

exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 321. For additional information contact the system manager.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID DoD-2009-OS-0061]

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

**AGENCY:** Department of Defense.

**ACTION:** Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces and implementation of a new electronic filing program.

**SUMMARY:** This notice announces the following proposed changes to Rules 19(a)(5), 20(e), 21(c)(2), 37(a), 37(b)(2), and 40(b)(3) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces and implementation of a new electronic filing program for public notice and comment. New language is in bold print. Language to be removed is within brackets.

**DATES:** Comments on the proposed changes must be received within 30 days of the date of this notice.

**ADDRESSES:** You may submit comments, identified by docket number and/or

Regulatory Information Number (RIN) and title by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

- *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 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://www.regulations.gov> as they are received without change, including personal identifiers or contact information.

#### FOR FURTHER INFORMATION CONTACT:

William A. DeCicco, Clerk of the Court, telephone (202) 761-1448.

Dated: April 24, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Liaison Officer.*

#### Department of Defense

Rule 19(a)(5):

(A) In all cases where the petition is filed by counsel, a supplement to the petition establishing good cause in accordance with Rule 21 shall be filed contemporaneously with the petition. Motions for enlargement of time to file the supplement, while disfavored, will be granted for good cause shown. An appellee's answer to the supplement to the petition, except for cases on appeal by the United States under Article 62, UCMJ, 10 U.S.C. § 862 (2000), may be filed no later than 20 days after the filing of the supplement. *See* Rule 21(e). A reply may be filed by the appellant no later than 5 days after the filing of appellee's answer. An appellee's answer to the supplement in a case under appeal by the United States under Article 62, UCMJ, may be filed no later than 10 days after the filing of the supplement; an appellant may file a reply no later than 5 days after the filing of appellee's answer.

(B) In all cases where the petition is filed by the appellant, a supplement to the petition shall be filed by counsel no later than 20 days after the issuance by the Clerk of a notice of docketing of the petition. *See* Rule 10(c). An appellee's answer to the supplement to the petition and an appellant's reply may be filed in accordance with the time limits contained in Rule 19(a)(5)(A).

[(A) *Article 62, UCMJ, appeals.* In cases involving a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 USC § 862, a supplement to the

petition establishing good cause in accordance with Rule 21 shall be filed no later than 20 days after the issuance by the Clerk of a notice of docketing of such a petition for grant of review. *See* Rule 10(c). An appellee's answer to the supplement to the petition for grant of review 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.

(B) *Other appeals.* In all other appeal cases, a supplement to the petition establishing good cause in accordance with Rule 21 shall be filed no later than 30 days after the issuance by the Clerk of a notice of docketing of a petition for grant of review. *See* Rule 10(c). An appellee's answer to the supplement to the petition for grant of review may be filed no later than 30 days after the filing of such supplement. *See* Rule 21(e). A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.]

*Comment:* The changes will accelerate the case disposition process. The accelerated time limits are accompanied with a provision to obtain extensions for good cause shown to address concerns that there may be circumstances where additional time may be justified.

Rule 20(e):

(e) Upon issuance by the Clerk under Rule 10(c) of a notice of docketing of a petition for grant of review filed personally by an appellant, counsel for the appellant shall file a supplement to the petition in accordance with the applicable time limit set forth in Rule 19(a)(5)[(A) or](B), and the provisions of Rule 21.

*Comment:* This change is a conforming amendment to bring Rule 20(e) into alignment with the change in Rule 19(a)(5).

Rule 21(c)(2):

(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] 20 days after the filing of the supplement; *see* Rule 21(e); (remainder of paragraph is unchanged).

*Comment:* This change conforms Rule 21(c)(2) to the change in Rule 19(a)(5).

Rules 37(a) and 37(b)(2):

(a) Printing. Except for records of trial and as otherwise provided by Rules 24(f) and 27(a)(4) or any order of the Court regarding the electronic filing of pleadings, all pleadings and 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.

(b)(2) Except for electronically filed pleadings, an original and 7 legible copies of all pleadings or other papers relative to a case shall be filed.

*Comment:* These changes are proposed to account for orders of the Court pertaining to electronic filing of pleadings.

Rule 40(b)(3):

(3) *Time allowed.* Each side will normally be allotted [30] 20 minutes to present oral argument.

*Comment:* This change is proposed to bring the rule into conformance with recent court practice.

