

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Misc. No. 05-24

IN RE: RULES OF PRACTICE AND PROCEDURE AND RULES OF ADMISSION AND PRACTICE

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 Court has determined that Rule 4 (Filing Appeal: Docketing; Copy of Board Decision), Rule 8 (Suspension of Secretarial Action or Suspension of Precedential Effect of Decision of this Court), Rule 24 (Waiver of Filing Fee), Rule 36 (Entry of Judgment), Rule 41 (Mandate), Rule 46 (Practice Before the Court and Representation), and form 3 (Notice of Appearance) of its Rules of Practice and Procedure, as well as Rule 4 (Standards for Professional Conduct and Duties of Practitioners) of its Rules of Admission and Practice should be revised.

The proposed revisions were developed in collaboration with the Court's Rules Advisory Committee.

Accordingly, it is

ORDERED that the attached proposed revisions to the Court's Rules of Practice and Procedure and the Court's Rules on Admission and Practice are hereby published for public comment for a period of 30 days. Comments must be submitted to the Clerk of the Court by February 21, 2024, at comments@uscourts.cavc.gov or 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004.

DATED: January 22, 2024

FOR THE COURT:

/s/Tiffany M. Wagner
TIFFANY M. WAGNER
Clerk of the Court

Attachments:

1. Proposed Revised Rules
2. Proposed Revised Rules with Changes Shown

Rule 4: Filing Appeal; Docketing; Copy of Board Decision

(a) Notice of Appeal

(1) *Time for Appeal.* A Notice of Appeal must be received by the Clerk not later than 120 days after the date on which the Board issues notice of the decision to the appellant and the appellant's authorized representative, if any. *See* Rule 25 (Filing and Service).

(2) *Deemed Receipt.* A Notice of Appeal is deemed received-

(A) on the date of its legible postmark, affixed by the U.S. Postal Service (not including a postage-metered date imprint other than one affixed by the U.S. Postal Service) on the cover in which the Notice of Appeal is posted, if the mailing is properly addressed to the Court and is mailed; or

(B) on the date of its receipt by the Clerk, if it does not bear a legible postmark affixed by the U.S. Postal Service, or if it is delivered or sent by means other than U.S. mail. *But see* Rule 25(b)(1)(B) (filing and service for appellant confined in an institution).

(3) *Timeliness; Good Cause or Excusable Neglect; Equitable Tolling.*

(A) If the Secretary does not within 45 days after the filing date of the Board decision (pursuant to Rule 4(c)) file a motion to dismiss an appeal for failure to file a timely Notice of Appeal within the 120-day appeal period, the Notice of Appeal will be treated as timely regardless of the date it was received.

(B) If the Secretary within 45 days after the filing date of the Board decision moves to dismiss an appeal for failure to file a timely Notice of Appeal within the 120-day appeal period, an untimely Notice of Appeal will be treated as timely if

(i) the Notice of Appeal is received within 30 days after the expiration of the filing deadline and the appellant demonstrates good cause or excusable neglect for failure to file the Notice of Appeal within the 120-day period; or

(ii) the Notice of Appeal is received more than 30 days after the expiration of the filing deadline but equitable tolling is warranted because the appellant demonstrates an extraordinary circumstance that prevented filing in a timely manner and the exercise of reasonable due diligence in attempting to file a timely Notice of Appeal.

(b) Docketing.

(1) *Docketing the appeal.* Upon receipt of the Notice of Appeal, the Clerk will docket the appeal, identifying the appellant by name, unless otherwise ordered by the Court.

(2) *Designation of public official.* The Secretary shall be described as the "appellee" by name and official title.

(3) *Notice of docketing.* The Clerk shall send a notice of docketing to all parties advising them of the date the Clerk received the Notice of Appeal.

(c) Copy of Board Decision. Not later than 30 days after the date the Clerk issues a notice of docketing (See subsection (b)(3)), the Secretary shall file with the Clerk under separate docket entries and serve on the appellant a copy of the Board's decision, showing-

(1) the date on which notice of the decision was issued, with any personal identifiers redacted except the name of the appellant (*See* E-Rule1(a)(10) (definition of "personal identifier"));

(2) a reference transmittal identifying the Board decision with any necessary personal identifiers, which when electronically filed will be locked (*See* E-Rule 4(d)); and

(3) if applicable, the filing date of any motion for reconsideration or vacatur of the Board decision, and the date and nature of any action on such a motion.

Rule 8: Suspending or Compelling Secretarial Action before Mandate, or Suspending Precedential Effect of Decision of this Court Pending its Appeal.

(a) Motions under this Rule.

(1) *Suspending Secretarial Action.* After an appeal or petition has been filed in this Court but before the Court has decided the matter, a party may file a motion seeking a Court order to suspend action by the Secretary or the Board.

(2) *Compelling Secretarial Action.* After this Court has issued a decision but before mandate, a party may file a motion seeking a Court order to compel the Secretary to comply with that decision.

(3) *Suspending Precedential Effect of a Decision of this Court.* After this Court has issued a precedential decision but before mandate, a party may file a motion seeking a Court order to stay the precedential effect of that decision pending its appeal.

