

## TITLE 38—APPENDIX

### RULES OF PRACTICE AND PROCEDURE OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

(Effective February 14, 2003, as amended to January 3, 2005)

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#### APPENDIX OF FORMS

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#### Rule 1. Scope of Rules

(a) **Scope.** These rules govern practice and procedure in this Court (the Court).

(b) **Effect on Court's Jurisdiction.** These rules do not extend or limit the jurisdiction of the Court as established by law.

#### Rule 2. Suspension of Rules

On its own initiative or on a party's motion, the Court may—to expedite its decision or for other good cause—suspend any provision of these rules and order proceedings as it directs, consistent with applicable law and precedent.

#### Rule 3. How to Appeal

(a) **Filing.** A person adversely affected by a Board of Veterans' Appeals decision may appeal that decision to the Court only by filing a written Notice of Appeal with the Clerk of the Court (Clerk), including transmission by facsimile (fax), within the time allowed by Rule 4(a). Failure of an appellant to take any step under these rules other than the timely filing of a Notice of Appeal does not affect the validity of the appeal, but may be grounds for such action as the Court deems appropriate, including dismissal of the appeal.

(b) **Service.** The appellant must serve a copy of the Notice of Appeal on any party (other than the Secretary of Veterans Affairs (Secretary)) to the proceedings before the Board of Veterans' Appeals (Board). See Rule 25.

(c) **Content.** The Notice of Appeal need not conform to Rule 32 and must—

(1) show the most recent name, address, and telephone number of the person or persons taking the appeal, and the appropriate Department of Veterans Affairs (VA) claims file number;

(2) reasonably identify the Board decision appealed from and be able to be reasonably construed, on its face or from the surrounding circumstances, as expressing an intent to seek Court review of that decision; and

(3) if filed by a representative other than one making a limited appearance, be accompanied by a notice of appearance and its attachments. See Rule 46(d)(2) and (6).

Form 1 in the Appendix of Forms is a suggested, but not required, form for a Notice of Appeal. Correspondence will be liberally construed in determining whether it is a Notice of Appeal.

(d) **Joint or Consolidated Appeals.** If more than one person is entitled to appeal from a decision of the Board and their interests make joinder practicable, they may file a joint Notice of Appeal or may join in an appeal after filing separate timely Notices of Appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Court on its own initiative or on a party's motion.

(e) **Payment of Fees.** A Notice of Appeal must be accompanied by a \$50.00 nonrefundable filing fee, paid by check or money order payable to “U.S. Court of Appeals for Veterans Claims.” An appellant who believes that the payment of the fee would be a financial hardship may obtain a waiver of the fee by filing a declaration of financial hardship in accordance with Rule 24. If a fax Notice of Appeal is filed, the filing fee or declaration must be received by the Court not later than 14 days after the fax was sent.

(f) **Limited Appearance.** See Rule 46(d)(6).

(g) **Addresses and Fax Number.** The Court’s mailing address is Clerk of the Court, U.S. Court of Appeals for Veterans Claims, 625 Indiana Avenue, N.W., Suite 900, Washington, D.C. 20004-2950. The Court’s fax number is (202) 501-5848. The Court’s web site is found at <www.vetapp.gov>.

(h) **Translations.** The Court conducts its reviews and deliberations in English. Any document transmitted to the Court (including one in the record on appeal) in a language other than English must be accompanied by an English translation that is certified by the translator, pursuant to 28 U.S.C. §1746, as true and accurate.

(As amended May 16, 2003, eff. July 1, 2003.)

#### **Rule 4. Filing Appeal; Docketing; Board Decision**

(a) **Time for Appeal.** A Notice of Appeal must be received by the Clerk not later than 120 days after the date on which the Board mailed notice of the decision to the last known address of the appellant and the appellant’s authorized representative, if any. A Notice of Appeal is deemed to be received—

(1) on the date of its legible postmark, affixed by the United States Postal Service (not including a postage-metered date imprint other than one affixed by the United States Postal Service) on the cover in which the Notice of Appeal is posted, if the mailing is properly addressed to the Court and is mailed; or

(2) on the date of its receipt by the Clerk, if it does not bear a legible postmark affixed by the United States Postal Service, or if it is delivered or sent by means other than United States mail, including fax.

But see Rule 25(b)(3) as to an appellant confined in an institution.

#### **(b) Docketing.**

(1) *Docketing the appeal.* Upon receipt of the Notice of Appeal, the Clerk will docket the appeal, identifying the appellant by name, unless otherwise ordered by the Court.

(2) *Designation of public official.* The Secretary will be described as the appellee by name and official title.

(3) *Notice of Docketing.* The Clerk will send a Notice of Docketing to all parties advising them of the date when the Clerk received the Notice of Appeal.

(c) **Copy of Board Decision.** Not later than 30 days after the date of the Clerk’s Notice of Docketing (see subsection (b)(3)), the Secretary must file with the Clerk and serve on the appellant a copy of the Board’s decision, showing—

(1) the date on which notice of the decision was mailed, and

(2) the filing date of any motion for its reconsideration or vacatur and the date and nature of any action on such a motion.

#### **Rule 5. Stay of Appellate Proceedings**

##### **(a) Grounds.**

(1) On its own initiative or on a party’s motion, the Court may stay its proceedings when—

(A) a motion has been filed for the Board to reconsider or vacate its decision; or

(B) a pro bono representation program, operating under a grant or contract made under the authority first provided in Public Law No. 102-229, is conducting case evaluation; or

(C) it is otherwise in the interest of judicial efficiency, but not for the purpose of negotiating a settlement or remand (see paragraph (2) of this subsection) or of extending the time for making any filing (see Rule 26(b)).

(2) A joint motion for a stay or stays of proceedings, not to exceed 60 days in total in a particular case, may be granted to allow the parties to negotiate a settlement or joint remand.

(b) **Effect of Stay.** Unless and until the Court grants a motion under this rule, such a motion does not suspend proceedings or interrupt preexisting filing schedules. When a stay expires, the preexisting filing schedule resumes at the point at which it was stayed.

(c) **Continuation of Stay.** Prior to the expiration of a stay, a party may move for continuation of the stay except to the extent that the duration sought is prohibited by subsection (a)(2), above. Such motion must satisfy the requirements of Rule 27(a), but is not governed by Rule 26(b).

(d) **Combined Motions Prohibited.** A motion to stay the Court’s proceedings may not be combined with any other motion. The Clerk will return any motion that violates this subsection.

(As amended May 16, 2003, eff. July 1, 2003.)

##### REFERENCES IN TEXT

Public Law No. 102-229, referred to in subsec. (a)(1)(B), is Pub. L. 102-229, Dec. 12, 1991, 105 Stat. 1701, as amended, known as the “Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Cost of ‘Operation Desert Shield/Desert Storm’ Act of 1992”. For complete classification of this Act to the Code, see Tables.

#### **Rule 6. Protection of Privacy**

Because Court records are public records, parties will refrain from putting the appellant’s or petitioner’s VA claims file number on motions, briefs, and responses (but not the Notice of Appeal (see Rule 3(c)(1))); use of the Court’s docket number is sufficient identification. In addition, parties should redact the appellant’s or petitioner’s VA claims file number from documents submitted to the Court in connection with motions, briefs, and responses.

#### **Rule 7. (Reserved)**

#### **Rule 8. Suspension of Secretarial Action Pending Disposition of Appeal or Petition**

(a) **Filing of Motion.** After an appeal or petition has been filed, an appellant or petitioner

seeking a Court order to suspend action by the Secretary or the Board pending proceedings in the Court must file with the Clerk a motion and serve a copy on all other parties by an expedited method (including express mail, overnight delivery, fax or other printed electronic transmission, or hand delivery).

**(b) Content.** The motion must—

(1) state the reason for the relief requested and the facts relied on; and

(2) be supported by affidavits or other sworn statements addressing any facts in dispute.

**(c) Court Action.** The motion normally will be considered by a panel of three or more judges, but in exceptional cases the motion may be acted on by a single judge pending consideration by a panel.

#### **Rule 9. (Reserved)**

#### **Rule 10. Designation of the Record on Appeal**

**(a) Designation.** Not later than 60 days after the date of the Clerk's Notice of Docketing, the Secretary must file with the Clerk and serve on the appellant (1) a designation of all material in the record of proceedings before the Secretary and the Board that was relied upon by the Board in ruling against the appellant on the issues listed by the Board and (2) any other material from the record that the Secretary considers relevant to the appeal. The Secretary must serve on the appellant a copy of those materials and a list of any record matter that cannot be duplicated. See also Rule 3(h) (Translations).

