

**UNITED STATES COURT OF VETERANS APPEALS**

Misc. No. 1-97

IN RE: RULES OF PRACTICE AND PROCEDURE

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

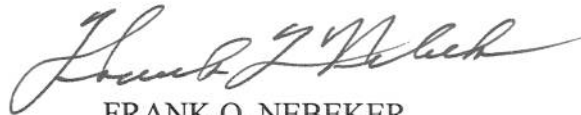
**ORDER**

Pursuant to the authority of 38 U.S.C. § 7264(a) and consistent with 28 U.S.C. § 2071(b), the Court has determined the need for changes to Rules 3, 4, 25, 26, 35, 36, and 41 of its Rules of Practice and Procedure. In reaching this determination, the Court has benefited from the views of its Rules Advisory Committee. Accordingly, it is

ORDERED that the attached proposed changes to this Court's 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 January 30, 1998.

DATED: December 3, 1997

BY THE COURT:



FRANK Q. NEBEKER  
Chief Judge

MISC. ORDER NO. 5-96 WAS THE LAST IN THE SERIES FOR 1996

ATTACHMENT TO USCVA MISCELLANEOUS ORDER NO. 1-97

PROPOSED RULE CHANGES (only affected subsections shown)  
(Added language underlined; deleted language ~~lined through~~)

RULE 3. HOW TO APPEAL

(a) **Filing.** An appeal will be taken by filing a written Notice of Appeal with the Clerk within the time allowed by Rule 4(a). A Notice of Appeal may be filed by facsimile sent to the Clerk of the Court at ~~(202) 501-5848~~. Failure of an appellant to take any step under these rules after the timely filing of a Notice of Appeal may be grounds for such action as the Court deems appropriate, which may include dismissal of the appeal.

*[Reason: Fax phone number is subject to change, so should not be in rules.]*

RULE 4. WHEN TO APPEAL

(b) **Notice of Docketing.** The Clerk shall ~~mail~~ send a Notice of Docketing to all parties advising them of the date when the Clerk received the Notice of Appeal.

*[Reason: Clerk does not mail papers to the Secretary.]*

\* \* \*

RULE 25. FILING AND SERVICE

\* \* \*

(b) **Timeliness.**

(1) **Facsimile Filing.** A paper may be sent at any time. A paper ~~--except a Notice of Appeal or an Application for Attorney Fees and Expenses--~~ received by the Clerk

(a) on any nonbusiness day or

(b) on any business day before 7:00 a.m. on ~~a business~~ that day

is considered received on the preceding business day. ~~But see Rule 4(a) concerning Notice of Appeal. A Notice of Appeal or an Application for Attorney Fees and Expenses filed by facsimile will be considered received on the day on which it is received.~~

(2) **Other Papers.** Except as provided in paragraph (1), all papers other than those filed by facsimile must be received by the Clerk or deposited in the night box within the time specified for filing. See Rule 45. ~~But see Rule 4(a) concerning Notice of Appeal.~~

\* \* \*

(c) **Service of All Papers Required.** A copy of any paper ~~--except a motion to waive the filing fee--~~ 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 and amici to the appeal. Service on a represented party or amicus must be made on the representative.

*[Reason: Clarifies that this rule does not create exceptions to time limits set by statute. The Secretary has no role in the waiver of filing fees.]*

## RULE 26. COMPUTATION AND EXTENSION OF TIME

**(a) Computing Time.**

- (1) 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, legal holiday, or--if the act to be done is filing a paper in the Court--a day when the Clerk's Office has been closed by direction of the Chief Judge. Notice that the Court is closed will be posted publicly, if circumstances permit, and placed on a recording for telephone callers.
- (2) As used in this rule, "legal holiday" means New Year's Day, Birthday of Martin Luther King, Jr., 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.

*[Reason: Rearranged for clarity. Change conforms with 5 U.S.C. § 6103(a)]*

\* \* \*

## RULE 35. MOTIONS FOR RECONSIDERATION, OR FOR DECISION BY A PANEL OR BY THE FULL COURT

**(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 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.

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

**(c) Motion for Full Court Decision.** A party may move for decision by the full Court (1) initially, or (2) after a panel has decided a case, or (3) after a panel has denied a motion for panel decision or reconsideration. A motion for decision by the full Court in a case decided only by a single judge is not permitted. Motions for 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) A motion for 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 single-judge decision.
- (2) A motion for panel reconsideration, for full Court 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 initial panel decision or order denying a motion for panel decision.
- (3) A motion for initial consideration of a case by the full Court must be filed within 30 days after the date on which the appellant's brief was served.
- (4) A motion for reconsideration of a case by the full Court 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 initial full Court decision.

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

- (1) a motion for 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 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; Number of Copies.** Except by the Court's permission, a motion or response (including any supporting memorandum or brief) under this rule must not exceed 15 pages. The motion must otherwise comply with Rule 27, but it need not indicate whether it is opposed. A motion for 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 panel or full Court decision 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 panel decision will be referred to a panel. A motion for full Court decision will be referred to all of the judges. Consideration by the full Court requires the vote of a majority of the judges. The Clerk shall return an untimely motion or one that fails to include the statement required by subsection (e) of this rule.

*[Reason: Completely rewritten to describe the Court's practice more accurately.]*

### **RULE 36. ENTRY OF JUDGMENT**

Unless the Court orders otherwise, the judgment will be entered after the time allowed in Rule 35(d)(1) or (2) has expired, or after the Court has acted on a timely motion for single-judge or panel reconsideration or for panel decision. The filing of a motion for full Court decision or reconsideration ~~by the full Court~~ will not postpone entry of the judgment. Entry of the judgment begins the 60-day time period for any appeal to the United States Court of Appeals for the Federal Circuit.

*[Reason: Rewritten to consolidate all provisions concerning entry of judgment.]*

\* \* \*

### **RULE 39. ATTORNEY FEES AND EXPENSES**

**(a) Time for filing.** An application pursuant to 28 U.S.C. § 2412 for award of attorney fees and other expenses in connection with an appeal must be filed with the Clerk within 30 days after this Court's judgment becomes final. See also 28 U.S.C. § 2412(d)(2)(G) and 38 U.S.C. § 7291(a). Such an application may be filed by facsimile sent to the Clerk of the Court.

*[Reason: To make clear that an application may be filed by facsimile.]*

\* \* \*

### **RULE 41. ISSUANCE OF MANDATE; STAY OF MANDATE**

**(a) Date of Issuance.** The mandate of this Court will issue 60 days after the date of entry of judgment pursuant to Rule 36 unless the time is shortened or extended by order. ~~A certified copy of the judgment and a copy of the Court's disposition of the appeal will constitute the mandate.~~ If a timely Notice of Appeal to the United States Court of Appeals for the Federal Circuit is filed with the Clerk, the mandate will issue in accordance with 38 U.S.C. § 7291(a).

**(b) Mandate in Consented Dismissal or Remand.** An order on consent dismissing or remanding a case will also constitute the mandate.

*[Reason: Furnishing multiple copies of the decision and the judgment is unnecessary, and is confusing to many unrepresented appellants. The Court issues a separate document as its mandate.]*