

**Annual Report**  
**United States Court of Appeals for Veterans Claims**  
**October 1, 2010 to September 30, 2011 (Fiscal Year 2011)**

Pursuant to 38 U.S.C. § 7288, the United States Court of Appeals for Veterans Claims (Court) submits the following report summarizing the workload of the Court for Fiscal Year (FY) 2011.

- 1. The number of appeals filed with the Court:** 3,948 (54% pro se at time of filing)
- 2. The number of petitions filed with the Court:** 137 (61% pro se at time of filing)
- 3. The number of applications filed with the Court under the Equal Access to Justice Act (EAJA) section 2412 of title 28:** 2,537
- 4. The total number of dispositions by each of the following for FY 2011:<sup>1</sup>**
  - (A) The Court as a whole:** 7,562<sup>2</sup>
    - Appeals: 4,620 (24% pro se at time of disposition)
    - Petitions: 167 (50% pro se at time of disposition)
    - EAJA: 2,517
    - Requests for Reconsideration/Panel Decision:<sup>3</sup> 235 appeals, 23 petitions
  - (B) The Clerk of the Court:<sup>4</sup> 4,742**
    - Appeals: 2,336
    - Petitions: 7
    - EAJA: 2,399
    - There were no Requests for Reconsideration of the Clerk's orders.
  - (C) A single judge of the Court:** 2,661
    - Appeals: 2,242
    - Petitions: 157
    - EAJA: 117
    - Requests for Reconsideration of a Single Judge Decision: 131 appeals, 14 petitions

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<sup>1</sup> "Dispositions" include each resolution of a matter, including decisions on appeals, petitions, EAJA applications, and requests for reconsideration/panel decision.

<sup>2</sup> This number, which was first reported in this Court's FY 2010 report, reflects additional workload associated with requests for reconsideration and panel decision.

<sup>3</sup> The number of requests for reconsideration by the Court as a whole, a single judge of the Court, a multi-judge panel of the Court, and the full Court do not include reconsideration of EAJA decisions by the Court.

<sup>4</sup> These actions generally include matters resolved through agreement of the parties, often with the aid of staff conferencing.

**(D) A multi-judge panel of the Court: 149**

Appeals: 42

Petitions: 3

EAJA: 1

Requests for Panel Decision following a Single Judge Decision/Reconsideration:  
94 appeals; 9 petitions

**(E) The full Court: 10**

Appeals: 0

Petitions: 0

EAJA: 0

Requests for Full Court Decision following a Panel Decision/Reconsideration:  
10 appeals, 0 petitions

**5. The number of each type of disposition by the Court, including settlement, affirmation, remand, vacation, dismissal, reversal, grant, and denial:**

|  | <b>Total</b> | <b>Clerk<sup>5</sup></b> | <b>Single Judge</b> | <b>3 Judge Panel</b> | <b>En Banc</b> |
|--|--------------|--------------------------|---------------------|----------------------|----------------|
| <b>APPEALS</b>   |              |                          |                     |                      |                |
| Affirmed   | 1051         | 0                        | 1,044               | 7                    | 0              |
| Affirmed or dismissed in part,<br>reversed/vacated and remanded<br>in part | 837          | 536                      | 292                 | 9                    | 0              |
| Reversed or vacated and remanded<br>in whole or in part                    | 706          | 0                        | 687                 | 19                   | 0              |
| Remanded   | 1298         | 1291                     | 6                   | 1                    | 0              |
| Dismissed for lack of jurisdiction   | 210          | 7                        | 202                 | 1                    | 0              |
| Dismissed for default  | 237          | 230                      | 7                   | 0                    | 0              |
| Dismissed voluntarily  | 281          | 272                      | 4                   | 5                    | 0              |
|  | <hr/>        | <hr/>                    | <hr/>               | <hr/>                | <hr/>          |
|  | 4,620        | 2,336                    | 2,242               | 42                   | 0              |
| <b>PETITIONS</b>   |              |                          |                     |                      |                |
| Extraordinary relief granted   | 1            | 0                        | 0                   | 1                    | 0              |
| Extraordinary relief denied  | 88           | 0                        | 87                  | 1                    | 0              |
| Extraordinary relief dismissed   | 48           | 2                        | 46                  | 0                    | 0              |
| Dismissed for default  | 17           | 2                        | 14                  | 1                    | 0              |
| Dismissed voluntarily  | 13           | 3                        | 10                  | 0                    | 0              |
|  | <hr/>        | <hr/>                    | <hr/>               | <hr/>                | <hr/>          |
|  | 167          | 7                        | 157                 | 3                    | 0              |

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<sup>5</sup> Please see footnote 4.

|                          | <b>Total</b> | <b>Clerk<sup>6</sup></b> | <b>Single Judge</b> | <b>3 Judge Panel</b> | <b>En Banc</b> |
|--------------------------|--------------|--------------------------|---------------------|----------------------|----------------|
| <b>EAJA on Appeals</b>   |              |                          |                     |                      |                |
| Grant                    | 2,627        | 2,570                    | 55                  | 2                    | 0              |
| Denied                   | 15           | 0                        | 14                  | 1                    | 0              |
| Dismissed                | 10           | 5                        | 4                   | 1                    | 0              |
| <b>EAJA on Petitions</b> |              |                          |                     |                      |                |
| Grant                    | 0            | 0                        | 0                   | 0                    | 0              |
| Denied                   | 1            | 0                        | 1                   | 0                    | 0              |
| Dismissed                | 0            | 0                        | 0                   | 0                    | 0              |
|                          | <u>2,653</u> | <u>2,575</u>             | <u>74</u>           | <u>4</u>             | <u>0</u>       |

6. **The median time from filing an appeal to disposition (i.e., time from the veteran filing an appeal until initial dispositive action of the Court) by each of the following:**

**(A) The Court as a whole:** The median time from filing an appeal to disposition of the case by the Court, as a whole, is 328 days (10.9 months). This involves pre-chambers procedural activity which includes staff conferencing, record dispute resolution, briefing, screening, and extensions of time for pro se appellants to seek counsel.

