

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS



RULES OF PRACTICE AND PROCEDURE

*Effective September 15, 2011, for all business before the Court
(Includes adopted revisions as of July 18, 2016)*

and

Case Management/Electronic Case Filing System (CM/ECF) E-Rules

**UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS
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RULE 1. SCOPE OF RULES

(a) Scope. These Rules, as supplemented by the E-Rules specifically applicable to submissions for the Case Management/Electronic Case Filing (CM/ECF) system, govern practice and procedure in the U.S. Court of Appeals for Veterans Claims (the Court), a court of national jurisdiction. The E-Rules are also on our website at www.uscourts.cavc.gov.

(b) Effect on Court's Jurisdiction. Neither these Rules nor the E-Rules extend or limit the jurisdiction of the Court.

(c) CM/ECF/Non-CM/ECF Electronic Filing. Absent a waiver from the Clerk of the Court (Clerk), filing through the CM/ECF system is mandatory for all representatives (as defined by Rule 46). *See* E-Rules 2 and 3. Represented parties who have registered to participate in filing through CM/ECF are called CM/ECF Users. For CM/ECF Users, if there is any conflict between these Rules and the E-Rules, the E-Rules apply.

Self-represented parties and others exempted by the Court from filing through CM/ECF are called Non-CM/ECF Users. Non-CM/ECF Users may submit documents electronically by email or facsimile, if properly formatted. *See* Rule 25(b) (Method and Timeliness). Where applicable in these Rules, the corresponding E-Rule has been cited.

RULE 2. SUSPENSION OF RULES

On its own initiative or on a party's motion, the Court may suspend any provision of these Rules and otherwise order proceedings as it sees fit.

RULE 3. APPELLATE PROCEDURE

(a) Filing. To appeal a Board of Veterans' Appeals (Board) decision, a person adversely affected by the decision must file a Notice of Appeal with the Clerk, within the time allowed by law. *See* Rule 4(a) (Time for Appeal). Because the Notice of Appeal will likely contain personal identifiers, that electronic record will be locked and accessible through CM/ECF only to CM/ECF Users in that case. *See* E-Rule 4(b). Failure to timely file a Notice of Appeal in accordance with law will result in dismissal of the appeal. *See also* Rule 38(b) (Failure to Act).

(b) Service. The appellant shall serve a copy of the Notice of Appeal on any party to the proceedings before the Board other than the Secretary of Veterans Affairs (Secretary), as well as any person whose absence from the appeal may as a practical matter impair or impede that person's ability to protect his or her interest. *See* Rule 25 (Filing and Service).

(c) Content. The Notice of Appeal—

(1) should show the name, address, and telephone number of the person or persons making the appeal, and the appropriate Department of Veterans Affairs (VA) claims file number;

(2) shall reasonably identify the Board decision appealed from and be capable of being reasonably construed, on its face or from the surrounding circumstances, as expressing an intent to seek Court review of that decision; and,

(3) if filed by a representative, must be accompanied by the documents specified in Rule 46(b)(1)(A)(Appellant's Representative). FORM 1 in the Appendix of Forms is the recommended form for a Notice of Appeal.

(d) Joint Appeals. If more than one person is entitled to appeal from a decision of the Board and their interests make

joinder practicable, they may file a joint Notice of Appeal and the case shall proceed as a single appeal or, if separate Notices of Appeal have been filed timely, the parties may jointly move to join appeals and, if the motion is granted, the case shall thereafter proceed as a single appeal. *See also* Rule 15 (Intervention).

(e) Consolidated Appeals. Appeals may be consolidated by order of the Court on its own initiative or on a party's motion. Any motion to consolidate must assert why consolidation is appropriate, be served on all involved parties, and comply with the requirements of Rule 27 (Motions).

(f) Payment of Fees. A \$50 nonrefundable filing fee, payable to "U.S. Court of Appeals for Veterans Claims," shall be submitted with the filing of the Notice of Appeal or received by the Court not later than 14 days after the filing of the Notice of Appeal. But *see* Rule 24 (Waiver of Filing Fee).

(g) Addresses and Fax Number. The Court's mailing address is: Clerk of the Court, U.S. Court of Appeals for Veterans Claims, 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004-2950. The Court's fax number is: (202) 501-5848. The Court's website is located at www.uscourts.cavc.gov.

(h) Translations. The Court conducts its reviews and deliberations in English. Any document transmitted to the Court in a language other than English shall be accompanied by an English translation that is certified as true and correct by the translator, pursuant to 28 U.S.C. § 1746.

