

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At that time the Board will examine the substance, interrelationships, and the U.S. national security implications of one critical area identified and tasked to the Board by the Secretary of Defense, Deputy Secretary of Defense, and Under Secretary of Defense for Acquisition and Technology. The subject area is: DoD Responses to Transnational Threats. The period of study is anticipated to culminate in the formulation of specific recommendations to be submitted to the Secretary of Defense, via the Under Secretary of Defense for Acquisition and Technology, for his consideration in determining resource policies, short- and long-range plans, and in shaping appropriate implementing actions as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 14, 1997.

**L.M. Bynum,**

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

[FR Doc. 97-13104 Filed 5-19-97; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Defense Science Board Task Force on Advanced Modeling and Simulation for Analyzing Combat Concepts in the 21st Century**

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Advanced Modeling and Simulation for Analyzing Combat Concepts in the 21st Century will meet in closed session on May 21-22, 1997 at Kirtland AFB, New Mexico. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology

on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address modeling and simulation capabilities required for analyzing concepts for 21st century military combat operations. These capabilities should encompass the breadth of warfare from strategic to individuals fighting afoot for all phases of military operations (Air, Land, Sea, Information, Communications).

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c) (1) (1994), and that accordingly this meeting will be closed to the public.

Dated: May 14, 1997.

**L.M. Bynum,**

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

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Defense Science Board Task Force on Stealth Technology and Future S&T Investments**

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Stealth Technology and Future S&T Investments will meet in closed session on May 16, June 3-4, and July 8-9, 1997 at Science Applications International Corporation, 4001 N. Fairfax Drive, Arlington, Virginia. In order for the Task Force to obtain time-sensitive classified briefings, critical to the understanding of the issues, these meetings are scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will explore the relationships between low observable and electronic warfare technologies in providing future weapon system survivability.

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, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5

U.S.C. § 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: May 14, 1997.

**L.M. Bynum,**

*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 15(f), 8(f), 19 (d) and (e), 25, and 27 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 15**

*Rule 15. Disciplinary Action*

Revise Subsection (f) as Follows

(f)(1) (as text presently is in current Rule 15(f)).

(f)(2) [new] 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 judge participating.

**Proposed Revisions to Rules 8(f), 19 (d) and (e), 25 and 27**

*Rule 8. Parties*

Amend Rule 8(f) to read as follows:

(f) The party or parties filing a petition for extraordinary relief with the

Court will be deemed the petitioner or petitioners. All parties to the proceeding below other than the petitioner or petitioners will be deemed respondents for all purposes.

**Rule 19. Time Limits**

Delete from Rule 19(d) the phrase "with a supporting brief and any available record." Add the sentence, "The Court will, whenever practicable, give priority to such cases."

Delete from Rule 19(e) the phrase, "together with any available record" and the sentence, "Unless it is filed in propria persona, such writ appeal petition shall be accompanied by a supporting brief." Add the sentence, "The Court will, whenever practicable, give priority to such cases."

**Rule 25. When Briefs Are Required**

Delete the phrase "petitions for extraordinary relief and writ appeal petitions."

**Rule 27. Petition for Extraordinary Relief, Writ Appeal Petition, Answer, and Reply**

(a) Petitions for Extraordinary Relief

(1) A petition for extraordinary relief shall be filed within the time prescribed by Rule 19(d), shall conform in length to Rule 24(b), and, in accordance with Rule 39, be accompanied by proof of service on all respondents. The petitioner shall also provide a copy of the petition to any trial or appellate military judge whose decision, judgment, or order is the subject of the petition.

(2)(A) The petition for extraordinary relief shall be captioned "In Re [name of petitioner]."

(B) The petition shall contain:

(i) A history of the case including whether prior actions or requests for the same relief have been filed or are pending in this or any other forum and the disposition or status thereof;

(ii) the reasons relief has not been sought from the appropriate Court of Criminal Appeals, if that is the case (see Rule 4(b)(1));

(iii) the relief sought;

(iv) the issues presented;

(v) the facts necessary to understand the issues presented by the petition;

(vi) the reasons why the writ should issue;

(vii) the mailing address, telephone and facsimile telephone numbers of each respondent.

(C) The petition shall include copies of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(D) Service on Judge Advocate General. The Clerk shall forward a copy of the petition to the Judge Advocate General of the service in which the case arose.

(3) Denial; Order Directing Answer; Briefs; Precedence.