**(b) Counter Designation.** Not later than 30 days after the Secretary serves the designation of the record on appeal, the appellant must file with the Clerk and serve on the Secretary either—

(1) a counter designation of any additional material that was before the Secretary and the Board and that the appellant considers relevant to the appeal (see also Rule 3(h) (Translations)), or

(2) a statement that the appellant accepts the content of the record as designated by the Secretary. See also Rule 11(c).

Failure of the appellant to do either will constitute the appellant's acceptance of the record as designated by the Secretary.

**(c) Disputes.** If any dispute arises as to the content of the record on appeal, the Court, on its own initiative or on a party's motion, will resolve the matter. A party's motion must describe the good faith efforts that have been made to resolve the dispute.

**(d) Postdated Material.** The parties should take note that the record on appeal generally may not include material postdating the Board decision on appeal.

#### **Rule 11. Transmission of the Record on Appeal**

**(a) Transmission.** The Secretary retains the original claims file. The Secretary must transmit to the Clerk two certified copies of the record on appeal and also serve a copy on each party. The Court may direct that additional copies be transmitted.

(1) *Content.* The record, preceded by a table of contents that must subdivide service medical

records by calendar year, must be paginated and contain, in this order:

(A) A photocopy of the Board's decision(s) being appealed; and

(B) photocopies of all documents, assembled in chronological order, that are agreed or ordered to be part of the record on appeal.

(2) *Time.* Unless the Court orders otherwise, the Secretary must transmit the record not later than 30 days after the appellant's counter designation or statement was (A) due under Rule 10 or (B) served on the Secretary, whichever date is later.

(3) *Filing of record; notice to file brief.* Upon receiving the record on appeal, the Clerk will file it and notify all parties when the appellant's brief is due. See Rule 31(a)(1).

**(b) Supplementation.**

(1) *Motion.* If, after the record on appeal has been transmitted to the Clerk and before the filing of the appellant's brief (see Rule 31(a)(1)), a party believes that any additional material that was before the Secretary and the Board is relevant to an issue on appeal, the party may file a motion to supplement the record. The motion must identify the material sought to be added to the record on appeal, include a copy of that material if it is in the possession of that party, and describe the steps taken pursuant to Rule 27(a)(4).

(2) *Opposition.* A party who believes that material sought to be added by another party is beyond the scope of matters relevant to the appeal may, not later than 14 days after service of the motion to supplement, file an opposition to the motion. The opposition must explain why the material opposed is not relevant to the appeal.

(3) *Supplemental record.* Not later than 14 days after the motion is granted in whole or in part, the Secretary must transmit to the Clerk two certified copies of such supplemental record, assembled in chronological order, paginated, and preceded by a table of contents, and also must serve a copy on each party.

(4) *Time limits for filing briefs.* Unless the Court orders otherwise, supplementation of the record does not extend the time for filing any brief.

**(c) Access of Parties or Representatives to Original Record.**

(1) *Material not subject to a protective order.* After a Notice of Appeal has been filed, the Secretary must permit a party or a representative of a party to inspect and to copy, subject to reasonable regulation by the Secretary, material in the record before the Board.

(2) *Confidential information.* On its own initiative or on a party's motion, the Court may take appropriate action to prevent disclosure of confidential information. See also Rule 48.

**(d) Contingency Planning.** See Rule 37.

(As amended Aug. 27, 2004, eff. Sept. 13, 2004.)

#### **Rules 12 through 14. (Reserved)**

#### **Rule 15. Intervention**

**(a) By Right.** A person who participated in the proceedings before the Board is entitled to intervene in a case before the Court by filing with the Clerk a notice of intervention and serving a

copy on all parties not later than 60 days after the date of the Clerk's Notice of Docketing (see Rule 4(b)(3)).

**(b) With Permission.** Any person who did not participate in the proceedings before the Board and who seeks to intervene in a case before the Court must file with the Clerk a motion for permission to intervene and serve a copy on all parties not later than 60 days after the date of the Clerk's Notice of Docketing (see Rule 4(b)(3)). The motion must contain a concise statement of the interest of the moving person or party and the grounds upon which intervention is sought.

**(c) Extraordinary Circumstances.** After the expiration of the time limit set in subsection (a) or (b), intervention will be permitted only on a finding of extraordinary circumstances.

#### Rules 16 through 20. (Reserved)

#### Rule 21. Extraordinary Relief

**(a) Petition; Service, Content, and Filing.** A party desiring extraordinary relief must file a petition with the Clerk with proof of service on the respondent(s), the Secretary (if not a respondent), and any other party in interest. The petition must—

- (1) state the precise relief sought;
- (2) state the facts necessary to understand the issues presented by the petition;
- (3) state the reasons why the petition should be granted, including why the petitioner has a clear and indisputable right to the writ and why there are inadequate alternative means to obtain the relief sought;
- (4) include an appendix containing copies of any order or decision or any other documents necessary to understand and support the petition; and
- (5) describe any public officer who is a respondent as the respondent by name and official title.

The requirements of Rules 3(e) and 24 (regarding fees) apply to petitions. Upon receipt of the filing fee (unless waived pursuant to Rule 24), the Clerk will docket the petition and submit it to the Court.

**(b) Action on the Petition.** Unless the Court concludes that the petition should be denied, it will order the respondent(s) to file an answer to the petition within a fixed time and will send copies of the order to all parties. Two or more respondents may answer jointly. The Clerk will notify the parties of the time limits for the filing of any briefs and of the date of any oral argument. The proceeding will be given priority by the Court.

**(c) Form and Length of Papers; Number of Copies; Translations.** Except by permission of the Court, the requirements in Rule 32 apply to petitions and answers thereto, except that a petition or answer may not exceed 20 pages. An original and three copies must be filed with the Clerk, but the Court may direct that additional copies be furnished. The petition must be captioned: “[Name of Petitioner], Petitioner, v. [Name and Title of Respondent], Respondent.” See also Rule 6 (Protection of Privacy). The requirements of Rule 3(h) regarding translations

apply to any non-English-language document appended to a petition or an answer.

(As amended May 16, 2003, eff. July 1, 2003.)

#### Rules 22 and 23. (Reserved)

#### Rule 24. Waiver of Filing Fee

Payment of the filing fee required by Rule 3(e) or Rule 21(a) will be waived, due to financial hardship, in any case where the appellant (or petitioner) submits a declaration of financial hardship and that declaration is accepted for filing. That declaration will be subject to the penalty for perjury pursuant to 28 U.S.C. § 1746, and must either be on Form 4 in the Appendix of Forms or contain the detail called for in that form. If the declaration is found to lack a signature or to be otherwise noncompliant, it will be returned; not later than the time fixed by the notice of returned papers, either the fee must be paid or a new declaration that addresses the deficiencies in the noncompliant declaration must be submitted.

(As amended May 16, 2003, eff. July 1, 2003.)

#### Rule 25. Filing and Service

**(a) Filing.** A paper required or permitted to be filed in the Court must be filed with the Clerk. See Rule 3(g).

(1) *Mail.* Filing may be accomplished by mail addressed to the Clerk.

(2) *Fax.* Any paper except a brief filed under Rule 28 or 29 may be filed by fax sent to the Clerk if the paper—

(A) is preceded by a cover sheet showing the sender's name, address, and telephone and fax numbers; the Court case number and caption; and the number of pages being sent; and

(B) has numbered pages and is not more than ten 8½“x11”<sup>1</sup> pages long (the page limit does not include the cover sheet or the certificate of service but does include any supporting documents, and the paper may not be split into multiple transmissions to avoid this page limit).

The sender bears the risk of fax transmission. Court personnel will not provide a confirmed copy. If a transmission is illegible in whole or in part or is incomplete, the Court may, but need not, direct the sender to provide a legible or complete copy by mail.

(3) *Confirmation.* Confirmation of the filing (but not of the adequacy of the content) of any paper by any means may be obtained by accessing the case docket on the Court's web site (see Rule 3(g)).

#### **(b) Timeliness.**

(1) *Fax filing.* A paper may be sent by fax at any time. A paper—except a Notice of Appeal or an application for attorney fees and expenses—received by the Clerk by fax on any nonbusiness day, or on any business day before 7:00 a.m. Eastern Time on that day, is considered received by the Court on the preceding business day. A Notice of Appeal or an application for attorney fees and expenses filed by fax is considered re-

<sup>1</sup> So in original. Probably should be “8½”x11”.

ceived by the Court on the day on which it is received.

(2) *Briefs.* A brief is timely filed if on or before the last day for filing it is—

(A) mailed to the Clerk via the United States Postal Service by first-class mail or other class of mail that is at least as expeditious, postage prepaid; or

(B) deposited with a private commercial carrier for delivery to the Clerk not later than the third calendar day after the date of deposit.

(3) *Other papers.* Except as provided in paragraph (1), all papers must be received by the Clerk or deposited in the night box within the time specified for filing. See Rule 45.