RULE 4. FILING APPEAL; DOCKETING; COPY OF BOARD DECISION

(a) 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 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). A Notice of Appeal is deemed received:

(1) 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

(2) 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).

(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 the 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 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)(Locked Documents); 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 5. STAY OF APPELLATE PROCEEDINGS

(a) Grounds. On its own initiative or on a motion by a party or an organization operating under the provisions of Public Law No. 102-229, the Court may stay its proceedings when—

(1) a motion has been filed for the Board to reconsider or vacate its decision, or

(2) an organization operating under the provisions of Public Law No. 102-229 is conducting case evaluation, or

(3) it is otherwise in the interest of judicial efficiency. *See also* Rule 45(g)(5)(Duties of the Clerk).

(b) Effect of Stay. Unless and until the Court grants a motion under this Rule, such a motion does not suspend proceedings or interrupt preexisting filing schedules. Unless otherwise ordered, when a stay expires or is lifted, the preexisting filing schedule resumes at the point at which it was stayed.

(c) Continuation of Stay. Prior to the expiration of a stay, a party or an organization operating under the provisions of Public Law No. 102-229 may move for continuation of the stay. Such motion shall satisfy the requirements of Rule 27(a)

(Content of Motions), but is not governed by Rule 26(b) (Extension of Time).

(d) Combined Motions Prohibited. A motion to stay the Court's proceedings may not be combined with any other motion. The Clerk will return any motion that violates this subsection.

Practitioner's Note: At the time these Rules were promulgated, the organization operating under the provisions of Public Law No. 102-229 was The Veterans Consortium Pro Bono Program.

RULE 6. PROTECTION OF PRIVACY
See also Rule 48 (Sealing of Cases) and E-Rule 4 (Locked Documents, Redaction)

(a) Public Records. Court records are public records and once filed are not protected by Federal privacy statutes or regulations. Pursuant to the Court's E-Rules, certain documents are locked; parties may seek to have additional documents locked (*see* E-Rules 4 and 1(a)(4)) or sealed pursuant to Rule 48 (Sealing of Cases). Therefore, parties shall refrain from putting a VA claims file number or other personal identifier (e.g., Social Security number, date of birth, financial account number, name of minor child) on any filings not locked or sealed; use of the Court's docket number is sufficient identification. In addition, parties shall redact any VA claims file number or other personal identifier from other documents submitted to the Court that are not locked or sealed.

(b) Uniformity. For purposes of uniformity redactions should be made as follows:

(1) for Social Security numbers, use only the last four digits,

(2) for date of birth, use only the year,

(3) for financial account numbers, use only the last four digits or a lesser number if needed to preserve privacy,

(4) for the name of a minor child, use only the initials.

(c) **Challenges.** Parties who wish to challenge a redaction may do so by filing a motion with the Court within 15 days of the redacted document's filing.

RULE 7. (RESERVED)

RULE 8. SUSPENSION OF SECRETARIAL ACTION OR SUSPENSION OF PRECEDENTIAL EFFECT OF DECISION OF THIS COURT

(a) **Filing of Motion.** After an appeal or petition has been filed, a party seeking a Court order to suspend action by the Secretary or the Board or the precedential effect of a decision issued by this Court pending its appeal shall submit for filing with the Clerk a motion and serve a copy on all other parties by an expedited method (including express mail, overnight delivery, fax or other electronic transmission, or hand delivery).

(b) **Content.** The motion shall—

(1) state the reason for the relief requested and the facts relied on; and

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

RULE 9. (RESERVED)

RULE 10. RECORD BEFORE THE AGENCY

(a) Record Before the Agency. Not later than 60 days following the notice of docketing, the Secretary shall:

(1) copy all materials that were contained in the claims file on the date the Board issued the decision from which the appeal was taken;

(2) copy any other material from the record before the Secretary and the Board relevant to the Board decision on appeal (Note: material postdating the Board decision on appeal generally will not be included in the record before the agency);

(3) assemble and paginate all documents, keeping attachments with their respective document. The decision of the Board from which the appeal was taken shall be the first document, followed by a list of any record matter that cannot be duplicated. The assembled document is the record before the agency;

(4) serve a copy of the record before the agency on the appellant; and

(5) submit under a separate docket entry a notice with the Clerk certifying that the record before the agency has been served.

(b) Disputes. If any dispute arises as to the preparation or content of the record before the agency, the Court, on motion of any party, will resolve the matter. Any motion shall describe the good faith efforts that the parties have made to resolve the dispute and shall be submitted to the Clerk to be filed within 14 days after the record before the agency has been served. An opposing party may submit to the Clerk for filing a response to such a motion within 7 days after the motion is served.