(b) Filing of Motion. The moving party shall submit for filing with the Clerk a motion described in paragraph (a) of this section and serve a copy thereof on all other parties by an expedited method (including express mail, overnight delivery, fax, or other electronic transmission, or hand delivery).

(c) Content. The motion shall-

(1) state the reason for the relief requested and the facts relied on, citing relevant parts of the record, as appropriate, or including an appendix containing any documents necessary to understand and support the motion; and

(2) be supported by affidavits or other sworn statements addressing any facts in dispute.

Rule 24: Waiver of Filing Fee

Payment of the filing fee required by Rules 3(f) (Appellate Procedure: Payment of Fees), 21(a) (Extraordinary Relief: Petition: Service, Content, and Filing), or 22(e) (Filing a Request for Class Certification and Class Action: Payment of Fees), will be waived, based on financial hardship, in any case where a person (the appellant or petitioner) submits a declaration of financial hardship and that declaration is accepted for filing. The Court may request additional information, as it deems appropriate. The declaration of financial hardship will be subject to the penalty for perjury pursuant to 28 U.S.C. § 1746. The declaration shall either be on Form 4 in the Appendix of Forms or contain the detail called for in that form. If the declaration is found to lack a signature or to be otherwise noncompliant, it will be returned; not later than the time fixed by the notice of returned documents, either the filing fee shall be paid or a new declaration that addresses the deficiencies in the noncompliant declaration shall be submitted.

Practitioner's Note: Only a natural person may qualify for waiver under this Rule. Other filers, such as corporations, companies, associations, firms, partnerships, and societies, are ineligible to file requests under this Rule.

Rule 36: Entry of Judgment

Practitioner's Note: Judgment is relevant to determining the expiration of time in which to file an appeal of a decision of the Court or file an application pursuant to 28 U.S.C. § 2412(d). Because entry of mandate on the docket, including any notation as to the effective date of mandate, is a ministerial act, practitioners are cautioned to use diligence when calculating time periods so as to ensure timely filings. *See* Rule 41.

Rule 41: Mandate

Practitioner's Note: Because entry of mandate on the docket, including any notation as to the effective date of mandate, is a ministerial act, practitioners are cautioned to use diligence when calculating time periods so as to ensure timely filings. *See* Rule 36. Requests to enter mandate prior to the expiration of 60 days pursuant to Rule 41(c)(2) and Rule 42 should be incorporated in the parties' joint motion or set forth in a separate motion.

Rule 46: Practice Before the Court and Representation

(a) Practice Before the Court.

(1) Admission of attorneys to bar of Court.

(A) General. A person of good moral character and repute who has been admitted to practice in the highest court of any state, the District of Columbia, or a United States territory or commonwealth within the meaning of 48 U.S.C. § 1904(e)(5), and is in good standing therein, may be admitted to the bar of the Court upon application. *See* Rules of Admission and Practice.

(B) Active Status. Membership in the Court's bar and practice before the Court requires an attorney to maintain active status in good standing in the highest court of any state, the District of Columbia, or a United States territory or commonwealth within the meaning of 48 U.S.C. § 1904(e)(5).

(C) Application. An attorney at law may be admitted to the bar of the Court upon filing with the Clerk a completed application accompanied by the applicable fee (payable by check or money order) and a current certificate from the clerk of the appropriate court showing that the applicant is a member in good standing of the bar of one of the courts named in paragraph (A) of this subsection. A current court certificate is one executed not earlier than 3 months before the date of the filing of the application.

(2) Admission of non-attorneys to practice. A non-attorney of good moral character and repute who is -

(A) under the direct supervision (including presence at any oral argument) of an attorney admitted to the bar of the Court, or

(B) employed by an organization that is chartered by Congress, is recognized by the Secretary of Veterans Affairs for claims representation, and provides a statement signed by the organization's chief executive officer certifying to the employee's -

(i) understanding of the procedures and jurisdiction of the Court and of the nature, scope, and standards of its judicial review; and

(ii) proficiency to represent appellants before the Court

may be admitted to practice before the Court as a non-attorney practitioner upon filing with the Clerk a completed application accompanied by the applicable fee (payable by check or money order). In making the statement under this paragraph, the chief executive officer should be aware that knowledge of and competence in veterans law and the administrative claims process does not in and of itself connote competence in appellate practice and procedure.

(3) Practitioner defined. A person who has been admitted under this subsection or has been permitted to appear under subsection (b)(1)(G) is referred to in this Rule as a practitioner.

(4) *Change of address.* Each practitioner shall give the Clerk and all other parties written notice (not included in another filing) of any change of his or her electronic or street address or telephone or fax number. Absent such notice, the delivery of documents to the address most recently provided by that person will be fully effective.

(b) Representation Requirements.

