

Docket ID: DoD-2024-OS-0065

Title: Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces

Submitted by: National Institute of Military Justice

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Proposed Rule 26:

1. Reduces the time for an amicus to file a brief from 10 to 7 days.

C.A.A.F. R. 26(d).

2. Retains the requirement for an amicus to “provide a statement as to whether the parties consent to the filing.” C.A.A.F. R. 26(c).

3. Retains language discouraging amici from filing briefs that bring other than “relevant **additional** matters to the attention of the Court.” C.A.A.F. R. 26(c) (emphasis add).

Comments:

The proposed reduction in time to file an amicus brief appears to adopt the 7-day limitation from Fed. R. App. P. 29(a)(6). But amici wishing to file briefs before federal appellate courts are in a much better position than they would be before the Court of Appeals for the Armed Forces (CAAF).

The Federal Judiciary’s PACER system provides public access to a party’s brief as soon as it is filed. Although the CAAF has a remote filing system, the briefs are not available to the public until they are posted by the Court on its own website. This can often take several days,

especially when a brief is filed shortly before a long holiday weekend begins. Thus, the current 10-day period often results in only 2–4 days, limiting the ability of an amicus to closely compare its brief with that of the supported party to ensure it complies with the caution in C.A.A.F. R. 26(c) to provide only relevant additional matters. These problems are exacerbated by the lack of access to the record of trial or even the parties' briefs at the lower court.

Furthermore, the reduced deadline, coupled with the lack of timely public notice that a party has filed, shortens the time for an amicus to seek the parties' consent to file and for the parties to respond. *See* C.A.A.F. R. 26(c).

The current 10-day rule does not adversely affect the appellate process nor impose any additional burden on the CAAF or the parties. It should be retained.