(4) *Appellant confined in an institution.* A paper filed by a self-represented appellant who is an inmate confined in an institution is timely filed if the paper is deposited in the institution's internal mail system within the time specified for filing and is accompanied by evidence showing the date of deposit and stating that first-class postage has been prepaid.

(c) **Service of Papers Required.** A copy of any paper—except a Notice of Appeal and a declaration of financial hardship—filed by any party or amicus must, at or before the time of filing, be served by a party or amicus on all other parties to the appeal and on any amici. Service on a represented party or amicus must be made on the representative.

(d) **Manner of Service.** Service may be personal;<sup>2</sup> by mail, or by private commercial carrier for delivery not later than 3 calendar days after delivery to the carrier. In addition, service (but not filing, except as provided in subsection (a)(2)) of any paper may be made by fax in a particular case if the proposed recipient has agreed in writing to such service. Personal service includes delivery of the copy to a responsible person at the office of the representative or the office or home of a party without a representative. The Secretary's representative is the General Counsel of the Department of Veterans Affairs, whose address is General Counsel (027), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420-0002.

(e) **Proof of Service.**

(1) A paper presented for filing must contain either of the following as proof of service:

(A) An acknowledgment by the person served of his or her personal service, or

(B) a statement certified by the person(s) who made service, showing the date and manner of service and the names and addresses of the persons served. Proof of service may appear on or be attached to the paper filed.

(2) When a brief is filed by mail or commercial-carrier delivery in accordance with subsection (b)(2), the proof of service must also state the date and manner by which the brief was sent to the Clerk.

(As amended May 16, 2003, eff. July 1, 2003; Aug. 27, 2004, eff. Sept. 13, 2004.)

**Rule 26. Computation and Extension of Time**

**(a) Computing Time.**

<sup>2</sup>So in original. Probably should be a comma.

(1) *General rule.* In computing a period of time set by these rules, or by a Court order, or by a statute, the day of the event that begins the period is not included. The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday; or, if the act to be done is filing a paper in the Court, unless it is a day when the Clerk's Office has been closed by direction of the Chief Judge or when the weather or another condition makes the Clerk's Office inaccessible, as declared by the Court or the Chief Judge.

(2) *Legal holidays.* As used in this rule, "legal holiday" means New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday (Presidents Day), Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President or Congress.

(3) *Notices.* Notice that the Court is closed or inaccessible will be posted publicly, if circumstances permit, and placed on a telephone recording.

(b) **Extension of Time.** The Court, on its own initiative or on a party's motion for good cause shown, may extend the time set by these rules for doing any act, or may permit an act to be done after the expiration of such time (by granting a motion for leave to file out of time or otherwise), but the Court may not extend the time for filing a Notice of Appeal or an application for attorney fees and expenses. See also Rule 5(a) (joint motion for stays to negotiate settlement or remand). Extensions of time for a total of 45 days for any particular filing may be granted for good cause. Any motion to extend the time set by these rules or by an order or notice of the Court beyond a total of 45 days for a particular filing will be granted only for extraordinary circumstances, which do not include workload considerations. In no case will a motion be granted to suspend the Rules (see Rule 2) in order to achieve an extension of time.

(1) *Additional requirements.* Any motion to extend time based on extraordinary circumstances (see above) must be filed not less than 14 days before the date sought to be extended. Any motion filed later than 14 days before the date sought to be extended and not acted upon by the date sought to be extended is denied.

(2) *Content of motion.* In addition to showing good cause for an extension of time, the motion must state the following:

(A) The date to be extended;

(B) the revised date sought;

(C) the total number of days of extension previously granted to the movant both for the same action and in the merits or attorney-fee-application phase, as applicable, of the case;

(D) the total number of days of extension previously granted to the other party(ies) in the merits or attorney-fee-application phase, as applicable, of the case; and

(E) a statement in compliance with Rule 27(a)(4).

(3) *Opposition.* Any opposition must be filed with the Clerk not later than 5 days after the non-moving party is served with a copy of that motion to extend time. The Court will treat the

motion as unopposed if no opposition is filed within this period; no extension of this period will be granted for any reason.

(4) *Effect of motion.* A motion to extend time does not extend the date on which a pleading or other paper is due to be filed with the Court unless the Court grants that motion. See Rule 5(b).

(5) *Noncompliance.* See Rule 45(k).

**(c) Additional Time After Service by Mail.**

(1) *General rule.* If a party is required or permitted to do an act within a period initiated by service of a paper under these rules on that party by another party and the paper is served by mail, 5 days are added to the period for doing that act.

(2) *Service overseas by Secretary.* If a paper is served by the Secretary by mail on an appellant, petitioner, or representative who is located outside the United States, Puerto Rico, or the Virgin Islands, 30 additional days are added to the applicable period.

(3) *Court orders and notices.* Additional time under this rule is not added to the periods set in Court orders and notices or in Rules 4 (Notice of Appeal), 35 (post-decision motions), and 39(a) (attorney fee applications).

**(d) Combined Motions Prohibited.** A motion to extend time may not be combined with any other motion. The Clerk will return any motion that violates this subsection.

(As amended May 16, 2003, eff. July 1, 2003.)

**Rule 27. Motions**

**(a) Content of Motions.** Unless another form is required by these rules, an application for relief must be made by filing a motion, with proof of service (see Rule 25(e)) on all other parties. The motion must—

(1) contain or be accompanied by any material required by any of the rules governing such a motion;

(2) state with particularity the specific grounds on which it is based;

(3) describe the relief sought; and,

(4) if the appellant is represented,

(A) describe the steps taken to contact the other party to determine whether the motion is opposed; and

(B) indicate whether the motion is opposed and, if so, whether the moving party has been advised that a response in opposition will be filed.

A motion should not be accompanied by a proposed implementing order. If a motion is supported by briefs, affidavits, or other papers, they must be served and filed with the motion.

**(b) Response or Opposition.**

(1) *Time to File.* Unless otherwise prescribed in these rules (see, e.g., Rule 26(b)(3)), any party may file a response or opposition to a motion not later than 14 days after service of the motion, but motions authorized by Rule 8 (suspension of Secretarial action pending appeal or petition) may be acted upon after reasonable notice of the motion has been provided to all parties. The Court may shorten or extend the time for responding to any motion.

(2) *Form of Opposition.* Unless the Court orders otherwise, an opposition to a motion must be

submitted by the opposing party in writing, and a motion will be considered unopposed if such an opposition is not filed.

**(c) Motions for Procedural Orders.** Notwithstanding subsection (a) and except as provided in the next sentence, motions for procedural orders may be acted on at any time, without awaiting a response, and, by rule or order of the Court, motions for certain procedural orders may be disposed of by the Clerk. Motions to extend time for good cause (but not for extraordinary circumstances) may be acted on by the Clerk if not opposed within 5 days after service on the other party. See Rule 26(b)(3). Any party who may be adversely affected by the action may, by motion, request that the Court reconsider, vacate, or modify the action not later than 10 days after the action is announced.

**(d) Form, Copies, and Length.** Except by permission of the Court, the form and copy requirements in Rule 32 for principal briefs apply to motions and responses, except that a motion or response may not exceed 20 pages. See also Rule 6 (Protection of Privacy) and Rule 37 (Contingency Planning).

**(e) Prohibited Nondispositive Motions.** No more than one subject may be addressed in any nondispositive motion unless otherwise provided by these rules (see Rule 35(d)). The Clerk will return any motion that violates this subsection. See also Rules 5(d) and 26(d).

**(f) Effect of Motions.** Filing a motion does not suspend proceedings or otherwise alter the schedule for filing papers unless the Court grants the motion. See Rules 5(b) and 26(b)(4).

(As amended May 16, 2003, eff. July 1, 2003; Aug. 27, 2004, eff. Sept. 13, 2004.)

**Rule 28. Briefs**

**(a) Appellant's Brief.** The appellant must file a brief which, unless the appellant is self-represented and submits an informal brief pursuant to subsection (i), must contain, in the following order, the appropriate division headings and the following separate divisions:

(1) A table of contents, with page references;

(2) a table of cases (alphabetically listed), statutes, and other authorities cited, with references to the page of the brief where they are cited, unless the case is expedited under Rule 47;

(3) a statement of the issues;

(4) a statement of the case, showing briefly the nature of the case, the course of proceedings, the result below, and the facts relevant to the issues, with appropriate references to the record on appeal;

(5) an argument, beginning with a summary and containing the appellant's contentions with respect to the issues and the reasons for those contentions, with citations to the authorities and parts of the record on appeal relied on; and

(6) a short conclusion stating the precise relief sought.

**(b) Secretary's Brief.**

(1) *Content.* The Secretary must file a brief, which must conform to the requirements of subsection (a), but a statement of the issues or of the case need not be made unless the Secretary is dissatisfied with the appellant's statement.