(1) *General appearance.*

(A) Appellants' and Petitioners' Representatives. Each practitioner representing an appellant or petitioner shall submit for filing with the Court and serve on the Secretary, no later than the date of the first filing submitted by the practitioner on behalf of that appellant or petitioner, a notice of appearance in the detail set out in Form 3 in the Appendix of Forms, and a copy of any retainer agreement and any fee agreement for representation before the Court, which when electronically filed will be locked (*see* E-Rule 4(a)).

(B) Intervenors', Movants', Prospective Parties', and Amici Curiae Representatives. Each practitioner representing an intervenor, movant, prospective party, or amicus curiae shall submit for filing with the Court and serve on all parties in the case, no later than the date of the first filing submitted by the practitioner in that case, a notice of appearance in the detail set out in Form 3 in the Appendix of Forms, and, if applicable, a copy of any retainer agreement and any fee agreement for representation before the Court, which when electronically filed will be locked (*see* E-Rule 4(a)).

(C) Secretary's Representatives. Each practitioner representing the Secretary shall submit for filing with the Court and serve on all parties in the case, no later than the date of the first filing submitted by the Secretary, a notice of appearance. The Secretary may substitute a practitioner of record at any time by submitting for filing with the Court and serving on all parties a notice of appearance of the new practitioner.

(D) Appearance by a Non-Attorney Practitioner. Each notice of appearance and pleading submitted for filing by a non-attorney practitioner shall include the name, address, and signature of the responsible supervising attorney under subsection (a)(2)(A) or the identification of the employing organization under subsection (a)(2)(B).

(E) Appearance by Multiple Representatives. In cases where multiple representatives submit for filing a notice of appearance, one representative must be designated as lead representative. When an additional representative for a party, other than the Secretary, is not designated as lead representative, that representative may withdraw his or her appearance without obtaining the Court's permission as would otherwise be required by subsection 46(c). The lead representative shall promptly file a notice in each case informing the Clerk's Office that the additional representative is no longer representing the party, that notice of the withdrawal of the additional representative has been provided to the party, and that the additional representative's name should be removed from the docket.

(F) Appearance by an Organization Prohibited. With the exception of an organization operating under the provisions of Public Law No. 102-229, *see* Practitioner's Note to Rule 5, an appearance may not be made in the name of a law firm or other organization.

(G) Appearance in a Particular Case. On motion and a showing of good cause, and submission of a completed application, the Court may permit any attorney or non-attorney practitioner not admitted to practice before the Court, or any other person in exceptional circumstances, to appear on behalf of a party, prospective party, movant, or amicus curiae for the purposes of a particular case. Whenever a person makes an appearance under this subsection, the person will be deemed to have conferred disciplinary jurisdiction upon the Court for any alleged misconduct in the course of, in the preparation for, or in connection with any proceeding in that case. Each attorney and non-attorney practitioner generally is limited to one appearance under this subsection. Except as permitted by the Court, any subsequent appearances shall be made under Rule 46(a)(1) (Admission of Attorneys to Bar of Court) or (a)(2) (Admission of Non-Attorneys to Practice).

(H) Appearance by Law Students.

(i) General. An eligible law student, with the written consent of the client and the attorney of record, who is a member of the bar of the Court, may appear in the Court as the Court may allow.

(ii) Participation defined. An eligible law student may participate in the preparation of briefs and other documents to be filed in the Court, but such briefs or documents shall be signed by the attorney of record. The student may also participate in oral argument with leave of the Court, but only in the presence of the attorney of record. The attorney of record shall personally assume professional responsibility for the law student's work and for supervising the quality of his or her work. The attorney shall be familiar with the case and prepared to supplement or correct any written or oral statement made by the student.

(iii) Conditions of appearance. In order to make an appearance pursuant to this Rule, the student shall-

(aa) be duly enrolled in a law school approved by the American Bar Association;

(bb) have completed legal studies amounting to at least two semesters or the equivalent if studies are scheduled on other than a semester basis;

(cc) be certified, by the dean of the law school in which the law student is enrolled, as being of good character and competent legal ability (this certification shall be submitted for filing with the Clerk and may be withdrawn at any time by the dean, upon written notice to the Clerk, or by the Court, without notice or hearing and without any showing of cause);

(dd) be introduced by the attorney of record in the case;

(ee) neither ask for nor receive any compensation or remuneration of any kind for his or her services from the person on whose behalf such services are rendered, but this will not prevent an

attorney, legal aid bureau, law school, a state, the District of Columbia, or a United States territory or commonwealth within the meaning of 48 U.S.C. § 1904(e)(5), or the United States from paying compensation to the eligible law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require;

(ff) certify in writing that he or she has read and is familiar with the code of professional responsibility or rules of professional conduct in effect in the state or jurisdiction in which the student's law school is located and with the rules governing practice in the Court (*See* Rule 4 of the Court's Rules of Admission and Practice).

(2) *Limited appearance.*

(A) Notice of Appeal. Any practitioner appearing for the limited purpose of submitting a Notice of Appeal for filing with the Court shall, when submitting such Notice of Appeal:

(i) provide the appellant's current address and telephone number; and

(ii) aver to the Court that the appellant has been advised, or, alternatively, will be advised, of the appellant's responsibility to abide by the Court's Rules of Practice and Procedure, including the need to timely serve and submit for filing a brief.

