

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 (italicized) to Rules 10, 26, 43 (new), 43A (new), and 44 of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment:

Rule 10. Docket

* * * * *

(d) Entry of Judgment. The Clerk shall prepare, sign, *date* and enter the *judgment immediately upon the filing of the opinion of the Court*. If a *judgment* is rendered without an opinion, the Clerk shall prepare, sign, *date* and enter *such judgment in an order* following instruction from the Court. The Clerk shall, on the date a *judgment* is entered, distribute to all parties and the Judge Advocate General of the service in which the case arose a copy of the *judgment and opinion*, if any, or of the order if no opinion was written. See Rule 43.

Rule 26. Amicus Curiae Briefs

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(e) [new] A member of the Bar of the Court who represents an *amicus curiae* and is authorized to file a brief under paragraph (a) of this rule may file a motion for leave to have a law student enter an appearance on behalf of the *amicus curiae*. To be eligible to participate under this rule, a law student must be acting under the attorney's supervision and the attorney and the law student must substantially comply with the requirements of Rule 13A (b)(1)–(5) and (d)(1)–(3). Argument by a law student granted permission to appear on behalf of an *amicus curiae* may be requested by motion filed under Rule 30.

Rule 42. Entry of Judgment [New]

(a) *Immediately upon the filing of an opinion of the Court, the Clerk shall prepare, sign, date and enter the judgment. The notation of a judgment in the docket constitutes entry of the judgment. On the date judgment is entered, the Clerk shall distribute to all parties and the Judge Advocate General of the service in which the case arose a copy of the opinion and judgment. See Rule 10(d).*

(b) *If a judgment is rendered without an opinion, the Clerk shall prepare, sign, date and enter such judgment in an order following instruction from the*

Court. Notation of such order in the docket constitutes entry of the judgment and the effective date of the judgment is the date of that order. On the date such order is entered, the Clerk shall distribute to all parties and the Judge Advocate General of the service in which the case arose a copy of the order. See Rule 10(d).

Rule 43A. Issuance of Mandate [Old Rule 43 as changed]

(a) *The mandate of the Court shall issue 7 days after the expiration of the time for filing a petition for reconsideration under Rule 31(a) unless such a petition is filed or the time is shortened or enlarged by order. A certified dated copy of the judgment and a copy of the opinion of the Court, if any, shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for reconsideration shall stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.* In any case, the Court may order the mandate to issue forthwith.

(b) The effective date of any order shall be the date of that order, and no mandate shall issue. The Clerk *shall distribute* copies of all such orders to *all parties* and the Judge Advocate General of the service in which the case arose.

Rule 44. Judicial Conference

[Delete from paragraph (a) the “(a)” and the section title “Purpose” and the second sentence, and delete paragraph (b) in its entirety to read as follows:]

There shall be held annually, at such time and place as shall be designated by the Court, a conference for the purpose of considering the state of business of the Court and advising on ways and means of improving the administration of military justice.

Rules Advisory Committee Comment on Proposed Rules 10, 43, and 43A

The Committee notes the absence in the Court's rules of any provision for the entry of a judgment and the distribution of a copy of the judgment to all parties when the Court issues an opinion. This omission makes it presently impossible to determine with confidence the beginning of the 90-day period within which a petition for a writ of certiorari may be filed under Supreme Court Rule 13.1. To remedy this situation, the Committee has drafted recommended changes to Rule 10(d) (Entry of final decision) and Rule 43 (Issuance of Mandates) as well as a new Rule (Entry

of Judgment) which reflects the relevant provisions of Rules 36 and 41 of the Federal Rules of Appellate Procedure (FRAP).

The Court's current practice differentiates between two types of case dispositions when an opinion is issued: (1) opinions which finally dispose of a case by affirmance or reversal, in whole or in part, or the lower court's decision are followed as a “mandate” of the Court issued under current Rule 43; and (2) opinions in which a case is remanded to the lower court or to a convening authority or court-martial for further interlocutory proceedings are followed by a “Finality Order” or “Because Order” which is issued in lieu of a mandate. The Committee recommends that this distinction and practice be discontinued and that a judgment and mandate be issued in all cases in which an opinion is filed, since the present practice departs for no reason from that of the geographical circuits. Indeed, the Committee has determined that no matter what type or kind of dispositive action a court of appeals directs in an opinion in a criminal case, a judgment document is prepared and entered upon the filing of the opinion of the court under FRAP 36, and a mandate of the court is issued separately as required by FRAP 41.