(c) Filing the Record Before the Agency. The record before the agency may include many documents not relevant to the issues on appeal. It will not be filed with the Court unless the Court so orders.

(d) Access of Parties or Representatives to Original Record. After a Notice of Appeal has been filed, the Secretary shall permit a party or a representative of a party to inspect and to copy, subject to reasonable regulation by the Secretary, any original material in the record before the agency that is not subject to a protective order.

(e) Retention Requirements for Documents. *See* Rule 37 (Retention Requirements for Documents).

RULES 11 THROUGH 14. (RESERVED)

RULE 15. INTERVENTION

(a) By Right. A person who participated in the proceedings before the Board may intervene in an appeal before the Court by filing with the Clerk a notice of intervention and serving a copy on all parties not later than 60 days after the date of the Clerk's notice of docketing (*see* Rule 4(b)(3) (Notice of Docketing)). *See also* Rule 28(d) (Intervenor's Brief).

(b) With Permission. Any person who did not participate in the proceedings before the Board and who seeks to intervene in an appeal before the Court shall submit for filing with the Clerk a motion for permission to intervene and serve a copy on all parties not later than 60 days after the date of the Clerk's notice of docketing (*see* Rule 4(b)(3) (Notice of Docketing)). The motion shall contain a concise statement of the interest of the moving person or party and the grounds upon which he or she seeks intervention. *See also* Rule 28(d)

(Intervenor's Brief); Rule 27(b) (Motions–Response or Opposition).

(c) In Extraordinary Circumstances. After the expiration of the time limit set in subsection (a) or (b), intervention will be permitted only on a finding of extraordinary circumstances.

(d) In Petitions for Writ of Mandamus. A person who seeks to intervene in a petition for writ of mandamus shall submit for filing with the Clerk a motion for permission to intervene and serve a copy on all parties within a reasonable time after the date of the Clerk's notice of docketing (*see* Rule 4(b)(3) (Notice of docketing)). The motion shall contain a concise statement of the interest of the moving person or party and the grounds upon which he or she seeks intervention. *See also* Rule 28(d) (Intervenor's Brief); Rule 27(b) (Motions–Response or Opposition).

RULES 16 THROUGH 20. (RESERVED)

RULE 21. EXTRAORDINARY RELIEF

(a) Petition: Service, Content, and Filing. Extraordinary relief from the Court may only be sought by filing a petition with the Clerk with proof of service on the respondent(s), the Secretary (if not a respondent), and any other party in interest. The petition shall –

- (1) state the precise relief sought;
- (2) state the facts necessary to understand the issues presented by the petition;
- (3) state the reasons why the Court should grant the petition, including why the petitioner has a clear and

indisputable right to the writ and why there are inadequate alternative means to obtain the relief sought;

(4) include an appendix containing copies of any order or decision or any other documents necessary to understand and support the petition; and

(5) describe any public officer who is a respondent by name and official title.

The requirements of Rules 3(f) (Payment of Fees) and 24 (Waiver of Filing Fee) apply to petitions. Upon receipt of the filing fee (unless waived pursuant to Rule 24 (Waiver of Filing Fee)), the Clerk will submit the petition to the Court.

(b) Form and Length of Documents; Translations.

(1) The requirements in Rule 32 (Form of Brief, Appendices, and Other Documents) apply to petitions and answers thereto, except that a petition or answer may not exceed 20 pages. The petition shall be captioned: "[Name of Petitioner], Petitioner, v. [Name and Title of Respondent], Respondent." *See also* Rule 6 (Protection of Privacy); Rule 48 (Sealing of Cases).

(2) The requirements of Rule 3(h) (Translations) apply to any non-English-language document appended to a petition or an answer.

(c) Consolidated Petitions. Petitions may be consolidated by order of the Court on its own initiative or on a party's motion. Any motion to consolidate must contain an assertion of why consolidation is appropriate, be served on all involved parties, and comply with the requirements of Rule 27 (Motions).

(d) Action on the Petition. Unless the Court concludes that the petition should be denied, the Court will order the respondent(s) to file an answer to the petition within a

fixed time. Two or more respondents may answer jointly. If required, the Clerk will notify the parties of the time limits for the filing of any briefs and of the date of any oral argument.

RULES 22 and 23. (RESERVED)

RULE 24. WAIVER OF FILING FEE

Payment of the filing fee required by Rule 3(f) (Payment of Fees) or Rule 21(a) (Petition: Service, Content, and Filing) will be waived, based on financial hardship, in any case where 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.

RULE 25. FILING AND SERVICE

(a) Document Submission and Filing.