(2) *Confession of error.* If the Secretary wishes to confess error as to any issue or issues raised by the appellant, but not as to all the issues raised, and the relief that the Secretary deems appropriate as to the confession of error is different from that sought by the appellant, the Secretary must include a statement of concession in the brief and identify the relief thereunder that the Secretary considers appropriate.

(c) **Reply Brief.** The appellant may file a brief in reply to the Secretary's brief.

(d) **Other Briefs.** Briefs may be filed by intervenors as directed by the Court. No briefs other than those described in this rule may be filed except with the Court's permission.

(e) **Motions Prohibited.** After the initial notice to file a brief has been issued to the appellant (see Rule 11(a)(3)), a motion, other than a joint motion for remand or termination, will not be accepted from any party in lieu of a brief required by subsections (a) through (c). A motion may not be included as part of any brief; the Court will not act on any motion so included. The Clerk will return any motion that violates this subsection.

(f) **References to the Record.** References in the briefs to the record on appeal must be to the pages as transmitted by the Secretary. Commonly understood abbreviations may be used.

(g) **Reproduction of Materials.** If determination of the issues requires consideration of superseded statutes, rules, or regulations, or unpublished authorities, relevant parts must be reproduced in the brief or in an appendix. Documents in the record on appeal may not be reproduced in or attached to the brief.

(h) **Multiple Appellants.** In cases involving more than one appellant, including consolidated cases, any number of appellants may join in a single brief, and any appellant may adopt by reference any part of the brief of another. Appellants may similarly join in reply briefs.

(i) **Brief of Self-represented Party.** Only a self-represented party may submit, without regard to the requirements of subsection (a) and Rule 32, an informal brief on the form provided by the Court.

(As amended May 16, 2003, eff. July 1, 2003; Aug. 27, 2004, eff. Sept. 13, 2004.)

#### Rule 29. Brief of an Amicus Curiae

(a) **Time.** A brief of an amicus curiae must be filed within the time allowed the party whose position the amicus curiae supports unless the Court permits later filing, in which event the Court will specify the time limit for an opposing party's response. An amicus curiae will be permitted to participate in oral argument only at the invitation of the Court.

(b) **Form and Content.** An amicus brief must comply with Rules 25(b)(2); 28(a)(1), (5) and (6); 28(f) and (g); 30; and 32; and state, at the outset of the brief, which party the amicus curiae supports and the interest of the amicus curiae. The brief should avoid repeating the parties' briefs and should focus on the points not made or not emphasized in them.

(As amended Aug. 27, 2004, eff. Sept. 13, 2004.)

#### Rule 30. Citation of Certain Authority

(a) **Citation of Nonprecedential Authority.** A party, intervenor, or amicus curiae may not cite as precedent any action designated as nonprecedential by the Court or any other court or that was withdrawn after having been published in a Reporter. Such an action may be referred to only when the binding or preclusive effect of that action (such as via the application of the law-of-the-case doctrine), rather than its quality as precedent, is relevant. A copy of the action referred to must be attached to the document containing the reference.

(b) **Citation of Supplemental Authority.** When pertinent and significant authority comes to the attention of a party after the party's brief has been filed or after oral argument but before the decision, a party must promptly advise the Clerk, by letter, with a copy to all other parties, setting forth the citation(s). If the authority is not readily available in a Reporter system, the party must provide the Clerk with a copy. The letter must refer to the page of the brief or to a point argued orally to which each citation pertains, and the letter must state without argument the reasons for the supplemental citation(s). Any response must be made promptly and must be similarly limited.

#### Rule 31. Filing and Service of Briefs

(a) **Time Limits.** Except in cases covered by Rule 47 (Expedited Consideration)—

(1) the appellant must serve and file a brief not later than 60 days after the date of the Clerk's notice that the record has been filed;

(2) the Secretary must serve and file a brief not later than 60 days after service of the appellant's brief; and

(3) the appellant may serve and file a reply brief not later than 14 days after service of the Secretary's brief.

(b) **Effect of Failure to File.** If an appellant fails to file a brief within the time provided by this rule, or within the time as extended, the Court, on its own initiative or on motion by the Secretary, may take appropriate action, to include dismissal of the appeal. If the Secretary fails to file a brief, the Court may take appropriate action.

#### Rule 32. Form of Briefs, Appendices, and Other Papers

(a) **Format.** Briefs, appendices, and other papers must be printed or typewritten, and may be produced by any copying process that produces a clear black image on white opaque paper; onion skin paper is not permitted except for papers sent by international mail. Pages must be letter size (8½ by 11 inches), with margins at least one inch wide from all edges, and with type or print on only one side of the page. *See also* Rule 6 (Protection of Privacy).

(b) **Type; Spacing.** If a proportionally spaced typeface is used, it must be 13-point or larger. If a monospaced typeface is used, it must not contain more than 10½ characters per inch. Text must be double spaced (except that motions and responses under Rule 27(c) may be single spaced), but quotations more than two lines long

and footnotes may be single spaced. The parties may not use photo reproduction that reduces print size smaller than the size required by this subsection. This subsection does not apply to pages of an appendix that are legible, unreduced photocopies of documents.

**(c) Covers.** Covers are not required on briefs or appendices but, if used, they should be blue for the appellant, red for the Secretary, green for an amicus curiae or an intervenor, gray for any reply brief, and white for an appendix if separate from the brief. See Form 2 (Sample Brief Cover).

**(d) Binding.** All papers, other than the record on appeal, must be attached only at the upper left-hand corner. The record on appeal must be bound at the top.

**(e) Caption.** A paper addressed to the Court must contain a caption setting forth the name of the Court, the Court's case number when assigned, the title of the case, and a brief heading indicating the purpose of the paper.

**(f) Page Numbers.** Pages must be numbered in the center of the bottom margin, using Arabic numerals for the pages subject to the page limitation and lower case Roman numerals for the table of contents, tables of citations, certificate of service, and any appendix containing statutes, rules, regulations, and unpublished authorities.

**(g) Length and Copies.**

(1) *Normal Course.* Except by permission of the Court or as limited by Rule 47, principal briefs may not exceed 30 pages and reply briefs may not exceed 15 pages, not counting the table of contents; the table of citations; any appendix containing superseded statutes, rules, and regulations, and unpublished authorities; and the certificate of service. An original and three copies of all papers must be filed with the Clerk, but the Court may require that additional copies be furnished. But see Rule 25 (fax filings).

(2) *Contingency Planning.* See Rule 37 for responsibilities of parties regarding maintaining copies of papers submitted to the Court for use in the event that the Court cannot access its regular files.

**(h) Identification.** The signature, printed name, address, and telephone number of the representative of record (see Rule 46(d)(1)) or of a self-represented party must appear on a brief or other document submitted for filing to the Clerk.

**(i) Noncompliance.** See Rule 45(k).

(As amended May 16, 2003, eff. July 1, 2003; Aug. 27, 2004, eff. Sept. 13, 2004.)

**Rule 33. Staff Conference**

**(a) Participation.** The Court may direct the representatives and self-represented parties to participate in a staff conference, in person or by telephone, to consider refinement of the issues and such other matters as may help the Court resolve the case. When necessary following such a conference, the Court will enter an appropriate order to control future proceedings. This rule does not prevent the parties from discussing settlement or agreeing to dismiss the appeal before argument or submission of the case. See also Rule 34(f).

**(b) Nondisclosure to Judges.** Statements made during a conference may not be disclosed to a judge of the Court as having been made during a conference unless the parties agree in writing to such disclosure. This subsection does not apply to a conference that has failed to resolve a dispute about the content of the record on appeal.

**Rule 34. Oral Argument**

**(a) In General.** Oral argument will be allowed only when ordered by the Court and will be held where and when the Court orders. Oral argument normally is not granted on nondispositive matters. The Court may order oral argument on its own initiative or on a party's motion filed not later than 14 days after the reply brief is due or filed, whichever is sooner. A motion for oral argument may not be included in any brief. A party may request that oral argument be held at a particular law school in the United States.

**(b) Notice of Argument; Postponement; Additional Time.** The Clerk will advise all parties and issue a public order as to when and where oral argument is to be heard, the time to be allowed each party, and the judge or judges assigned to the case. Where possible, the Clerk will schedule oral argument so as to minimize inconvenience to the parties. A request for postponement of the argument or for the allowance of additional time must be made by motion filed reasonably in advance of the date fixed for argument and must contain a showing of good cause.

**(c) Order and Content of Argument.** The appellant will generally open and conclude the argument. A party will not be permitted to read at length from briefs, records, or authorities. In argument on motions, the movant will generally open and conclude the argument.

**(d) Nonappearance of Parties.** If any party fails to appear to present argument, the Court will hear argument by any other party who is present.