### Proposed Order on Electronic Filing

Effective (date), the following pleadings may be filed on paper or electronically in accordance with the guidelines attached to this Order:

(a) Petitions for grant of review filed by counsel under Rule 18(a)(1);

(b) Supplements to petitions for grant of review filed under Rule 21;

(c) Answers (including 10-day letters to the Clerk) and replies filed under Rule 21(c); and

(d) Motions filed under Rule 30 that concern the pleadings described in paragraphs (a)-(c), and replies thereto, when such motions are filed prior to the Court's action granting or denying a petition for grant of review.

It is further ordered that the Orders pertaining to electronic filing issued on May 8, 2003 (58 M.J. 282) and August 5, 2004 (60 M.J. 308) are hereby rescinded, effective (date).

### Proposed Guidelines for Electronic Filing of Pleadings

#### 1. Scope

The United States Court of Appeals for the Armed Forces adopts the following provisions to govern the filing of the documents described in paragraphs (a)-(d) of the order (hereinafter collectively referred to as "petition documents"):

a. This Order applies to all petition documents filed electronically on or after (date). An appendix to the supplement to the petition for grant of review (containing the decision of the Court of Criminal Appeals, matters submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982) and other required matter) is included in this requirement to be filed electronically unless it consists of more than 50 pages. In such a case, the appendix may be submitted on paper and the supplement submitted electronically. In lieu of submitting an appendix in excess of 50 pages on paper, counsel may submit it in a CD or DVD format and note in the supplement

that it is being filed in that format under separate cover. Record matters in the form of video media on CD-ROM or DVD may be submitted in a separate volume of the appendix that is filed in accordance with Rule 21(b).

b. A petition for grant of review filed personally by an appellant shall be filed on paper as provided under Rule 20(a). All subsequent petition documents filed by counsel in such a case may be filed on paper or electronically except as provided in section 1.c of these guidelines.

c. This Order does not provide for electronic filing of documents concerning other matters, such as documents concerning certified cases; mandatory review cases; writ-appeal petitions; petitions for extraordinary relief; petitions for new trial; and petitions for reconsideration. In a case arising under Article 67(a)(3), UCMJ, (petitions for grant of review), the Order permits electronic filing only with respect to documents filed before the Court issues an order granting or denying review.

#### 2. Electronic Filing Address

Counsel shall file petition and motion documents at the following e-mail address: (to be filled in)

@armfor.uscourts.gov

For questions or help concerning the electronic filing of pleadings, counsel should contact the Clerk's Office at (202) 761-1448.

#### 3. Procedure

a. The electronic filing of a petition document shall be deemed filed as of the date and time of the transmission of the electronic mail message.

b. The electronic mail message shall contain the following in the subject block: (1) The name of the case; (2) the docket number if a docket number has been assigned; and (3) the words "electronic filing." A description of what is being attached will be included in the body of the electronic mail message.

c. The pleading shall be attached to the electronic mail message in Portable Document Format (PDF), and, when printed, shall be in compliance with the Rules of Practice and Procedure of the Court.

d. Counsel shall send an electronic copy of the message and all attachments to opposing counsel to accomplish service of the pleading under Rule 39. This may be accomplished by listing opposing counsel as a "cc" recipient of the electronic message.

e. The pleading attached to an electronic filing shall contain the conformed signature ("/s/") or digital

signature of the attorney of record. This will comply with Rule 38.

f. If a pleading is filed electronically in accordance with this Order, the party is not required to prepare and file printed copies under Rules 37(a) and 37(b)(2). The Court will send a reply electronic message to the sender indicating receipt of the electronic filing.

g. Classified material and material under seal will not be filed electronically. If such matters need to be filed, they will be submitted to the Court on paper as a supplemental filing to the document in which they would otherwise appear. In such cases, counsel will include in the text of the electronic mail message a notation that classified or sealed material is being separately submitted. The classified or sealed material will be appropriately packaged, marked and delivered, and will include a notation that it accompanies an electronic filing in the case. All classified material will be handled in accordance with Rule 12.

h. Counsel must refrain from including and shall redact the following personal data identifiers from documents filed with the Court:

- Social security numbers
- Names of minors
- Dates of birth
- Financial account numbers
- Home addresses

i. Upon the entry of an order granting or denying an electronically filed petition for grant of review, the Clerk will electronically transmit a copy of the order to counsel.

*Comment:* Appellate courts are increasingly providing for electronic filing of pleadings. This proposal will permit electronic filing of pleadings at the petition stage of cases before the Court. By making the program optional, the rules provide for circumstances in which counsel may find it necessary to file on paper.

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

[Docket ID USAF-2009-0028]

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to delete a System of Records.

**SUMMARY:** The Department of the Air Force proposes to delete a system of