(A) The Court may deny the petition without answer. Otherwise, it may order the respondent or respondents to answer within a fixed time. The Court may also take any other action deemed appropriate, including referring the matter to a special master, who may be a military judge or other person, to make further investigation, to take evidence, and to make such recommendations to the Court as are deemed appropriate. See *United States v. DuBay*, 17 U.S.C.M.A. 147 (1967).

(B) When the Court directs that an answer be filed, two or more respondents may answer jointly.

(C) The Court may invite or order any trial or appellate military judge whose decision, judgment or order is the subject of the petition to respond or may invite an amicus curiae to do so. A trial or appellate military judge may request permission to respond but may not respond unless invited or ordered to do so by the Court.

(D) The court may set the matter for hearing. However, the Court may grant or deny the relief sought or issue such other order in the case as the circumstances may require on the basis of the pleadings alone.

(E) If further briefing or oral argument is required, the Clerk shall advise the parties and, when appropriate, any judge or judges or amicus curiae.

(4) Electronic message petitions.

The Court will not docket petitions for extraordinary relief submitted by means of an electronic message or by facsimile without prior approval of the Clerk.

(b) 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 by subsection (a)(2)(C), within the time prescribed by Rule 19(e), shall be accompanied by proof of service on the appellee, and shall contain the information required by subsection (a)(2)(B). The appellee shall 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.

**Rules Advisory Committee Comment on Proposed Rule 15(f)**

The proposed revision to Rule 15(f) establishes an alternative procedure for the initiation of a disciplinary action that would apply when a member of the Bar is convicted by court-martial or by other court of competent jurisdiction and the conviction has become final. If the conviction evidences conduct that constitutes a failure to comply with the ABA Model Rules of Professional Conduct, the Court may, *sua sponte*, commence a disciplinary action by issuing an order to show cause why the member of the Bar should not be disbarred. The proposed revision allows the Court, at its discretion, to avoid formal investigations in cases where a record has already been developed through a judicial criminal process and there has already been a conviction that has become final.

The rule is consistent with the prior practice of the Court. In *In Re Trimper*, Special Docket No. 89-04, the Court issued such an order to show cause without first referring the matter to the Investigations Committee under the current provisions of Rule 15(b)-(e). The order was issued to an active duty military lawyer, after the Court affirmed his court-martial conviction for wrongful use of drugs.

**Rules Advisory Committee Comment on Proposed Revisions to Rules 8(f), 19(d) and (e), 25 and 27**

The purpose of the proposed revisions to Rules 8(f) and 27 is to clarify, in the context of extraordinary writ practice, the identities of petitioners and respondents and the responsibilities of such parties. Such revisions also clarify the roles, in responding to petitions for extraordinary relief, of trial and appellate military judges whose decisions, judgments, or orders are at issue. Finally, the revisions seek to make these rules conform, as closely as possible, to recent revisions of Fed. R. App. P. 21 (Writs of Mandamus and Prohibitions, and Other Extraordinary Writs), effective December 1, 1996, See 924 F. Supp. No. 3 at CCXXVII (July 1, 1996).

The revision to Rule 8(f) makes it clear that any party below, who is not the moving party, shall be deemed a respondent. See Fed. R. App. P. 21(a)(1). The proposed revision, however, is not intended to preclude a respondent from being realigned as a petitioner in an appropriate case.

As revised, Rule 27(a)(1) requires that the petitioner provide a copy of the petition to any trial or appellate military judge whose decision, judgment, or order is the subject of the petition. The purpose of this requirement is to alert the judge or judges to the filing of the petition, a necessity because members of the lower court are not treated as respondents and are therefore not served. This revision conforms to revised Fed. R. App. P. 21(a)(1).

As revised, Rule 27(a)(2)(A) requires that the caption of the petition merely identify the moving party rather than the name of the judge or judges whose order is subject to challenge, as has been the practice in some cases. In this respect, the amendment clarifies that such judge or judges are not to be considered or treated as respondents.

Revised Rule 27(a)(2) (B) and (C) modifies those subsections to conform more closely to Fed. R. App. P. 21(a)(2) (B) and (C) in connection with the required contents of a petition for extraordinary relief. In substance, the revision does not deviate substantially from the Court's present Rule 27(a)(1).