**(e) Physical Exhibits.** A party who wishes to use physical exhibits other than documents must arrange with the Clerk to have them placed in the courtroom on the date of the argument before the Court convenes. After the argument, the party must remove the exhibits unless the Court otherwise directs. If the exhibits are not reclaimed within a reasonable time after notice is given by the Clerk, they will be disposed of by the Clerk.

(As amended Aug. 27, 2004, eff. Sept. 13, 2004.)

**Rule 35. Motions for Reconsideration, or for Decision by a Panel or by the Full Court**

**(a) Motion for Reconsideration.**

(1) *Permitted.* A party in a case dismissed by the Clerk pursuant to Rule 45(i) may move for reconsideration by the Clerk. If the Clerk denies such reconsideration, the matter will be referred for decision by a judge. A party in a case decided by a single judge may move for reconsideration by the single judge. A party in a case decided by a panel may move for reconsideration by the panel. A party in a case decided by the full Court may move for reconsideration by the full Court.

(2) *Prohibited.* A party may not move for reconsideration<sup>1</sup>

(A) of a matter if that party has previously filed a motion for reconsideration of that matter and the Court has denied that motion, or

(B) of the denial of a motion under subsection (b) or (c) for a panel decision or a full-Court decision, as the case may be.

**(b) Motion for Panel Decision.** A party in a case decided by a single judge may move for a decision by a panel of the Court.

**(c) Motion for Full Court Decision.** Subject to the requirements of subsections (d), (e), and (f), a party may move for a decision by the full Court—

(1) in the first instance, or

(2) after a panel has decided a case, or

(3) after a panel has denied a motion for a panel decision or for reconsideration.

A motion for a decision by the full Court in a case decided only by a single judge is not permitted. Motions for a full-Court decision are not favored. Ordinarily they will not be granted unless such action is necessary to secure or maintain uniformity of the Court's decisions or to resolve a question of exceptional importance.

**(d) Time for Motion.**

(1) *Clerk or single-judge action.* A motion for Clerk reconsideration, a motion for single-judge reconsideration, a motion for a panel decision, or a motion for both single-judge reconsideration and a panel decision, must be filed not later than 21 days (51 days if the motion is filed by an appellant, petitioner, or representative located outside the United States, Puerto Rico, or the Virgin Islands) after the date of the Clerk's or single-judge's dispositive action. The filing of a motion for single-judge reconsideration does not toll the running of the time period set forth in the preceding sentence; thus, any motion for a panel decision that is not filed within that same time period will be untimely.

(2) *Panel action.* A motion for panel reconsideration, a motion for a full-Court decision, or a motion for both panel reconsideration and a full-Court decision, must be filed not later than 21 days (51 days if the motion is filed by an appellant, petitioner, or representative located outside the United States, Puerto Rico, or the Virgin Islands) after the date of the initial panel decision or order denying a motion for a panel decision. The filing of a motion for panel reconsideration does not toll the running of the time period set forth in the preceding sentence; thus, any motion for a full-Court decision that is not filed within that same time period will be untimely.

(3) *Full-Court consideration in the first instance.* A motion for consideration of a case by the full Court in the first instance must be filed not later than 30 days after the date on which (A) the appellant's brief was served in an appeal or (B) the petitioner's petition was filed in a petition for extraordinary relief.

(4) *Full-Court reconsideration.* A motion for reconsideration of a case decided by the full Court must be filed not later than 21 days (51 days if

the motion is filed by an appellant, petitioner, or representative located outside the United States, Puerto Rico, or the Virgin Islands) after the date of the initial full-Court decision.

**(e) Content of Motion.** A motion under this rule must contain a supporting argument. In addition—

(1) a motion for a panel decision or a motion for single-judge, panel, or full-Court reconsideration must state the points of law or fact that the party believes the Court has overlooked or misunderstood, and

(2) a motion for a full-Court decision must state—

(A) how such action will secure or maintain uniformity of the Court's decisions or

(B) what question of exceptional importance is involved.

**(f) Form; Length; Copies.** Except by the Court's permission, a motion or response (including any supporting memorandum or brief) under this rule may not exceed 15 pages. The motion must otherwise comply with Rule 27, but it need not indicate whether it is opposed. A motion for a full-Court decision, and any response, must be filed in an original and 7 copies.

**(g) Response; Action on the Motion.** No response to a motion under this rule may be filed unless it is requested by the Court, but a motion for a panel or full-Court decision or a motion for reconsideration under section (a)(1) ordinarily will not be granted without such a request. A motion for reconsideration will be decided by the judge or panel that rendered the decision. A motion for a panel decision will be referred to a panel. A motion for a full-Court decision or for reconsideration of a full-Court decision will be referred to all of the judges in regular active service. Consideration by the full Court requires the vote of at least one half of the judges in regular active service who are not disqualified.

(As amended May 16, 2003, eff. July 1, 2003; Aug. 27, 2004, eff. Sept. 13, 2004.)

### Rule 36. Entry of Judgment

Unless the Court orders otherwise, the judgment will be entered on the docket after the later of (1) the date on which the time allowed in Rule 35(d)(1), (2), or (4) has expired, or (2) the date on which the Court has denied a motion for reconsideration or has denied a motion for full-Court decision after a panel decision, if no other timely motion under Rule 35 is pending. Entry of the judgment begins the 60-day time period for any appeal to the United States Court of Appeals for the Federal Circuit.

(As amended Aug. 27, 2004, eff. Sept. 13, 2004.)

### Rule 37. Contingency Planning

**(a) General.** In the event that the Court's regular files become inaccessible due to an unforeseen contingency, the following responsibilities are imposed on parties before the Court in order to be able to provide the Court with replacement copies of essential papers filed in cases before the Court.

(1) *Represented Parties.* When the appellant or petitioner is represented, the representative

<sup>1</sup> So in original. Probably should be followed by a dash.

must retain copies of the record on appeal and all papers filed with the Court by the parties or any intervenor or amicus curiae and of all actions issued by the Court.

(2) *Self-represented Parties.* When the appellant or petitioner is self-represented, the Secretary must retain copies of the record on appeal and all papers filed with the Court by the parties or any intervenor or amicus curiae and of all actions issued by the Court. However, if retention of a copy of the record on appeal is not feasible, the Secretary must maintain the capability to reconstruct the record on appeal from the claims file and to certify the accuracy of the reconstructed record on appeal.

**(b) Application of Rule; Duration of Retention.** This Rule is applicable to all cases in which all proceedings have not been concluded as of the date of the adoption of this Rule, and to all cases docketed thereafter. Documents described in subsection (a) will be retained for not less than one year after all proceedings, including those concerning attorney fees and expenses (see Rule 39), are concluded.

(Added Aug. 27, 2004, eff. Sept. 13, 2004.)

### Rule 38. Frivolous Filings

If the Court determines that an appeal, petition, motion, or other filing is frivolous, it may enter such order as it deems appropriate.

### Rule 39. Attorney Fees and Expenses

**(a) Application.** An application pursuant to 28 U.S.C. §2412(d) for award of attorney fees and/or other expenses in a case must be filed with the Clerk not later than 30 days after the Court's judgment becomes final pursuant to 38 U.S.C. §7291(a) (which occurs 60 days after entry of judgment under Rule 36) or, consistent with Rule 41(b), upon the issuance of an order on consent dismissing, terminating, or remanding a case. The time (which is a jurisdictional requirement set by the statute) for filing an application under this subsection may not be extended. See Rule 25 (filing and service). The application must include the fees and expenses claimed for the submission of that application.

**(b) Response.** Not later than 30 days after the date on which an application described in subsection (a) or a supplemental application described in subsection (c) or (d) is filed, the Secretary must file and serve a response to that application or supplemental application. The response must state which elements of the application or supplemental application are not contested and explain the Secretary's position on those elements that are contested.

**(c) Reply.** Not later than 30 days after service of any response by the Secretary, the applicant may file and serve a reply addressing those matters contested by the Secretary. Any reply involving a supplemental application described in subsection (d) must include a supplemental application that includes the fees and expenses claimed for the submission of that reply.

#### **(d) Supplemental Application.**

(1) *General.* Except as provided in paragraphs (2) or (3) of this subsection and in subsection (c), a party whose application described in sub-

section (a) has been granted in whole or in part may, not later than 20 days after the Court action granting such application, file a supplemental application for attorney fees and other expenses in connection with the defense of such subsection (a) application.

(2) *Appeals to the Federal Circuit.* When an action on an application appealed to the United States Court of Appeals for the Federal Circuit is returned to the Court and the application has been granted in whole or in part by any court, any supplemental application (over which the Court has jurisdiction) based on representation provided in that appeal may be filed in the Court not later than 20 days after the mandate is issued by that court. See FED. R. APP. P. 41; FED. CIR. R. 41.