(B) Stay for Case Evaluation. A practitioner representing an organization operating under the provisions of Public Law No. 102-229 may enter a limited appearance to seek a stay in a case for the purpose of case evaluation. *See* Rule 5(a) (Stay of Appellate Proceedings-Grounds) and Practitioner's Note to Rule 5. A limited appearance and stay request may be presented in a single motion for stay.

Practitioner's Note: Any filing for a limited appearance by a non-attorney practitioner must be signed by the supervising attorney.

(c) Withdrawal From Representation. Except as noted in subsection (b)(1)(B), (b)(1)(D), and in subparagraph (2), a practitioner may not withdraw from a case without obtaining the Court's permission. The practitioner's authority and duty continue until the practitioner is relieved by the Court, subject to conditions that the Court considers appropriate.

(1) *General appearances.* Permission to withdraw may be sought by submitting for filing a motion to withdraw that

(A) states the reasons for withdrawal;

(B) lists the client's current address and telephone number;

(C) states whether the client consents to the withdrawal and, if not, the reason or reasons therefore; and

(D) contains a representation by the practitioner that all documents submitted for filing by the

parties, all notices and orders accumulated by the practitioner, and all files belonging to the client have been provided to the client or to a named substitute practitioner.

(2) *Limited appearances.*

(A) Notice of Appeal. If a practitioner has appeared for the limited purpose of submitting for filing a Notice of Appeal and averred at that time that the client had already been advised of the appellant's responsibility to abide by the Court's Rules of Practice and Procedure, including the need to timely serve and submit for filing a brief, withdrawal is automatic at the time of such submission and a motion to withdraw is not necessary. In instances where the attorney averred that the practitioner would in the future advise the appellant of the appellant's responsibility to abide by the Court's Rules of Practice and Procedure, including the need to timely serve and submit for filing a brief, withdrawal will be granted only upon averment that the appellant has been so advised. Until such time, the practitioner remains professionally responsible to the Court and to the appellant for compliance with the Court's Rules of Practice and Procedure.

(B) An organization operating under the provisions of Public Law No. 102-229. Withdrawal is automatic upon submission for filing of a notice that an organization operating under the provisions of Public Law No. 102-229 will not take the case. *See* Practitioner's Note to subsection (b)(2)(B).

NOTICE OF APPEARANCE

v. Appellant,
 Petitioner, Docket No. _____

Secretary of Veterans Affairs _____, Appellee / Respondent.

1. Please enter my appearance for the appellant or petitioner
 the Secretary
 the intervenor
 amicus curiae: _____
 other: _____

2. I am:
 admitted to practice before this Court as: attorney non-attorney practitioner
 seeking to appear in this case only, under Rule 46(b)(1)(G); my motion is attached.

3. I am:
 the lead representative of record. I will accept service for my client and will inform all co-representatives of matters served upon me.
 not the lead representative of record but am joining as co-representative.
 replacing the lead representative of record, who:
 has been permitted or is seeking to withdraw.
 remains as co-representative.

4. If I am representing the appellant, petitioner, intervenor, movant, or other prospective party my representation is:
 pursuant to the attached fee agreement. If the fee agreement provides for direct payment out of past-due benefits under 38 U.S.C. § 5904, a copy has been served on counsel for the Secretary. If the fee agreement provides for a contingent fee, it also provides for an offset of any fees and expenses awarded under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) in the event the Court awards VA benefits on the claim.
 without charge to that client; however, it is subject to the attached retainer agreement.
 pursuant to the fee/retainer agreement already on record in this case.

/s/

Signature

Date

Printed name

Veterans Service Org., if R. 46(a)(2)(B) applies.

Signature and printed name and address of
Supervising attorney, if R. 46(a)(2)(A) applies.

Address

Telephone number

Email address

Attachments: Application and motion to appear under Rule 46(b)(1)(G)
 Fee agreement Retainer agreement

Rules of Admission and Practice

Rule 4: Standards for Professional Conduct and Duties of Practitioner

(a) Discipline. Unless otherwise provided by specific rule of the Court, the disciplinary standard for practice is the Model Rules of Professional Conduct adopted by the American Bar Association on August 2, 1983, as amended.

(b) Professional Misconduct. A practitioner is subject to the Court's disciplinary authority for professional misconduct.

(1) Professional misconduct means:

(A) an act or omission that violates the Court's disciplinary standard or any other disciplinary rules applicable to the practitioner; or

(B) an act or omission that resulted in discipline by another jurisdiction at any time after the practitioner's admission to practice before the Court.

(2) Professional misconduct may also mean a failure to comply with any rule of the Court.

(c) Duties of Practitioners.