**(B) The Clerk of the Court:** The median time from filing an appeal to disposition of the case by the Clerk is 183 days (6.1 months). This involves pre-chambers procedural activity which includes staff conferencing, record dispute resolution, briefing, screening, and extensions of time for pro se appellants to seek counsel.

**(C) A single judge of the Court:** The median time for disposition of a single judge decision once it has been assigned to chambers is 79 days (2.6 months). The median time from filing an appeal to disposition by a single judge, which includes pre-chambers procedural activity, is 584 days (19.5 months). Pre-chambers procedural activity includes staff conferencing, record dispute resolution, briefing, screening, and extensions of time for pro se appellants to seek counsel.

**(D) Multiple judges of the Court (including a multi-judge panel of the Court or the full Court):** The median time for disposition of a multi-judge panel decision once it has been assigned to panel is 148 days (4.9 months). The median time from filing an appeal to disposition by a multi-judge panel, which includes pre-chambers procedural activity, is 763 days (25.4 months). Pre-chambers procedural activity includes staff conferencing, record dispute resolution, briefing, screening, and extensions of time for pro se appellants to seek counsel. In addition, scheduling a case for oral argument, which adds a minimum of 45 days, and additional time for supplemental briefing contribute to the time for case disposition.

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<sup>6</sup> The Clerk generally takes action on uncontested applications for attorney fees and expenses (EAJA).

7. **The median time from filing a petition to disposition by the Court:** 54 days (1.8 months)
8. **The median time from filing an application under section 2412 of title 28 to disposition by the Court:** 29 days (1 month)
9. **The median time from the completion of briefing requirements by the parties to disposition by the Court:** 271 days (9 months) Note: This time includes approximately two weeks to raise issues relating to finalizing the Record of Proceedings (a compilation of all documents relevant to the appeal) in every case. If an objection to the Record of Proceedings is filed, resolution can take several more weeks. Also, due to the considerable caseload it takes approximately 6 months for cases to be fully screened by the Court's Central Legal Staff.
10. **The number of oral arguments before the Court:** 21 (35 scheduled, 14 settled)
11. **The number of cases appealed to the United States Court of Appeals for the Federal Circuit:** 197
  - Appeals: 180
  - Petitions: 12
  - EAJA: 5
12. **The approximate number and status of appeals and petitions and EAJA applications pending with the Court as of the end of such fiscal year:**
  - Appeals and Petitions: 4,705
    - Pre-chambers procedural activity: 3,229<sup>7</sup>
    - Pending decision by a Judge or Panel: 388
    - Post decision: 1,088<sup>8</sup>
      - EAJA procedural activity: 317
      - EAJA pending decision by a Judge or Panel: 11
      - On appeal before the Federal Circuit: 155

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<sup>7</sup> Pre-chambers procedural activity, which occurs during the period of time from filing an appeal to assignment of the appeal to chambers, generally includes staff conferencing, record dispute resolution, briefing, screening, and extensions of time for pro se appellants to seek counsel.

<sup>8</sup> This number reflects cases pending during the time required for judgment, mandate, and EAJA (if applicable) as well as cases on appeal to the Federal Circuit and the Supreme Court.

13. **The number of cases pending with the Court more than 18 months as of the end of such fiscal year:** 864 appeals
- |                                       |                  |
|---------------------------------------|------------------|
| Pre-chambers procedural activity:     | 115 <sup>9</sup> |
| Pending decision by a Judge or Panel: | 170              |
| Post decision:                        | 579              |
14. **A summary of any service performed for the Court by a recalled retired judge of the Court:** Our recall retired (Senior) judges decided 581 appeals. In addition, our Senior judges decided hundreds of motions, permitting the regular active judges to devote their time to appeals, including those that raise more complex issues.
15. **An assessment of the workload of each judge of the Court, including consideration of the following:**
- (A) **The time required of each judge for disposition of each type of case.**
  - (B) **The number of cases reviewed by the Court.**
  - (C) **The average workload of other Federal appellate judges.**

As reflected in the responses to questions 1-14 above, each judge on the Court, regular active and Senior judge, carries a substantial workload. In addition to rendering decisions on appeals, petitions and related motions (e.g., procedural motions and motions for reconsideration or for panel review), and applications filed pursuant to 28 U.S.C. §2412 (EAJA), the Judges, through the Board of Judges, provide general direction and oversight of the operations of the Court, and work on the judicial conference and outreach and education issues.

In FY 2011, the Court averaged 288 appeals decided on the merits per active judge. For purposes of comparison using currently available data, from September 30, 2010, through September 30, 2011, for the 12 circuit courts of appeals,<sup>10</sup> this was the highest number of merits decisions per active judge. The number of merits decisions per active judge for those courts ranged from 55 (DC Circuit) to 234 (11th Circuit). As to the number of filings, the Court had 681 filings per active judge, based on the 4,085 appeals and petitions filed in FY 2011. The number of filings per active judge for the circuit courts of appeals ranged from 126 (DC Circuit) to 623 (11th Circuit).

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<sup>9</sup> Delays associated with pre-chambers procedural activity are due primarily to parties' requests for stays or extensions of time.

<sup>10</sup> This comparison does not include data from the U.S. Court of Appeals for the Federal Circuit (comparable data was not available).