(3) *Appeals to the Supreme Court.* When an action on an application appealed to the Supreme Court is returned to the Court and the application has been granted in whole or in part by any court, any supplemental application (over which the Court has jurisdiction) based on representation provided in that appeal may be filed in the Court not later than 20 days after the expiration of the time for filing a petition for a rehearing by the Supreme Court. See SUP. CT. R. 45.

(4) *Preparation costs.* A supplemental application must include the fees and expenses claimed for the submission of that supplemental application.

(5) *Timing of supplemental responses and replies.* When a supplemental application is filed under paragraph (2) or (3) of this subsection, the Court will issue an order specifying the timing of responses and replies, in order to ensure that all previous applications have been resolved before requiring a response to the next application.

**(e) Appendices.** The parties must attach as appendices to any pleading filed under this rule those relevant papers that are not already before the Court.

**(f) Form, Copies, and Length.** All papers filed under this rule must conform to the requirements set forth in Rule 32, except that an application or response may not exceed 20 pages, not counting any appendix containing pages necessary to meet the 28 U.S.C. §2412(d) application-content requirements. See also Rule 37 (Contingency Planning).

(As amended May 16, 2003, eff. July 1, 2003; Aug. 27, 2004, eff. Sept. 13, 2004.)

### Rule 40. Rules Advisory Committee

**(a) General.** The Court will have a Rules Advisory Committee (Committee) for the study of, and advice to the Court on possible changes to, rules of the Court, either sua sponte or at the request of the Court.

**(b) Appointment.** The Chief Judge, with the concurrence of the Court, will appoint nine members of the Court's bar to serve on the Committee, eight as members and one as the Chair. At least two members of the Committee will be attorneys employed by the Department of Veterans Affairs (Department). The membership of the Committee as of the date of the adoption of this rule will continue under this rule.

**(c) Terms.**

(1) *Length of terms.* The term of a member continued under subsection (b) will expire on June 30, 2003, unless, on that date, the member (A) has served on the Committee for less than three years or (B) is serving as the Chair. Except as provided in paragraph (3) of this subsection, each member appointed thereafter and each new Chair appointed will be appointed for a term of two years. Notwithstanding the terms provided for in the preceding sentence, the term of any person serving by virtue of employment by the Department will end automatically at such time as the person is no longer so employed.

(2) *Reappointment.* Except as provided in the next two sentences, a member may serve three terms consecutively; a break in service permits a new series of three consecutive terms. The person serving as the Chair on January 1, 2003, will be permitted to so serve to the end of his or her current term as the Chair and, upon the end of that term, may be appointed as the Chair, or as a member, of the Committee for one additional consecutive term only. A person may be appointed to three consecutive terms as the Chair notwithstanding any term or terms as a member; a break in service as the Chair permits a new series of such terms or a new series of three terms as a member. There is no limit on the number of nonconsecutive terms to which any person may be appointed as a member or the Chair of the Committee. A member or the Chair may continue to serve until a successor has been appointed. If a member or the Chair holds over after his or her term expires, the holdover period shall be part of the successor's term.

(3) *Resignation or removal.* A member or the Chair of the Committee may resign from the Committee, or the Chief Judge, with the concurrence of the Court, may, due to the disability of the member or the Chair or other good cause, revoke an appointment at any time; the successor appointed will serve the unexpired term of his or her predecessor. Time served as a successor to a member or the Chair whose position became available due to death, resignation, or revocation of appointment will not be considered a "term" for the purposes of paragraph (2) of this subsection.

#### Rule 41. Issuance of Mandate

(a) **Date of Issuance.** The mandate of the Court (which is executed by the Clerk as a ministerial action and is merely evidence that a judgment has become final) will issue no earlier than 60 days after the date of entry of the judgment pursuant to Rule 36 unless the time is shortened or extended by order. If a timely Notice of Appeal to the United States Court of Appeals for the Federal Circuit is filed with the Clerk, the mandate of the Court will issue in accordance with 38 U.S.C. § 7291(a).

(b) **Mandate in Consent Dispositions.** An order on consent (1) dismissing, terminating, or remanding a case or (2) granting or dismissing an uncontested application for attorney fees and expenses will also constitute the final judgment and mandate of the Court.

#### Rule 42. Voluntary Termination or Dismissal

If the parties file with the Clerk a motion to terminate a matter (other than an application for attorney fees and expenses) based upon a settlement agreement to be effective upon the Court's termination of the case, the Clerk may enter the case terminated. On motion of the appellant or petitioner for dismissal, an appeal, petition, or application for attorney fees and expenses may be dismissed by the Clerk on terms requested by the appellant or petitioner, agreed upon by the parties, or previously fixed by the Court.

#### Rule 43. Substitution of Parties

##### (a) Death of a Party.

(1) *Before Notice of Appeal.* If a party entitled to appeal dies before filing a Notice of Appeal, the Notice of Appeal may be filed within the time limit in Rule 4 by any person permitted by law to do so.

(2) *After Notice of Appeal.* If a party dies after a Notice of Appeal is filed or while a proceeding is pending in the Court, the personal representative of the deceased party's estate or any other appropriate person may, to the extent permitted by law, be substituted as a party on motion by such person. Any party may notify the Court of the death of an appellant, and proceedings will then be as the Court directs.

(b) **Substitution for Other Causes.** If substitution of a party in the Court is necessary for any reason other than death, the Court may order substitution on its own initiative or on a party's motion.

(c) **Death or Separation from Office of Public Officer.** When a public officer is a party in an official capacity and during the proceedings dies, resigns, or otherwise ceases to hold office, the proceedings are not stopped, and the public officer's successor is automatically substituted as a party. Proceedings following the substitution will be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties will be disregarded.

#### Rule 44. Judicial Conference

(a) **Purpose.** Pursuant to 38 U.S.C. § 7286, there shall be convened, at such time and place as the Chief Judge designates, a conference to consider the business of the Court and to recommend means of improving the administration of justice within the Court's jurisdiction.

(b) **Committee.** The Chief Judge will appoint a Judicial Conference Planning Committee to plan and conduct the conference. The Planning Committee may appoint such subcommittees as may be necessary to assure the efficient operation of the conference.

(c) **Attendance.** The Chief Judge presides at the conference. All persons admitted to practice before the Court, and such other persons as are designated by the Chief Judge, may be members of and participate in the conference.

(d) **Registration Fee.** Each member of the conference other than judges of the Court must pay a registration fee in an amount fixed by the Court to defray expenses of the conference. The Chief Judge may excuse the payment of the fee

in individual cases. These fees are governed by 38 U.S.C. §7285.

**(e) Responsibility of the Clerk.** The Clerk is responsible for receipt and disbursement of conference funds, for all conference records and accounts, and for conference staff support, and performs such other duties pertaining to the conference as may be directed by the Chief Judge.

**(f) Delegation.** The Chief Judge may delegate any or all of his or her responsibilities to another judge of the Court.

**Rule 45. Duties of Clerk**

**(a) General Provisions.** The Clerk must take the oath required by law. Neither the Clerk nor any deputy clerk may practice as an attorney or counselor in any court while continuing in office. The Court is always open for the purpose of receiving a facsimile transmission of any paper, except a brief (see Rule 25(a)(2)). The office of the Clerk, with the Clerk or a deputy clerk in attendance, is open during business hours on all days except Saturdays, Sundays, legal holidays, and other days when the Court is closed (see Rule 26(a)) from 9:00 a.m. to 4:00 p.m. A night box is available at the entrance to the Public Office from 4:00 p.m. to 6:00 p.m. on all days that the Court is open.

**(b) The Docket; Calendar; Other Records Required.** The Clerk will—

(1) maintain a docket containing a record of all papers filed with the Clerk, and all process, orders, and judgments;

(2) maintain an index of cases contained in the docket;

(3) prepare, under the direction of the Court, a calendar of cases submitted or awaiting argument; and

(4) keep such other books and records as may be required by the Court.

**(c) Notice of Court Actions.** Immediately upon issuance of an opinion, memorandum decision, order, entry of the judgment, or issuance of the mandate, the Clerk will send a copy to each party to the proceeding and note in the docket the issuance or entry date.

**(d) Custody of Records and Papers.** The Clerk will have custody of the records and papers of the Court. The Clerk will not permit any original record or paper to be taken from the Clerk's custody except as authorized by the United States Supreme Court, the United States Court of Appeals for the Federal Circuit, or the Court. Original papers transmitted as the record on appeal will be returned upon disposition of the case. The Clerk will preserve copies of briefs and appendices and other printed papers filed.

**(e) Court Seal.** The Clerk is the custodian of the seal of the Court. The seal will appear as ordered by the Court. The seal is the means of authentication of all records and certificates and process issued from the Court.

