

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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INSTRUCTIONS FOR UNREPRESENTED APPELLANTS

First Steps

The first steps to having the Court of Appeals for Veterans Claims (the Court) consider your case are to (1) file a **Notice of Appeal** (Form 1) from a Board of Veterans' Appeals (BVA) decision, and (2) pay the \$50 filing fee or request a waiver of that fee by completing a Declaration of Financial Hardship (Form 4). These forms are available from the Court's website at www.uscourts.cavc.gov/forms_fees.php. On the Notice of Appeal form you may choose to receive future notifications from the Court via email or regular mail delivered by the U.S. Postal Service (paper mail).

Once the Court receives your Notice of Appeal, we give your case a **case number** and create a case **docket** where all activity in your case is recorded. The **notice of docketing** shows that information. Put your case number – *not* your VA claims file number or your social security number – on every paper you send to the Court so we can match it with your case. Type or hand-print your papers so we can read them. If we can't read your filing, we will send it back to you and that will delay your case.

You are referred to as the **appellant**. The other party in your appeal is the Secretary of Veterans Affairs, also called "the Secretary" or the **appellee**. The Secretary is represented by attorneys from the **VA Office of General Counsel (VA counsel)**. As your case moves along, we will send a **notice** or an **order** telling you what to do next. Pay attention and do what it tells you. You must follow the Court's **Rules of Practice and Procedure (Rules)** that are posted on the Court's website at www.uscourts.cavc.gov/rules_of_practice.php

About the Court

The Court is NOT part of VA. The Court does not receive new evidence, hold trials, or award money damages. It reviews only what the BVA did in your case, based on the **evidence** and the **briefs**. In a few cases, usually only when an appellant has a representative, the Court will schedule an "oral argument" and the Judges will ask the parties questions about the case.

Finding the Law

The statutes and regulations pertaining to veterans benefits can be found in title 38 of the U.S. Code, and title 38 of the Code of Federal Regulations. These are available in most public libraries and online. The Court's

opinions are available in *West's Veterans Appeals Reporter* and on the Court's web site at www.uscourts.cavc.gov/orders_and_opinions.php.

Change of Address

If you move or change your phone number or email address while your case is at the Court, send a notice of your new information to the Court and to VA counsel. If you don't, and you miss a deadline because mail went to your old address, the Court may **dismiss** your appeal (terminate it without considering it).

Representation

The Secretary of Veterans Affairs is always represented by an attorney from the VA, who will argue VA's side. You may represent yourself, although your side may be better presented if you are also represented. When we docket your appeal, your name and address become public, so lawyers may write to you offering to represent you – some for a fee, and some without charge. If you are interested in getting a representative, you may also review a list of eligible attorneys and non-attorney representatives on the Court's website at www.uscourts.cavc.gov/public_list.php or you may contact another attorney you may know. Your representative does not have to be from the state where you live. The Court won't recommend or appoint anyone to represent you. You may ask an attorney to represent you or help you with your case for free (pro bono) through the Veterans Consortium Pro Bono Program at www.vetsprobono.org or 855-446-9678.

The Record Before the Agency

Not later than 60 days after the notice of docketing has been sent to you, the Secretary will: (1) copy all materials that were contained in the claims file on the date the BVA issued the decision that you are appealing and copy any other material from the record before the Secretary and the BVA (collectively referred to as "the agency") relevant to the issues listed in the BVA decision on appeal (Note: material submitted after the BVA decision on appeal generally will not be included in the record before the agency); (2) prepare a list of any record material that cannot be duplicated; (3) assemble and paginate those materials to create the **record before the agency**; (4) provide a copy of the record before the agency to you; and (5) file a notice with the Court certifying that the record before the agency has been served on you.

If you don't agree with the preparation or content of the record before the agency, you may file a motion within 14 days after the record before the agency was served on you (plus 5 extra days if your motion is filed by paper mail), and the Court will resolve the matter.

Your Brief

After VA counsel provides you with the record before the agency, the Court will send you a **Notice to File Your Brief**. Do not submit your brief before you receive the Notice to File Your Brief. Your brief is important. It tells the Court what you think was wrong with the BVA's decision. Most cases depend on the facts. Refer to facts that are in the record before the agency, not new facts that weren't available to the BVA. You may also refer to laws, regulations, or court decisions that you think apply to your appeal.

We will send you an **Informal Brief form** that you may use for your brief. Follow the instructions carefully. If you don't use that form you must meet all the requirements for a brief as explained in the Court's Rules 28 and 31. You may attach extra pages to an Informal Brief, but not more than 28 pages without the Court's permission. Don't attach "evidence." If you want the Court to look at a particular page in the record before the agency, you need to specifically refer to that page in your brief.

After you file your brief, VA counsel will file a brief arguing the Secretary's side of the case and will serve a copy on you. Within 14 days after that (19 days if by paper mail), you may--but don't have to—file a reply brief of not more than 15 pages. Your reply brief may be in the form of a letter.

Record of Proceedings

After the Court receives all of the briefs, the Secretary will prepare and file the **record of proceedings** which will contain: (1) the BVA decision(s) being appealed; (2) any material from the record before the agency cited in your brief(s) and the Secretary's brief; and (3) any other documents before the agency that are relevant to the issues decided by the BVA that are on appeal to the Court.

The record of proceedings will be arranged and paginated in the same order as the documents appeared in the record before the agency. Because certain documents in the record before the agency may not be included in the record of proceedings, this arrangement may result in pages in the record of proceedings not having consecutive numbers, for example, page 22 may be followed immediately by page 43.

The Secretary will file and serve the record of proceedings not later than 14 days after the reply brief is filed and served or if no reply brief is filed, not later

than 14 days after the reply brief was due in accordance with Rule 31(a)(3).

If you don't agree with the preparation or content of the record of proceedings, you may file a motion, within 14 days after the record of proceedings has been served with the Court (19 days if by paper mail), and the Court will resolve the matter.

Motions

To ask the Court to do something, file and serve a **motion**. Say specifically what you want and why you want it. *See* Rule 27.

Withdrawing your Appeal

If you want to drop your case, send a notice with your case number to the Court saying: "I withdraw my appeal." Be sure you want to do that, because the Court probably won't let you change your mind later or refund the \$50 filing fee.

Notice of the Court's Decision

The Court may decide your appeal in an opinion, a memorandum decision, or an order. You will receive a copy from the Court.

- The Court may disagree with your arguments and find nothing wrong with the BVA decision and **affirm** it.
- The Court may agree with some or all of your arguments and **reverse** (overturn) or **vacate** (cancel) the BVA decision in part or entirely, and **remand** the case (send it back) for action and decision by the BVA. The Court may **dismiss** the appeal, leaving the BVA decision in effect. This happens when the Court doesn't have **jurisdiction** (legal authority) to consider your appeal, if you haven't obeyed the Court's Rules and orders, if you withdrew your case, or for other reasons.

More Information

For more information, visit the Court's website at www.uscourts.cavc.gov. If you want to receive electronic notification when anything in your case is filed, send an email to self-rep@uscourts.cavc.gov and ask to be enrolled in e-notification. You may also write to us at the address at the top of the first page, or call us at (202) 501-5970 between 9:00 a.m. and 4:00 p.m. on weekdays.

- We won't give you legal advice.
- We won't suggest how to handle your appeal.
- We won't guess how or when it will be decided.

But we will answer questions about procedures and about the status of your case.