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(2) may be withdrawn by the Court at any time; and

(3) may be withdrawn by the dean at any time.

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*. A law student may appear on behalf of an *amicus curiae* on motion and in accordance with the provisions of Rules 26 and 40(b)(2).

(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.

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

DATES: Comments on the proposed changes and addition must be received by February 24, 1995.

ADDRESSES: Forward written comments to Thomas F. Granahan, Clerk of the 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 the Court, telephone (202) 272–1448 (x600). SUPPLEMENTARY INFORMATION: The Rules Advisory Committee Report on the proposed changes to Rule 4(b), Rule 19(d), Rule 27(a)(1)(E), Rule 30, and Rule 31 and the Proposed Student Practice Rule is included as an attachment to this notice.

Committee Report on Proposed Rules 4(b) and 27(a)(1)(E)

The purpose of the proposed changes to Rules 4(b) and 27(a)(1)(E) is to make clear to practitioners that a petition for extraordinary relief should not be filed with the Court unless efforts to obtain the requested relief from the appropriate Court of Criminal Appeals (formerly Court of Military Review) have been unavailing. See, e.q., United States v. Coffey, 38 MJ 290, 291 (CMA 1993) (per curiam). Since those courts have All Writs Act powers, and share with the Judge Advocates General responsibility for the administration of military justice in their branch of the service, it is only sensible that they be afforded an opportunity to address extraordinary writ issues before they reach the United States Court of Appeals for the Armed Forces (formerly Court of Military

Appeals). This will give those closest to the issues a chance to bring their experience to bear, and in some number of cases may make it unnecessary for the Court of Appeals for the Armed Forces to become involved. Even if relief is denied by the Court of Criminal Appeals, their consideration may help to frame the issues and develop a record. Both of these factors will facilitate efficient and intelligent review by the Court of Appeals for the Armed Forces. It is presumed, on the other hand, that extraordinary writ cases will be addressed expeditiously by the Courts of Criminal Appeals.

In keeping with the policy underlying Article 36(a), that military practice should conform to the extent practicable with civilian federal practice, these proposed rule changes take into account the practice of the Supreme Court and the Article III courts of appeals. Fed.R.App.P. 22(a) requires that original habeas corpus petitions be filed in the district court. (The part of Fed.R.App.P. 22(a) that calls for resort to the district court merely made former practice explicit. 9 Moore's Federal Practice ¶ 222.01[2], at 22-3 (James Wm. Moore, Bernard J. Ward & Jo Desha Lucas 2d ed. 1993) (Advisory Committee Note).)

The Supreme Court discourages the filing of original extraordinary writ petitions with it. S.Ct.R. 20.1, 20.3, 20.4; Robert L. Stern, Eugene Gressman, Stephen M. Shapiro & Kenneth S. Geller, Supreme Court Practice § 11.3, at 501–03 (7th ed. 1993) (last time Court granted original habeas petition was in 1925); see also 28 USC 2242 (1988) (habeas application directed to a Justice "shall state the reasons for not making application to the district court of the district in which the applicant is held").

Because courts-martial are not standing bodies, requiring resort to the trial court is not feasible in the military context. Requiring resort to the intermediate courts serves similar purposes.

These proposed rule changes permit a petitioner to petition the Court of Appeals for the Armed Forces without having first sought relief from the Court of Criminal Appeals only if there is good cause to do so. This exception has been included only because it is impossible to anticipate all eventualities. It is intended that a stringent standard would be applied in this connection. The Committee believes that what constitutes good cause for this purpose will be spelled out by the Court in its opinions. While we have used the term already used by the Court for requests to suspend the Rules, see Rule 33, and by Congress in Article 67(a)(3) with respect to petitions

for grant of review, we do not, by so doing, mean to imply that the standards would be comparable. Extraordinary writs are and should remain extraordinary, and bypassing the Courts of Criminal Appeals should be permitted sparingly and only for compelling reasons.

The Committee considered inserting in Rule 27(a)(1)(E) a clause requiring counsel to state the exceptional circumstances that are believed to warrant an exercise of the Court's discretionary powers. This proposal was not adopted because the Committee believes that such a requirement is already implicit in Rule 27(a)(1)(F), which requires counsel to state the "[r]easons for granting the writ." Subdivision (E) speaks to jurisdiction, rather than the divers prudential factors that bear on whether the Court's All Writs Act authority should be exercised.

These proposed rule changes originated with a version proposed by Judge Richard M. Mollison of the United States Navy-Marine Corps Court of Criminal Appeals.

Committee Report on Proposed Rule 19(d)

The Court's Rules Advisory Committee, with one member dissenting, recommends that Rule 19(d) be changed to eliminate the apparent 20-day time limit for petitioning the Court for a writ of error coram nobis.

Noting that only petitions for writ of habeas corpus are expressly exempted from the 20-day time limit established by Rule 19(d), the Committee suggests the failure also to exempt petitions for writ of error coram nobis may be due to an oversight by the drafters of Rule 19.

The All Writs Act, 28 USC 1651(a), which is the basis for the Court's extraordinary relief jurisdiction, establishes no fixed time limit for applications for writs of error coram nobis. See *United States* v. *Morgan*, 346 U.S. 502 (1954) (writ available after sentence already served when the conviction was sought to be used to enhance sentence on a later conviction).

When Rule 19 was drafted, the Court of Appeals for the Armed Forces had not previously suggested any time limit for the filing of a petition for writ of error coram nobis. See *Del Prado* v. *United States*, 23 USCMA 132, 48 CMR 748, 749 (1974) (citing *United States* v. *Morgan, supra*). Nor has the Court strictly enforced its present rule. *Cf. Garrett* v. *Lowe*, 39 MJ 293, 295 and n.2 (CMA 1994). Coincidentally, the joint Courts of Criminal Appeals (formerly Courts of Military Review) Rules do not impose a time limit on any petitions for extraordinary relief, including those for