(1) A practitioner must, not later than ten days after the occurrence, provide written notification to the Clerk, to all clients presently represented before the Court, and to all adverse parties in those cases of any of the following actions regarding that practitioner:

(A) Public discipline for professional misconduct or administrative suspension for any reason;

(B) indictment of or other equivalent formal charge with a serious crime (as defined in Rule 7(b)(3));

(C) conviction of a serious crime (as defined in Rule 7(b)(3));

(D) disbarment on consent;

(E) resignation from the bar of any court while an investigation into an allegation of misconduct is pending; or

(F) in the case of a non-attorney practitioner, loss of sponsorship, *see* Rule 1(e), above.

(2) A practitioner before the Court must promptly provide written notification to the Clerk of any change of address. *See* Rule 1(d) above.

Rule 4: Filing Appeal; Docketing; Copy of Board Decision

(a) Notice of Appeal

~~(a)~~(1) *Time for Appeal.* A Notice of Appeal must be received by the Clerk not later than 120 days after the date on which the Board ~~issues~~~~mailed~~ notice of the decision to the ~~last known address of the~~ appellant and the appellant's authorized representative, if any. ~~See also~~ Rule 25 (Filing and Service).

(2) *Deemed Receipt.* A Notice of Appeal is deemed received-

(A) on the date of its legible postmark, affixed by the U.S. Postal Service (not including a postage-metered date imprint other than one affixed by the U.S. Postal Service) on the cover in which the Notice of Appeal is posted, if the mailing is properly addressed to the Court and is mailed; or

(B) on the date of its receipt by the Clerk, if it does not bear a legible postmark affixed by the U.S. Postal Service, or if it is delivered or sent by means other than U.S. mail. *But see* Rule 25(b)(1)(B) (filing and service for appellant confined in an institution).

(3) *Timeliness; Good Cause or Excusable Neglect; Equitable Tolling.*

(A) If the Secretary does not within 45 days after the filing date of the Board decision (pursuant to Rule 4(c)) file a motion to dismiss an appeal for failure to file a timely Notice of Appeal within the 120-day appeal period, the Notice of Appeal will be treated as timely regardless of the date it was received.

(B) If the Secretary within 45 days after the filing date of the Board decision moves to dismiss an appeal for failure to file a timely Notice of Appeal within the 120-day appeal period, an untimely Notice of Appeal will be treated as timely if

(i) the Notice of Appeal is received within 30 days after the expiration of the filing deadline and the appellant demonstrates good cause or excusable neglect for failure to file the Notice of Appeal within the 120-day period; or

(ii) the Notice of Appeal is received more than 30 days after the expiration of the filing deadline but equitable tolling is warranted because the appellant demonstrates an extraordinary circumstance that prevented filing in a timely manner and the exercise of reasonable due diligence in attempting to file a timely Notice of Appeal.

(b) Docketing.

(1) *Docketing the appeal.* Upon receipt of the Notice of Appeal, the Clerk will docket the appeal, identifying the appellant by name, unless otherwise ordered by the Court.

(2) *Designation of public official.* The Secretary shall be described as the "appellee" by name and official title.

(3) *Notice of docketing.* The Clerk shall send a notice of docketing to all parties advising them of the date the Clerk received the Notice of Appeal.

(c) Copy of Board Decision. Not later than 30 days after the date the Clerk issues a notice of docketing (See subsection (b)(3)), the Secretary shall file with the Clerk under separate docket entries and serve on the appellant a copy of the Board's decision, showing-

(1) the date on which notice of the decision was ~~issued~~mailed, with any personal identifiers redacted except the name of the appellant (*See* E-Rule1(a)(10) (definition of "personal identifier"));

(2) a reference transmittal identifying the Board decision with any necessary personal identifiers, which when electronically filed will be locked (*See* E-Rule 4(d)); and

(3) if applicable, the filing date of any motion for reconsideration or vacatur of the Board decision, and the date and nature of any action on such a motion.

Rule 8: Suspending or Compelling Secretarial Action or Suspension of before Mandate, or Suspending Precedential Effect of Decision of this Court Pending its Appeal.

(a) Filing of Motion. Motions under this Rule.

(1) Suspending Secretarial Action. After an appeal or petition has been filed in this Court but before the Court has decided the matter, a party may file a motion seeking a Court order to suspend action by the Secretary or the Board ~~or~~.

(2) Compelling Secretarial Action. After this Court has issued a decision but before mandate, a party may file a motion seeking a Court order to compel the Secretary to comply with that decision.

(3) Suspending Precedential Effect of a Decision of this Court. After this Court has issued a precedential decision but before mandate, a party may file a motion seeking a Court order to stay the precedential effect of that decision ~~issued by this Court~~ pending its appeal.

(b) Filing of Motion. The moving party shall submit for filing with the Clerk a motion described in paragraph (a) of this section and serve a copy thereof on all other parties by an expedited method (including express mail, overnight delivery, fax, or other electronic transmission, or hand delivery).

(c) Content. The motion shall-

(1) state the reason for the relief requested and the facts relied on; citing relevant parts of the record, as appropriate, or including an appendix containing any documents necessary to understand and support the motion; and

(2) be supported by affidavits or other sworn statements addressing any facts in dispute.