**(f) Schedule of Fees.** The Clerk will maintain in the Public Office a schedule of fees approved by the Court.

**(g) Motions.** Unless a case has been assigned to a judge or judges, the Clerk may act on motions, if joint, consented to, or unopposed, that seek to—

(1) dismiss or terminate an appeal or petition with or without prejudice to reinstate it;

(2) remand a case;

(3) reinstate a case that was dismissed for failure to comply with the rules;

(4) extend the time for taking any action required or permitted by the rules or by an order of the Court, unless the motion is made after the time limit has elapsed or unless the basis for the motion is extraordinary circumstances as required by Rule 26(b);

(5) consolidate appeals;

(6) withdraw or substitute an appearance; or

(7) correct a brief or other paper.

**(h) Applications for Attorney Fees and Expenses.** The Clerk may grant an application for attorney fees and expenses filed pursuant to 28 U.S.C. §2412(d) when the Secretary does not contest the application, and may grant joint motions to dismiss such applications.

**(i) Sua Sponte Dismissal of Cases.** The Clerk may dismiss a case for the appellant's failure to pay the filing fee or to file a brief. See also Rule 35(a).

**(j) Construction of Rules in Self-Representation Cases.** Consistent with the practice of the Court, the Clerk will liberally construe the rules as they apply to self-represented appellants.

**(k) Nonconforming Papers.** Except where return of a paper is required by these rules for a specific reason (see Rules 5(d), 24, 26(d), 27(e) and 28(e)), if the Court receives any paper that does not conform to these rules, the Clerk will receive, but not file, the paper; however, if it is a jurisdiction-conferring paper, the paper will be filed notwithstanding any other provision of these rules. In every case, the Clerk will promptly notify the party of the defect(s) to be corrected and may, in accordance with guidance from the Board of Judges, stay proceedings for a reasonable time in order to permit submission of a conforming paper. Failure to submit such conforming paper in a timely manner may result in the dismissal of the matter.

(As amended May 16, 2003, eff. July 1, 2003; Aug. 27, 2004, eff. Sept. 13, 2004.)

FEE SCHEDULE

It is ORDERED, pursuant to Rule 45(f), that the following revised schedule of fees approved by the Court is announced. The fees marked \* apply to services on behalf of the United States, if the information requested is available through electronic access. Changes are marked by #:

For filing Notice of Appeal or Petition for Extraordinary Relief in this Court, but not when the Court orders case redocketing for its administrative convenience	\$50.00
For filing Notice of Appeal to the U.S. Court of Appeals for the Federal Circuit (fee set by that court, payable to this Court)	255.00#
For reproducing a paper copy from original documents or from microfiche or microfilm reproductions of original records, per copy page	.50*
For each microfiche sheet of film or microfilm jacket copy of any Court record, when available	3.00
For reproducing audio or video tape recording, including cost of materials	15.00

For searching Court records, per name or item searched	15.00*
For retrieval of a Court record from a Federal Records Center or National Archives	25.00
For certifying a document or paper, whether certification is made directly on the document or by separate instrument	5.00
For application for admission to practice before the Court	30.00
For a certificate of admission to practice, suitable for framing: (fee set by, and payable to, printer)	
attorney	28.00#
nonattorney	23.00#
For a Certificate of Good Standing	5.00

DATED: November 12, 2003

FOR THE COURT:  
NORMAN Y. HERRING  
Clerk of the Court

### Rule 46. Representation

#### (a) Admission of Attorneys to Bar of Court.

(1) *General.* A person of good moral character and repute who has been admitted to practice in the Supreme Court of the United States, or the highest court of any state, the District of Columbia or a United States territory or commonwealth within the meaning of 48 U.S.C. §1904(e)(5), and is in good standing therein, may be admitted to the bar of the Court upon application. See Rules of Admission and Practice.

(2) *Application.* An attorney at law may be admitted to the bar of the Court upon filing with the Clerk a completed application accompanied by the applicable fee (payable by check or money order) and a current certificate from the clerk of the appropriate court showing that the applicant is a member in good standing of the bar of one of the courts named in paragraph (1) of this subsection. A current court certificate is one executed not earlier than 3 months before the date of the filing of the application.

**(b) Admission of Nonattorney Practitioners to Practice.** A nonattorney of good moral character and repute who is—

(1) under the direct supervision (including presence at any oral argument) of an attorney admitted to the bar of the Court, or

(2) employed by an organization that is chartered by Congress, is recognized by the Secretary of Veterans Affairs for claims representation, and provides a statement signed by the organization's chief executive officer certifying to the employee's—

(A) understanding of the procedures and jurisdiction of the Court and of the nature, scope, and standards of its judicial review; and

(B) proficiency to represent appellants before the Court may be admitted to practice before the Court upon filing with the Clerk a completed application accompanied by the applicable fee (payable by check or money order). In making the statement under this paragraph, the chief executive officer should be aware that knowledge of and competence in veterans law and the administrative claims process does not in and of itself connote competence in appellate practice and procedure.

**(c) Appearance in a Particular Case.** On motion and a showing of good cause, the Court may permit any attorney or nonattorney practi-

tioner not admitted to practice before the Court, or any other person in exceptional circumstances, to appear on behalf of a party or amicus for the purposes of a particular case. Whenever a person is admitted to practice under this subsection, the person will be deemed to have conferred disciplinary jurisdiction upon the Court for any alleged misconduct in the course of, in the preparation for, or in connection with any proceeding in that case.

#### (d) Representation Requirements.

(1) *Practitioner defined.* A person who has been admitted under subsection (a) or (b), or has been permitted to appear under subsection (c) is referred to in this subsection as a practitioner.

(2) *Appearance.* No practitioner may appear as a representative of a party or amicus in any proceedings in a case without first filing—

(A) a written notice of appearance in the detail set out in Form 3 in the Appendix of Forms, served in compliance with Rule 25; and

(B) unless the representation is without charge to that party, a copy of the fee agreement if the practitioner is representing an appellant or petitioner or intervenor. A copy of the agreement must be served on the Secretary.

An appearance may not be made in the name of a law firm or other organization.

(3) *Filings by nonattorney practitioner.* Each notice of appearance and pleading filed by a nonattorney practitioner must include the name, address, and signature of the responsible supervising attorney under subsection (b)(1) or the identification of the employing organization under subsection (b)(2).

(4) *Withdrawal.* If another practitioner has previously entered an appearance on behalf of a party, a practitioner may withdraw from a case by filing a notice stating that the party has consented to the withdrawal. Otherwise, a practitioner may not withdraw from a case without obtaining the Court's permission by filing a motion to withdraw that—

(A) lists the client's current address and telephone number; and

(B) avers to the Court that—

(i) the client has been notified of the motion to withdraw; and

(ii) copies of all papers filed by the parties, all notices and orders accumulated by the practitioner, and all files belonging to the client have been sent to the client or to a named substitute practitioner.

The practitioner's authority and duty continue until he or she is relieved by the Court, subject to conditions that the Court considers appropriate.

(5) *Change of address.* Each practitioner must give the Clerk and all other parties written notice (not included in another filing) of any change of his or her address or telephone number. Such a notice by a practitioner must list, by docket number and title, each pending case in which that practitioner is a representative in the Court. Absent such notice, the mailing of documents to the address most recently provided by that person will be fully effective.

(6) *Limited appearance.* Paragraphs (2) through (4) of this subsection do not apply when a practi-

tioner files a Notice of Appeal on behalf of an appellant and specifies that the appearance is limited to that filing. The practitioner must include his or her name, address, and telephone number on such a Notice of Appeal.

(7) *VA practitioners.* Paragraphs (2)(B), (4), (5), and (6) of this subsection do not apply to practitioners representing the Secretary.

**(e) (Rescinded)**

**(f) Appearance by Law Students.**

(1) *General.* An eligible law student, with the written consent of the appellant and the attorney of record, who must be a member of the bar of the Court, may appear in the Court as provided in this subsection.

(2) *Participation defined.* An eligible law student may participate in the preparation of briefs and other documents to be filed in the Court, but such briefs or documents must be signed by the attorney of record. The student may also participate in oral argument with leave of the Court, but only in the presence of the attorney of record. The attorney of record must assume personal professional responsibility for the law student's work and for supervising the quality of his or her work. The attorney must be familiar with the case and prepared to supplement or correct any written or oral statement made by the student.