The Committee considers it appropriate to promulgate the recommended changes in order to conform the Court's practice to that of the other courts of appeals and to remove the present uncertainty as to when the 90-day period begins to run for filing a petition for a writ of certiorari.

Rules Advisory Committee Comment on Proposed Rule 26

The Court has previously allowed students to appear on behalf of an *amicus curiae* on an ad hoc basis. Although the Court will continue to do so, the rule has been amended to provide some guidance to those seeking leave of court to have law students appear in this capacity. While literal compliance with the requirements for student practice on behalf of parties is not necessarily, the rule reflects a desire to limit *amicus* participation to students who have completed a substantial portion of their legal studies and are undertaking representation with appropriate supervision from a member of the Bar of this Court. Only law students who substantially comply with the requirements of Rule 13A(b) (1)–(5) and who are under the supervision of attorneys who substantially comply with Rule 13A(d) (1)–(3) will be

considered eligible for participation under this rule.

Rules Advisory Committee Comment on Proposed Rule 44

The purpose of the proposed rule change is to conform the rule more closely to the Court's practice. Since the Court has not conducted a Judicial Conference other than in the context of the Homer Ferguson Conference, and has taken to referring to that annual proceeding as its Judicial Conference, no purpose is served by distinguishing between the two. In addition, the list of invitees currently set out in paragraph (b) is unnecessary.

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DATE: Comments on the proposed changes must be received by February 14, 1997.

ADDRESS: Forward written comments 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: December 10, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96-31756 Filed 12-13-96; 8:45 am]

BILLING CODE 5000-04-M

Department of the Army

Military Traffic Management Command Rules and Accessorial Services Governing the Movement of Department of Defense Freight Traffic by Motor or Railroad Carriers (Request for Carrier Industry Comments)

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), for the Department of Defense, is updating MTMC Freight Traffic Rules Publication (MFTP) No. 1A for transport of military freight by motor carriers and MFTRP No. 10 for railroads and requests that carriers submit beneficial suggestions and comments for needed changes, additions, and enhancements. MTMC will consider carrier input received at Headquarters, MTMC, ATTN: MTOP-T-SR, by January 20, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Julian Jolkovsky, Headquarters, Military Traffic Management Command, ATTN: MTOP-T-SR, 5611 Columbia Pike, Falls Church, VA 22040-5050 or

phone (703) 681-3440, fax (703) 681-7687, e-mail jolkovsj@baileysemh5.army.mil.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer.

[FR Doc. 96-31829 Filed 12-13-96; 8:45 am]

BILLING CODE 3710-08-M

Notice of Intent To Grant an Exclusive or Partially Exclusive License to Micromet Instruments Inc.

AGENCY: U.S. Army Research Laboratory.

ACTION: Notice of intent.

SUMMARY: In compliance with 37 CFR 404 et seq., the Department of the Army hereby gives notice of its intent to grant to Micromet Instruments Inc., a corporation having its principle place of business at 7 Wells Avenue, Newton Centre, MA, 02159; an exclusive or partially exclusive license under U.S. Patent 5,210,499, issued 11 May 1993, entitled "In-Situ Sensor Method and Device". Anyone wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL-CS-TT/Bldg. 459, Aberdeen Proving Ground, Maryland 21005-5425, Telephone: (410) 278-5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer.

[FR Doc. 96-31830 Filed 12-13-96; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education

AGENCY: Department of Education.

ACTION: Request for comments on agencies applying to the Secretary for Initial Recognition or Renewal of Recognition.

DATES: Commentors should submit their written comments by January 30, 1997 to the address below.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and Eligibility Determination Division, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3915 ROB-3, Washington, DC 20202-

5244, telephone: (202) 708-7417.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS:

The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition. All comments received in response to this notice will be reviewed by Department staff as part of its evaluation of the agencies' compliance with the criteria for recognition. In order for Department staff to give full consideration to the comments received, the comments must arrive at the address listed above not later than January 30, 1997. Comments must relate to the Secretary's Criteria for the Recognition of Accrediting Agencies. Comments pertaining to agencies whose interim reports will be reviewed must be restricted to the concerns raised in the Secretary's letter for which the report is requested.

The National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet June 16-18, 1997 in Washington, D.C. All written comments received by the Department in response to this notice will be considered by both the Advisory Committee and the Secretary. A subsequent Federal Register notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the Advisory Committee on the agencies being reviewed. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

The following agencies will be reviewed during the June 1997 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies and Associations

Petition for Initial Recognition—

Planning Accreditation Board

(requested scope of recognition: The