Rule 24: Waiver of Filing Fee

Payment of the filing fee required by Rules 3(f) (Appellate Procedure: Payment of Fees), ~~or Rule 21(a) (Extraordinary Relief: Petition: Service, Content, and Filing), or 22(e) (Filing a Request for Class Certification and Class Action: Payment of Fees)~~, will be waived, based on financial hardship, in any case where a person (the appellant (or petitioner)) submits a declaration of financial hardship and that declaration is accepted for filing. The Court may request additional information, as it deems appropriate. The declaration of financial hardship will be subject to the penalty for perjury pursuant to 28 U.S.C. § 1746. The declaration shall either be on Form 4 in the Appendix of Forms or contain the detail called for in that form. If the declaration is found to lack a signature or to be otherwise noncompliant, it will be returned; not later than the time fixed by the notice of returned documents, either the filing fee shall be paid or a new declaration that addresses the deficiencies in the noncompliant declaration shall be submitted.

Practitioner's Note: Only a natural person may qualify for waiver under this Rule. Other filers, such as corporations, companies, associations, firms, partnerships, and societies, are ineligible to file requests under this Rule.

Rule 36: Entry of Judgment

Practitioner's Note: Judgment is relevant to determining the expiration of time in which to file an appeal of a decision of the Court or file an application pursuant to 28 U.S.C. § 2412(d). Because entry of mandate on the docket, including any notation as to the effective date of mandate, is a ministerial act ~~and may not occur on the date of mandate~~, practitioners are cautioned to use diligence when calculating time periods so as to ensure timely filings. *See* Rule 41.

Rule 41: Mandate

Practitioner's Note: Because entry of mandate on the docket, including any notation as to the effective date of mandate, is a ministerial act ~~and may not occur on the date of mandate~~, practitioners are cautioned to use diligence when calculating time periods so as to ensure timely filings. *See* Rule 36. Requests to enter mandate prior to the expiration of 60 days pursuant to Rule 41(c)(2) and Rule 42 should be incorporated in the parties' joint motion or set forth in a separate motion.

Rule 46: Practice Before the Court and Representation

(a) Practice Before the Court.

(1) *Admission of attorneys to bar of Court.*

(A) General. A person of good moral character and repute who has been admitted to practice in the highest court of any state, the District of Columbia, or a United States territory or commonwealth within the meaning of 48 U.S.C. § 1904(e)(5), and is in good standing therein, may be admitted to the bar of the Court upon application. *See* Rules of Admission and Practice.

(B) Active Status. **Membership in the Court's bar and p**Practice before the Court requires an attorney to maintain active status in good standing in the highest court of any state, the District of Columbia, or a United States territory or commonwealth within the meaning of 48 U.S.C. § 1904(e)(5).

(C) Application. An attorney at law may be admitted to the bar of the Court upon filing with the Clerk a completed application accompanied by the applicable fee (payable by check or money order) and a current certificate from the clerk of the appropriate court showing that the applicant is a member in good standing of the bar of one of the courts named in paragraph (A) of this subsection. A current court certificate is one executed not earlier than 3 months before the date of the filing of the application.

(2) *Admission of non-attorneys to practice.* A non-attorney of good moral character and repute who is -

(A) under the direct supervision (including presence at any oral argument) of an attorney admitted to the bar of the Court, or

(B) employed by an organization that is chartered by Congress, is recognized by the Secretary of Veterans Affairs for claims representation, and provides a statement signed by the organization's chief executive officer certifying to the employee's -

(i) understanding of the procedures and jurisdiction of the Court and of the nature, scope, and standards of its judicial review; and

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(3) *Practitioner defined.* A person who has been admitted under this subsection or has been permitted to appear under subsection (b)(1)(~~GF~~) is referred to in this Rule as a practitioner.

(4) *Change of address.* Each practitioner shall give the Clerk and all other parties written notice (not included in another filing) of any change of his or her electronic or street address or telephone or fax number. Absent such notice, the delivery of documents to the address most recently provided by that person will be fully effective.

(b) Representation Requirements.

(1) *General appearance.*

(A) Appellants' and Petitioners' Representatives. Each practitioner representing an appellant or petitioner shall submit for filing with the Court and serve on the Secretary, no later than the date of the first filing submitted by the practitioner on behalf of ~~that~~ appellant or petitioner, a notice of appearance in the detail set out in Form 3 in the Appendix of Forms, and a copy of any retainer agreement and any fee agreement for representation before the Court, which when electronically filed will be locked (*see* E-Rule 4(a)).

(B) Intervenor's, Movant's, Prospective Parties', and Amici Curiae Representatives. Each practitioner representing an intervenor, movant, prospective party, or amicus curiae shall submit for filing with the Court and serve on all parties in the case, no later than the date of the first filing submitted by the practitioner in that case, a notice of appearance in the detail set out in Form 3 in the Appendix of Forms, and, if applicable, a copy of any retainer agreement and any fee agreement for representation before the Court, which when electronically filed will be locked (*see* E-Rule 4(a)).