In General. A document required or permitted to be filed in the Court with regard to an appeal or petition for extraordinary relief shall be submitted to the Clerk with proof of service. *See* E-Rule 1(a)(6) (Notice of Docket Activity). Submitted documents otherwise proper for filing shall generally be filed by the Clerk as of the date of receipt by the Clerk. Parties are responsible for delivery of any document to the Court. Confirmation of receipt or filing may be obtained

by accessing the case docket on the Court's website at www.uscourts.cavc.gov.

Notice of Appeal or petition for extraordinary relief.

A Notice of Appeal or petition for extraordinary relief may be submitted by mail, personal delivery or other delivery service, or fax, or as an attachment to an email, as designated in subsection (b).

(1) *Document submission and filing by representatives and amici curiae required to use CM/ECF.* Subject to the exceptions in Rules 25(a) (Document Submission and Filing) and 25(b) (Method and Timeliness) for a Notice of Appeal or petition for extraordinary relief, and for a notice of appearance, fee agreement, or declaration of financial hardship emailed concurrently with the Notice of Appeal or petition for extraordinary relief, all submissions by a representative or amicus curiae shall be submitted through the CM/ECF system. *See* Rule 1(c) (CM/ECF/Non-CM/ECF Electronic Filing) and *see generally* E-Rules.

(2) *Document submission and filing by self-represented parties and others exempt from using CM/ECF.* All submissions by self-represented parties and others exempted by the Court from using CM/ECF may be submitted by mail, personal delivery or other delivery service, or fax, or as an attachment to an email to the Clerk. *See* Rule 25(b) (Method and Timeliness).

(b) Method and Timeliness.

(1) *Mail, personal delivery, or other delivery service.* Submissions by mail, personal delivery, or other delivery service shall be mailed or delivered to the Clerk of the Court, U.S. Court of Appeals for Veterans Claims, 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004-2950.

(A) Submissions through the U.S. Postal Service shall be deemed received by the Clerk as of the date of

postmark. Otherwise the Clerk shall use the actual date of receipt for filing purposes.

(B) A document submitted through the U.S. Postal Service by a self-represented party who is an inmate confined in an institution is timely filed if the document is deposited in the institution's internal mail system within the time specified for filing and is accompanied by evidence showing the date of deposit and stating that first-class postage has been prepaid.

(2) *Fax.* Submissions by fax shall be faxed to the Clerk of the Court at (202) 501-5848.

(A) The Clerk shall use the actual date of receipt for filing purposes.

(B) Faxed documents shall be preceded by a cover sheet showing the sender's name, address, and telephone and fax numbers; the Court case number, if one has been assigned, and caption; and the number of pages being sent.

(3) *Email.*

(A) CM/EFC Users. A Notice of Appeal, petition for extraordinary relief, or a notice of appearance, fee agreement, or declaration of financial hardship submitted concurrently therewith, may be submitted as an attachment to an email to the Clerk at esubmission@uscourts.cavc.gov. All documents attached to emails must be in pdf format, have at the top the names of the parties, and bear an electronic signature. Also, the subject line of the email forwarding the document should include the name of the document (e.g., Notice of Appeal) and the names of the parties. *See* E-Rule 1(a)(2) and (9) (Definitions) and E-Rule 10 (Electronic Signatures). No other documents may be submitted by email. The Clerk shall use the actual date of receipt for filing purposes.

(B) Non-CM/ECF Users.

(i) Self-represented parties. Self-represented parties may submit any document as an attachment to an email to the Clerk at self-rep@uscourts.cavc.gov. All documents attached to emails must be in pdf format; have at the top the names of the parties and the docket number of the case, if one has been assigned; and bear an electronic signature. Also, the subject line of the email forwarding the document should include the name of the document (e.g., Motion To Dispute RBA), the names of the parties, and the docket number of the case, if available. *See* E-Rule 1(a)(2) and (9) (Definitions) and E-Rule 10 (Electronic Signatures). The Clerk shall use the actual date of receipt for filing purposes.

(ii) Represented parties exempted by the Court from using CM/ECF. Representatives exempted by the Court from using CM/ECF may submit documents initiating an appeal (i.e., a Notice of Appeal or petition for extraordinary relief), as well as a notice of appearance, fee agreement, or declaration of financial hardship if submitted concurrently therewith, as an attachment to an email to the Clerk at esubmission@uscourts.cavc.gov. Once the case has been docketed, all other documents may be submitted as an attachment to an email to the Clerk at efiling@uscourts.cavc.gov. All documents attached to emails must be in pdf format; have at the top the names of the parties and the docket number of the case, if one has been assigned; and bear an electronic signature. Also, the subject line of the email forwarding the document should include the name of the document (e.g., Motion to Dispute RBA), the names of the parties, and the docket number of the case, if available. *See* E-Rule 1(a)(2) and (9) (Definitions) and E-Rule 10 (Electronic Signatures.) The Clerk shall use the actual date of receipt for filing purposes.

