

UNITED STATES COURT OF VETERANS APPEALS

Misc. No. 3-93

IN RE: RULES 36 AND 39

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

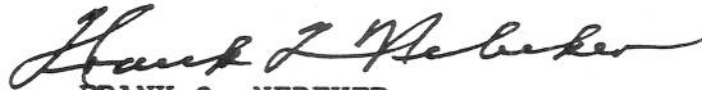
O R D E R

Pursuant to the authority of 38 U.S.C. § 7264(a) and consistent with 28 U.S.C. § 2071(b), the United States Court of Veterans Appeals has adopted rules providing for application for attorney fees and expenses under the Equal Access to Justice Act. On February 1, 1993, the Court adopted interim Rules 36(b) and 39 and invited public comment. The Court has benefited from the views of its Rules Advisory Committee and from public comment received from February 1 through March 31, 1993. Accordingly, it is

ORDERED that the attached Rules 36 and 39 of this Court's Rules of Practice and Procedure are hereby adopted as final rules. Rule 36(a) applies to any appeal pending in this Court on or after the date of this order. Rules 36(b) and 39 apply to any appeal pending in this Court, or to any appeal from this Court pending in the United States Court of Appeals for the Federal Circuit, on or after October 29, 1992.

DATED: June 1, 1993

BY THE COURT:



FRANK Q. NEBEKER
Chief Judge

Rule 36. Publication of Decision and Entry of Judgment

(a) **Generally.** Upon receipt of a decision, the Clerk shall send copies to all parties. The Clerk shall enter the judgment after the time allowed in Rule 35(a) has expired unless otherwise ordered by the Court. Entry of the judgment begins the 60-day time period for any appeal to the United States Court of Appeals for the Federal Circuit. On the date judgment is entered, the Clerk shall send copies of the judgment to all parties.

(b) **Upon Remand.** When a matter is remanded in a case in which the appellant is represented, unless the opinion, decision, or order specifies otherwise, the Court retains jurisdiction for the limited purpose of entertaining an application for attorney fees and expenses under Rule 39. Within 14 days after the final postremand administrative decision in such a case, the Secretary shall file a copy of that decision with the Clerk. After receiving that decision, the Clerk shall enter final judgment, unless good cause is shown why such judgment should not be entered, and shall send copies to all parties.

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).

(b) **Content.** The application, in an original and three copies with proof of service on the Secretary, must be captioned with the name and docket number of the proceeding in this Court for which an award is sought. It must include:

- (1) a statement that the applicant is a prevailing party and is eligible to receive an award;
- (2) identification of the specific position or positions of the Secretary that the applicant alleges were not substantially justified; and
- (3) an itemized statement from the applicant's attorney as to each type of service which was rendered in this Court and in any proceedings pursuant to this Court's remand, describing:
 - (A) the nature of the service;
 - (B) the actual time expended for which a fee is sought;
 - (C) the rate at which fees are computed; and
 - (D) the amount sought;

and an itemized statement of expenses for which reimbursement is sought.

(c) **Response.** Within 30 days after service of the application, the Secretary shall file and serve a response, stating which elements of the application are not contested and explaining the Secretary's position on those elements which are contested.

(d) **Reply.** Within 30 days after service of the Secretary's response, the applicant may file and serve a reply, addressing those matters contested by the Secretary.

(e) **Appendices.** The parties shall file as appendices to the application, response, and reply those relevant papers which are not already before the Court.