(C) Secretary's Representatives. Each practitioner representing the Secretary shall submit for filing with the Court and serve on all parties in the case ~~the appellant~~, no later than the date of the first filing submitted by ~~n which~~ the Secretary ~~files the record before the agency~~, a notice of appearance. The Secretary may substitute a practitioner of record at any time by submitting for filing with the Court and serving on all parties~~the appellant~~ a notice of appearance of the new practitioner.

(~~DC~~) Appearance by a Non-Attorney Practitioner. Each notice of appearance and pleading submitted for filing by a non-attorney practitioner shall include the name, address, and signature of the responsible supervising attorney under subsection (a)(2)(A) or the identification of the employing organization under subsection (a)(2)(B).

(~~ED~~) Appearance by Multiple Representatives. In cases where multiple representatives submit for filing a notice of appearance, one representative must be designated as lead representative. When an additional representative for a party, other than the Secretary, appellant or intervenor is not designated as lead representative, that representative may withdraw his or her appearance without obtaining the Court's permission as would otherwise be required by subsection 46(c). The lead representative shall promptly file a notice in each case informing the Clerk's Office that the additional representative is no longer representing the party~~appellant or intervenor~~, that notice of the withdrawal of the additional representative has been provided to the party~~appellant or intervenor~~, and that the additional representative's name should be removed from the docket.

(~~FE~~) Appearance by an Organization Prohibited. With the exception of an organization operating under the provisions of Public Law No. 102-229, *see* Practitioner's Note to Rule 5, an appearance may not be made in the name of a law firm or other organization.

(~~GF~~) Appearance in a Particular Case. On motion and a showing of good cause, and submission of a completed application, the Court may permit any attorney or non-attorney practitioner not admitted to practice before the Court, or any other person in exceptional circumstances, to appear on behalf of a party, prospective party, movant, or amicus curiae for the purposes of a particular case. Whenever a person makes an appearance under this subsection, the person will be deemed to have conferred disciplinary jurisdiction upon the Court for any alleged misconduct in the course of, in the preparation for, or in connection with any proceeding in that case. Each attorney and non-attorney practitioner generally is limited to one appearance under this subsection. Except as permitted by the Court, any subsequent appearances shall be made under Rule 46(a)(1) (Admission of Attorneys to Bar of Court) or (a)(2) (Admission of Non-Attorneys to Practice).

(~~HG~~) Appearance by Law Students.

(i) General. An eligible law student, with the written consent of the clientappellant and the attorney of record, who is a member of the bar of the Court, may appear in the Court as the Court may allow.

(ii) Participation defined. An eligible law student may participate in the preparation of briefs and other documents to be filed in the Court, but such briefs or documents shall be signed by the attorney of record. The student may also participate in oral argument with leave of the Court, but only in the presence of the attorney of record. The attorney of record shall personally assume professional responsibility for the law student's work and for supervising the quality of his or her work. The attorney shall be familiar with the case and prepared to supplement or correct any written or oral statement made by the student.

(iii) Conditions of appearance. In order to make an appearance pursuant to this Rule, the student shall-

(aa) be duly enrolled in a law school approved by the American Bar Association;

(bb) have completed legal studies amounting to at least two semesters or the equivalent if studies are scheduled on other than a semester basis;

(cc) be certified, by the dean of the law school in which the law student is enrolled, as being of good character and competent legal ability (this certification shall be submitted for filing with the Clerk and may be withdrawn at any time by the dean, upon written notice to the Clerk, or by the Court, without notice or hearing and without any showing of cause);

(dd) be introduced by the attorney of record in the case;

(ee) neither ask for nor receive any compensation or remuneration of any kind for his or her

services from the person on whose behalf such services are rendered, but this will not prevent an attorney, legal aid bureau, law school, a state, the District of Columbia, or a United States territory or commonwealth within the meaning of 48 U.S.C. § 1904(e)(5), or the United States from paying compensation to the eligible law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require;

(ff) certify in writing that he or she has read and is familiar with the code of professional responsibility or rules of professional conduct in effect in the state or jurisdiction in which the student's law school is located and with the rules governing practice in the Court (*See* Rule 4 of the Court's Rules of Admission and Practice).

(2) *Limited appearance.*

(A) Notice of Appeal. Any practitioner appearing for the limited purpose of submitting a Notice of Appeal for filing with the Court shall, when submitting such Notice of Appeal:

(i) provide the appellant's current address and telephone number; and

(ii) aver to the Court that the appellant has been advised, or, alternatively, will be advised, of the appellant's responsibility to abide by the Court's Rules of Practice and Procedure, including the need to timely serve and submit for filing a brief.

(B) Stay for Case Evaluation. A practitioner representing an organization operating under the provisions of Public Law No. 102-229 may enter a limited appearance to seek a stay in a case for the purpose of case evaluation. *See* Rule 5(a) (Stay of Appellate Proceedings-Grounds) and Practitioner's Note to Rule 5. A limited appearance and stay request may be presented in a single motion for stay.

Practitioner's Note: Any filing for a limited appearance by a non-attorney practitioner must be signed by the supervising attorney.