(3) *Conditions of appearance.* In order to make an appearance pursuant to this rule, the student must—

(A) be duly enrolled in a law school approved by the American Bar Association;

(B) have completed legal studies amounting to at least four semesters, or the equivalent if studies are scheduled on other than a semester basis;

(C) be certified, by the dean of the law school in which the law student is enrolled, as being of good character and competent legal ability (this certification must be filed with the Clerk and may be withdrawn at any time by the dean, upon written notice to the Clerk, or by the Court, without notice or hearing and without any showing of cause);

(D) be introduced by the attorney of record in the case;

(E) neither ask for nor receive any compensation or remuneration of any kind for his or her services from the person on whose behalf such services are rendered, but this will not prevent an attorney, legal aid bureau, law school, a state, the District of Columbia, or a United States territory or commonwealth within the meaning of 48 U.S.C. §1904(e)(5), or the United States from paying compensation to the eligible law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require;

(F) certify in writing that he or she has read and is familiar with the code of professional responsibility or rules of professional conduct in effect in the state or jurisdiction in which the student's law school is located and with the rules governing practice in the Court (see Rule 4 of the Rules of Admission and Practice).

**Rule 46.1. Self-Representation**

Any appellant, petitioner, or intervenor may be self represented before the Court. A self-represented party must give the Clerk and all other parties written notice (not included in another filing) of any change of his or her address or telephone number. Absent such notice, the mailing of documents to the address most recently provided by that person will be fully effective. See also Rules 25(b)(3) (filing by inmate), 28(i) (informal brief), 32(h) (identification in brief), 33(a) (staff conference), and 45(j) (rules construed liberally for self-represented appellants).

(As amended May 16, 2003, eff. July 1, 2003.)

**Rule 47. Expedited Proceedings**

**(a) Motion and Order.** On a party's motion for good cause shown, on written agreement of the parties, or on its own initiative, the Court may order that any matter before the Court be expedited with respect to some or all procedural steps. The following may constitute good cause:

(1) a serious health condition that makes the death of the appellant or petitioner imminent, as shown by a physician's statement (including identification of the physician's licensing authority and current license number);

(2) the advanced age (over 75 years) of the appellant or petitioner and a state of failing health due to a nontemporary condition, as shown by a physician's statement (including identification of the physician's licensing authority and current license number), such that expeditious proceedings are necessary to avoid an injustice to the appellant or petitioner; or

(3) any other exceptional circumstances that make expeditious proceedings necessary to avoid an injustice to the appellant or petitioner, as shown by credible evidence. Consideration of good cause under clauses (2) and (3) of this subsection may take into account the overall case-load of a judge or judges.

**(b) Filing and Service of Papers.** Expedited proceedings will be scheduled as directed by the Court. Unless otherwise ordered, the appellant's principal brief must be served and filed not later than 25 days after the date of the Clerk's notice that the record on appeal has been filed; the Secretary's brief must be served and filed not later than 15 days after service of the appellant's brief; and any reply brief must be served and filed not later than 10 days after service of the Secretary's brief.

**(c) Form and Length of Briefs.** Briefs filed under this rule must comply with Rules 28 and 32, except that principal briefs must be limited to 15 pages, reply briefs must be limited to 7 pages, and a table of authorities is not required.

**(d) Supplementation of the Transmitted Record.** If expedited proceedings are ordered, any motion for supplementation of the record on appeal must be served and filed before the date on which the appellant's brief is due. See also Rule 11(b). Unless the Court orders otherwise, such supplementation does not extend the time for filing any brief.

**Rule 48. Sealing of Cases**

**(a) Cases Involving Protected Records.** If, during the time periods set out in Rule 10 or at any

other time during a proceeding before the Court, the parties identify records protected by 38 U.S.C. §7332 and at least one of the parties believes that disclosure of such records is required in such proceeding and, further, the parties cannot agree with respect to the disclosure of such records, the party requesting disclosure must make immediate application therefor, pursuant to 38 U.S.C. §7332(b)(2)(D), caption the case “In re: Sealed Case No. [insert Court case number]” (not disclosing the identity of any individual), and serve on the protected person or successor in interest a copy of the application. Such application must include a statement specifying those steps taken by the parties to reach agreement before application was made to the Court. Upon receipt of such application, unless otherwise directed by the Court, the Clerk will enter the case as “withdrawn” on the docket, assign a new case number and recaption the case using an encoded identifier, and seal the record on appeal and the file of the Court. Thereafter, any party or representative of a party, unless other-

wise ordered by the Court, must make reference in any subsequent filing only to the new case number and caption assigned by the Clerk.

**(b) Other Cases.** The procedures described in this rule may, in the Court’s discretion, be applied to cases that the Court orders sealed but that do not contain records protected by 38 U.S.C. §7332.

#### Rule 49. Complaints Against Judges

Rules for the processing of complaints of judicial misconduct or disability have been adopted by the Court pursuant to 28 U.S.C. §372(c) (superseded<sup>1</sup> by §§351.64<sup>2</sup>). Copies are available from the Clerk on request.

#### REFERENCES IN TEXT

28 U.S.C. §372(c), referred to in text, was struck out by Pub. L. 107-273, div. C, title I, §11043(a)(1)(B), Nov. 2, 2002, 116 Stat. 1855.

<sup>1</sup> So in original. Probably should be “superseded”.

<sup>2</sup> So in original. Probably should be “§§351-64”.

APPENDIX OF FORMS

FORM 1

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Notice of Appeal

The following named appellant appeals to the Court from a final Board of Veterans' Appeals (BVA) decision. The BVA's decision was dated \_\_\_\_\_.

Appellant's printed name, VA claims file number, Appellant's address, Appellant's telephone number, Signature of person filing this notice

Only if this Notice of Appeal is filed by a representative, check one of the following:

- [ ] My Notice of Appearance is attached.
[ ] My representation is limited to the filing of this Notice of Appeal (complete items below).

Representative's printed name, Representative's address, Representative's telephone number

INSTRUCTIONS
Send this Notice of Appeal (NOA) (original only) to: Clerk, US Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950
You may send this NOA by facsimile transmission to (202) 501-5848 or by means other than the USPS.
There is a \$50 filing fee for an appeal. Send a check or money order, payable to "US Court of Appeals for Veterans Claims," with this NOA.

[S-A-M-P-L-E]

**APPELLANT'S BRIEF**

**UNITED STATES COURT OF APPEALS  
FOR VETERANS CLAIMS**

**No. 00-0000**

**JOHN Q. VETERAN,**

**Appellant**

**v.**

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**SECRETARY OF VETERANS AFFAIRS,**

**Appellee**

**Oliver W. Counsel  
Lawyr & Lawyr  
1111 J Street, NW  
Washington, DC 20000  
(202) 555-1212**

**Attorney for Appellant**

FORM 3

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS Notice of Appearance

\_\_\_\_\_, [ ] Appellant, [ ] Petitioner, v. \_\_\_\_\_ No. \_\_\_\_\_

Secretary of Veterans Affairs.

- 1. Please enter my appearance for [ ] the appellant or petitioner [ ] the Secretary [ ] the intervenor [ ] amicus curiae: \_\_\_\_\_
2. I am: [ ] admitted to practice before this Court. [ ] awaiting admission to practice; my application was submitted on (date) \_\_\_\_\_ [ ] seeking to appear in this case only, under Rule 46(c); my motion is attached.
3. I am: [ ] the representative of record. I will accept service for the party and will inform all of the party's other representatives of the matters served upon me. [ ] not the representative of record, but am joining that representative. [ ] replacing the representative of record, who has been permitted to withdraw.
4. If I am representing the appellant, petitioner, or intervenor, my representation is: [ ] pursuant to the attached fee agreement. If it provides for direct payment out of past-due benefits under 38 U.S.C. § 5904, I have served a copy on counsel for the Secretary. [ ] without charge to the appellant, petitioner, or intervenor.

Signature \_\_\_\_\_ Date \_\_\_\_\_
Printed name \_\_\_\_\_ Veterans service organization, if Rule 46(b)(2) applies.
Address \_\_\_\_\_ Signature and printed name and address of supervising attorney, if Rule 46(b)(1) applies
Telephone number \_\_\_\_\_

Attachments: [ ] Motion to appear under Rule 46(c) [ ] Fee agreement

**FORM 4**  
**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**  
**DECLARATION OF FINANCIAL HARDSHIP**

\_\_\_\_\_, Appellant/Petitioner,

v.

No. \_\_\_\_\_

Secretary of Veterans Affairs, Appellee/Respondent.

I am the appellant/petitioner. I declare, by my signature below, that payment of the fifty dollar (\$50.00) filing fee required by Rule 3(e) or Rule 21(a) of the Court's Rules of Practice and Procedure would be a financial hardship for me.

**Pursuant to 28 U.S.C. § 1746, I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.**

\_\_\_\_\_  
Signature of Appellant/Petitioner

\_\_\_\_\_  
Date

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Accepted for filing:

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Date

**INSTRUCTIONS**  
*Send this Declaration (original only) to:*  
**Clerk, US Court of Appeals for Veterans Claims**  
**625 Indiana Avenue, NW, Suite 900**  
**Washington, DC 20004-2950**  
  
**or FAX to (202) 501-5848**