

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

Misc. No. 3-01

In Re: RULES OF PRACTICE AND PROCEDURE

Before KRAMER, *Chief Judge*, and FARLEY, HOLDAWAY,  
IVERS, STEINBERG, and GREENE, *Judges*.

**ORDER**

Pursuant to the authority of 38 U.S.C. §§ 7263(b) and 7264(a) and consistent with 28 U.S.C. § 2071(b) and (e), the Court has determined the need to revise certain of its Rules of Practice and Procedure. In reaching this determination, the Court has benefitted from the views of its Rules Advisory Committee. It is

ORDERED that the attached proposed changes to Rules 32(g), 35(a) and (d)(1), and 45(i) of the Rules of Practice and Procedure are hereby published. Public comment on these changes is invited. Such comment must be submitted to the Clerk of this Court at 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004-2950, by July 9, 2001.

DATED: May 10, 2001

BY THE COURT:

KENNETH B. KRAMER  
Chief Judge

Attachment

**ATTACHMENT TO USCVA MISCELLANEOUS ORDER NO. 3-01**  
**PROPOSED RULES CHANGES (added language underlined;**  
**deleted language [in brackets])**

**RULE 32. FORM OF BRIEFS, APPENDICES, AND OTHER PAPERS**

Amend Rule 32(g) by increasing the page length of briefs to 30 pages and excluding the certificate of service from the page limit:

**(g) Page Limits and Number of Copies.** Except by permission of the Court or as limited by Rule 47, principal briefs may not exceed [25] 30 pages and reply briefs may not exceed 15 pages, not counting the table of contents; the table of citations; [and] any appendix containing superseded statutes, rules, and regulations, and unpublished authorities; and the certificate of service.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 concerning fax filings.

*(Reason: This change, recommended by the Rules Advisory Committee, would be in line with December 1998 changes to FED. R. APP. P. 32(a)(7)(A) and (a)(7)(B) and Rule 32(a)(7)(A) and (a)(7)(B)(i) of the U.S. Court of Appeals for the Federal Circuit.)*

**RULE 35(a) and 35(d)(1)**

Amend Rule 35(a) and (d)(1) by inserting a new second sentence, so that Rule 35(a) would read as follows:

**(a) Motion for Reconsideration.** A party in a case decided by a single judge may move for reconsideration by the single judge. A party in a case dismissed by the Clerk pursuant to Rule 45(i) may move for reconsideration by the Clerk. 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.

And add the following language to (d)(1):

(d)(1) A motion for Clerk reconsideration, single-judge reconsideration, for panel decision, or for both, must be filed within 21 days (51 days if the motion is filed by a person located outside a state, the District of Columbia, Puerto Rico, or the Virgin Islands) after the date of the Clerk's or single-judge's decision.

*(Reason: The Court has decided that the Clerk should be empowered to dismiss cases when the appellant has failed to pay the Court's filing fee (or request a waiver of the fee) or to file a brief after having been ordered to do so by the Court. A challenge to such a dismissal, by a motion for*

*reconsideration under Rule 35(a), as proposed to be revised, would either be allowed by the Clerk or referred to a judge for decision under Rule 45(i), as proposed below to be revised. The new authority provided to the Clerk would be exercised (1) only after a show-cause order has been issued to the appellant regarding such a dismissal and (2) only by the Clerk personally or an attorney acting for him.)*

## **RULE 45**

Amend Rule 45 by redesignating subsection (i) as (j) and adding a new (i), so that Rule 45 would read in part as follows:

....

**(g) Motions.** The Clerk may act on motions, if consented to or unopposed, that seek to:

- (1) dismiss an appeal or an application for extraordinary relief 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 an order of the Court, unless the motion is made after the time limit has elapsed;
- (5) consolidate appeals;
- (6) withdraw or substitute an appearance; or
- (7) correct a brief or other paper.

**(a)** ....

**(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. If a party's motion for reconsideration by the Clerk of a case dismissed by the Clerk under this subsection is not granted by the Clerk, the matter must be referred for decision by a judge.

**[i](j) Construction of Rules in Self-Representation Cases.** The Clerk shall liberally construe the rules as they apply to appellants representing

themselves.

*(Reason: See Reason following proposed Rule 35 revision.)*