(c) **Withdrawal From Representation.** Except as noted in subsection (b)(1)(B), (b)(1)(D), and in subparagraph (2), a practitioner may not withdraw from a case without obtaining the Court's permission. The practitioner's authority and duty continue until the practitioner is relieved by the Court, subject to conditions that the Court considers appropriate.

(1) *General appearances.* Permission to withdraw may be sought by submitting for filing a motion to withdraw that

(A) states the reasons for withdrawal;

(B) lists the client's current address and telephone number;

(C) states whether the client consents to the withdrawal and, if not, the reason or reasons therefore; and

(D) contains a representation by the practitioner that all documents submitted for filing by the parties, all notices and orders accumulated by the practitioner, and all files belonging to the client have been provided to the client or to a named substitute practitioner.

(2) *Limited appearances.*

(A) Notice of Appeal. If a practitioner has appeared for the limited purpose of submitting for filing a Notice of Appeal and averred at that time that the client had already been advised of the appellant's responsibility to abide by the Court's Rules of Practice and Procedure, including the need to timely serve and submit for filing a brief, withdrawal is automatic at the time of such submission and a motion to withdraw is not necessary. In instances where the attorney averred that the practitioner would in the future advise the appellant of the appellant's responsibility to abide by the Court's Rules of Practice and Procedure, including the need to timely serve and submit for filing a brief, withdrawal will be granted only upon averment that the appellant has been so advised. Until such time, the practitioner remains professionally responsible to the Court and to the appellant for compliance with the Court's Rules of Practice and Procedure.

(B) An organization operating under the provisions of Public Law No. 102-229. Withdrawal is automatic upon submission for filing of a notice that an organization operating under the provisions of Public Law No. 102-229 will not take the case. *See* Practitioner's Note to subsection (b)(2)(B).

NOTICE OF APPEARANCE

v. Appellant,
 Petitioner, Docket No. _____

Secretary of Veterans Affairs _____, Appellee / Respondent.

1. Please enter my appearance for the appellant or petitioner
 the Secretary
 the intervenor
 amicus curiae: _____
 other: _____

2. I am:
 admitted to practice before this Court as: attorney non-attorney practitioner
 seeking to appear in this case only, under Rule 46(b)(1)(GF); my motion is attached.

3. I am:
 the lead representative of record. I will accept service for my client~~the party~~ and will inform all ~~of the party's~~ co-representatives of matters served upon me.
 not the lead representative of record, but am joining as co-representative.
 replacing the lead representative of record, who:
 has been permitted or is seeking to withdraw.
 remains as co-representative.

4. If I am representing the appellant, petitioner, ~~or~~ intervenor, movant, or other prospective party my representation is:
 pursuant to the attached fee agreement. If the fee agreement provides for direct payment out of past-due benefits under 38 U.S.C. § 5904, a copy has been served on counsel for the Secretary. If the fee agreement provides for a contingent fee, it also provides for an offset of any fees and expenses awarded under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) in the event the Court awards VA benefits on the claim.
 without charge to that client~~the appellant, petitioner, or intervenor~~; however, it is subject to the attached retainer agreement.
 pursuant to the fee/retainer agreement already on record in this case.

/s/

Signature

Date

Printed name

Veterans Service Org., if R. 46(a)(2)(B) applies.

Signature and printed name and address of
Supervising attorney, if R. 46(a)(2)(A) applies.

Address

Telephone number

Email address

Attachments: Application and motion to appear under Rule 46(b)(1)(GF)
 Fee agreement Retainer agreement

Rules of Admission and Practice

Rule 4: Standards for Professional Conduct and Duties of Practitioner

(a) **Discipline.** Unless otherwise provided by specific rule of the Court, the disciplinary standard for practice is the Model Rules of Professional Conduct adopted by the American Bar Association on August 2, 1983, as amended.

(b) **Professional Misconduct.** A practitioner is subject to the Court's disciplinary authority for professional misconduct.

(1) Professional misconduct means:

(A) an act or omission that violates the Court's disciplinary standard or any other disciplinary rules applicable to the practitioner; or

(B) an act or omission that resulted in discipline by another jurisdiction at any time after the practitioner's admission to practice before the Court.

(2) Professional misconduct may also mean a failure to comply with any rule of the Court.

(c) Duties of Practitioners.

(1) A practitioner must, not later than ten days after the occurrence, provide written notification to the Clerk, to all clients presently represented before the Court, and to all adverse parties in those cases of any of the following actions regarding that practitioner:

(A) Public discipline for professional misconduct or administrative suspension for any reason;

(B) indictment of or other equivalent formal charge with a serious crime (as defined in Rule 7(b)(3)); ~~or~~

(C) conviction of a serious crime (as defined in Rule 7(b)(3)); ~~or~~

(D) disbarment on consent; ~~or~~

(E) resignation from the bar of any court while an investigation into an allegation of misconduct is pending; or

(F) in the case of a non-attorney practitioner, loss of sponsorship, *see* Rule 1(e), above.

(2) A practitioner before the Court must promptly provide written notification to the Clerk of any change of address. *See* Rule 1(d) above.