal that are to be included in a joint appendix shall be submitted in a separate volume, clearly designated as containing classified or sealed material. Classified material will be handled in accordance with Rule 12.

Rule 27(b) – Petition for Extraordinary Relief, Writ-Appeal Petition,
Answer, and Reply

(b) Writ-Appeal.

(1) Writ-Appeal Petition, Answer, and Reply. A writ-appeal petition for review of a decision by a Court of Criminal Appeals acting on a petition for extraordinary relief shall be filed by an appellant, together with any available record, including the items specified in subsection (a)(2)(C), within the time prescribed by Rule 19(e); ~~The petition must shall~~ conform in length to Rule 24(b), shall be accompanied by proof of service on the appellee in accordance with Rule 39, and shall contain the information required by subsection (a)(2)(B). The appellee ~~shall~~ **may** file an answer no later than 10 days after the filing of the writ-appeal petition. A reply may be filed by the appellant no later than 5 days after the filing of the appellee’s answer. *See* Rules 28(b)(2) and (c)(2). ~~Upon the filing of pleadings by the parties, the Court may grant or deny the writ-appeal petition or take such other action as the circumstances may require.~~

(2) Priority Writ-Appeal for Article 6b(e) Writs. To the extent practicable, review of any decision of the Courts of Criminal Appeals on a petition for mandamus, pursuant to Article

6b(e)(3)(C), UCMJ, 10 USC § 806b(e)(3)(C), will have priority over all other proceedings before this Court.

Rule 36 – Filing of Pleadings

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

(f) Pro Se Filings. A pro se filing is a filing that is made by a person on his or her own behalf and that is not signed by at least one counsel who is participating in the case. See Rule 38(a). Pro se filings must include a statement indicating whether the filer is currently represented by designated military or other counsel. A person who is represented by counsel may make a pro se filing only if leave to file is granted by the Court for good cause shown. To establish good cause, a person who is represented by a counsel who has entered a notice of appearance must explain why representation by that counsel is inadequate. The Court and its employees cannot give legal help or advice to any person. A person making a pro se filing must follow all the Court's Rules of Practice and Procedure.

Rule 37(b)(2) – Printing, Copying, and Style Requirements

(2) Except for electronically filed pleadings **and audio and video recordings**, an original and 7 legible copies of all pleadings or other ~~papers~~ **documents** relative to a case shall be filed. *See* Rule 35A concerning documents which contain classified information.

Rule 38(a) – Signatures

(a) General. Except for documents filed pro se 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. An electronic filing shall contain the digital signature of the attorney of record.

Rule 39(a) – Service of Pleadings

(a) In General. At or before the filing of any pleading or other paper relative to a case ~~in the Clerk’s office~~, a copy thereof shall be served on

all counsel of record, including amicus curiae counsel, in person, by mail, by third-party commercial carrier, or by electronic means ~~if the party being served consents. See Rule 16(b).~~ When a party is not represented by counsel, service shall be made on such party in person, by mail, or by third-party commercial carrier. When reasonable, considering such factors as the immediacy of the relief sought, distance, and cost, service must be at least as expeditious as the manner used to file the pleading or other paper with the Court. *See* Rule 36.

Guidelines for Electronic Filing of Pleadings

e. The Joint Appendix to the brief, **to include copies**, will be filed in paper form only ~~with the required number of paper copies rather than electronically.~~ **Audio and video recordings are exempt from this paper requirement for the Joint Appendix to the brief.** If the appellant or petitioner files the brief electronically, the Joint Appendix will be filed on the same day the brief is filed ~~electronically.~~