In contrast with the Court's present Rule 27(a)(3), the revision adopts the federal practice of dispensing with separate briefs accompanying petitions for extraordinary relief. The submission of such multiple pleadings fosters redundancy and is inconsistent with the time-sensitive context in which such petitions are typically filed. Any necessary legal argument is properly contained in the explanation of why the writ should issue in subsection (a)(2)(B). In the event the Court deems supplemental briefing necessary following the submission of the petition and any answer, the revised rule affords ample authority to direct such briefings. See draft Rule 27(a)(3) (A) and (E). Should this revision be adopted, Rule 19(d) which is captioned "Time Limits" will have to be revised to delete reference to the submission of supporting briefs. References to submission of "any available record" in these rules is also unnecessary as such a requirement is imposed by Rule 27(a)(2)(C), as revised. Rule 25, which is captioned "When Briefs Are Required," will likewise have to be revised to omit reference to petitions for extraordinary relief.

Revised Rule 27(a)(3) has been drafted to conform more closely to Fed. R. App. P. 21(b). Subsections (a)(3) (B) and (E) are new. Subsections (a)(3)(C) clarifies the responsibilities of a trial or appellate military judge or judges whose decision, judgment, or order is the subject of a petition for extraordinary relief. It anticipates that the views of such judge

or judges will normally have been stated on the record or in an order in the usual course and that, as in a direct appeal, the lower court's interest in defending such an order will ordinarily be fulfilled by the prevailing party. Accordingly, in language adopted from Fed. R. App. P. 21(b)(4), it makes clear that such judge or judges are not expected to respond to a petition and have no right to respond except in the extraordinary instance where invited or ordered to do so by the Court. The Committee recognizes that there may be instances where the respondent chooses not to defend the decision of the trial or appellate military judge whose decision is the subject of the petition. *United States v. Harper*, 729 F. 2d 1216, 1217 (9th Cir. 1984) (noting refusal by government to defend, in a mandamus proceeding, order of district court). In such instances, the proposed rule permits that judge to request permission to respond on his own behalf. The Court has discretion whether to permit such a response by or on behalf of a judge.

It is the view of the Rules Advisory Committee that, due to the mobility of sitting military trial judges, as well as former military appellate judges, the Judge Advocates General are better situated than the Court to ensure that such judges are promptly notified of orders granting or denying extraordinary relief. Accordingly, in contrast with Fed. R. App. P. 21(b)(7), the revised Rule makes no provision for such service by the Court. See Rule 43(b).

As revised, Rule 27(b) eliminates, for the reasons set out above, the requirement that separate briefs accompany writ appeal petitions. As in the case of petitions filed in the first instance, writ appeal petitions should ordinarily contain ample legal analysis to permit disposition without further briefing. Should this revision be adopted, Rules 19(e) and 25 will have to be amended to omit reference to the submission of briefs in connection with writ appeal petitions.

Rule 27(a)(4) has been revised to preclude the submission of petitions for extraordinary relief by electronic means, including facsimile, except by authorization of the Clerk. When counsel in the field find it necessary to submit, by electronic means, a petition for immediate transmission to the Court, it should normally be transmitted to the Chief of the Appellate Defense Division or the Appellate Government Division, as appropriate, within the Office of the Judge Advocate General of petitioner's service, with copies to all named respondents and to any trial or appellate military judge whose decision, judgment, or order is the subject of the

petition, in accordance with subsection (a). Upon receipt, the appropriate Appellate Division will reproduce the submission and it will be filed by an appellate counsel appointed within such office in accordance with Rule 37.

Finally, Rules 19(d) and 19(e) have been amended to afford a preference in disposition to petitions for extraordinary relief and writ appeal petitions.

\* \* \* \* \*

**DATES:** Comments on the proposed changes must be received by July 21, 1997.

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

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Granahan, Clerk of Court, telephone (202) 761-1448 (x600).

Dated: May 14, 1997.

**L.M. Bynum,**

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

[FR Doc. 97-13110 Filed 5-19-97; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Grant of Exclusive License

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Correction.

**SUMMARY:** In previous **Federal Register** notice (Vol. 62, No. 65, pages 16143-16144) Friday, April 4, 1997 make the following correction:

On Page 16143, at the bottom of the column chart (under the country titled "Portugal"), add the following Country, Application No., and Filed date:

Country	Application No.	Filed
Spain ..	(EP) 94926514.4	Aug. 17, 1994.

The above information was inadvertently omitted from the publication.

**ADDRESSES:** U.S. Army Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180-6199.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Mr. Phil Stewart (601) 634-4113.

**SUPPLEMENTARY INFORMATION:** None.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 97-13140 Filed 5-19-97; 8:45 am]

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