(4) *CM/ECF*. A separate docket entry shall be used for each document submitted using CM/ECF. The Clerk shall consider the actual date of docket entry as the date of receipt

for filing purposes and that date shall constitute the date of filing unless the Clerk notes otherwise on the docket.

(c) Manner and Proof of Service. Any document submitted for filing with the Court shall be served on all parties in the case.

(1) *CM/ECF Users.* When a document is submitted through the CM/ECF system, the system will electronically generate a notice of docket activity. That notice shall constitute both service and proof of service of the submitted document with regard to any party in that case who is also a CM/ECF User.

(2) *Non-CM/ECF Users.* Service by or on a party who is a Non-CM/ECF User shall be accomplished by providing a copy of the document to be filed to a responsible person at the office of the representative of a party, or the office or home of a party, by personal delivery, mail, or private commercial carrier. Proof of service is accomplished by submitting with the document to be filed either:

(A) an acknowledgment by the person served of his or her personal service, or

(B) a statement certified by the person(s) who made service, showing the date and manner of service and the names and addresses of the persons served.

Proof of service may appear on or be attached to the document filed. The Secretary's representative is the General Counsel of the Department of Veterans Affairs, whose address is General Counsel (027), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420-0002.

(d) Identification. All documents submitted for filing with the Court must be submitted under signature of the party submitting the document or of the party's representative of

record. When a document is submitted for filing through CM/ECF or email, it shall contain an "electronic signature." See E-Rule 1(a)(2)(Definitions); E-Rule10 (Electronic Signatures).

RULE 26. COMPUTATION AND EXTENSION OF TIME

(a) Computing Time.

(1) *General rule.* 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 day the Court is closed at the direction of the Chief Judge.

(2) *Legal holidays.* As used in this Rule, "legal holiday" means New Year's Day, Martin Luther King, Jr.'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.

(3) *Notices.* Notice that the Court is closed or inaccessible will be posted publicly, on the Court's website, if circumstances permit. See www.uscourts.cavc.gov.

(b) Extension of Time. The Court, on its own initiative or on a party's motion for good cause shown, may extend the time set by these Rules for doing any act, or may permit an act to be done after the expiration of such time, but the Court may not extend the time for filing a Notice of Appeal or an application for attorney fees and expenses. See also Rule 5(a) (Stay of Appellate Proceedings). The Court may grant an extension of time not to exceed a total of 45 days for any particular filing for good cause. Any motion to extend the time set by these Rules or by an order or notice of the Court beyond

a total of 45 days for a particular filing will be granted only for extraordinary circumstances.

(1) *Content of motion.* In addition to the information required by Rule 27(a) (Content of Motions), the motion shall state the following:

(A) the date to be extended;

(B) the revised date sought;

(C) the total number of days of extension previously granted to the movant in the merits or attorney-fee application phase, as applicable, of the case;

(D) the total number of days of extension previously granted to the other party(ies) in the merits or attorney-fee-application phase, as applicable, of the case; and

(E) a statement in compliance with Rule 27(a)(5) (Content of Motions).

(2) *Opposition.* Any opposition shall be filed with the Clerk not later than 5 days after the non-moving party is served with a copy of that motion to extend time. The Court will treat the motion as unopposed if no opposition is filed within this period.

(3) *Effect of motion.* A motion to extend time does not extend the date on which a pleading or other document is due to be filed with the Court unless the Court grants that motion. *See* Rule 5(b) (Effect of Stay).

(4) *Noncompliance.* *See* Rule 45(j) (Noncompliant Submissions).

(c) Additional Time After Service by Mail.

(1) *General rule.* If a party is required or permitted to do an act within a period initiated by service of a document under these Rules on that party by another party and the document is served by mail, 5 days are added to the period for doing that act.

(2) *Service overseas by Secretary.* If a document is served by the Secretary by means other than through CM/ECF on an appellant, petitioner, or representative who is located outside the United States, Puerto Rico, or the Virgin Islands, 30 additional days are added to the applicable period.

(3) *Court orders and notices.* Additional time under this Rule is not added to the periods set in Court orders and notices or in Rules 4 (Filing Appeal; Docketing; Copy of Board Decision), 35 (Motions for Reconsideration, Panel Decision, or Full Court Review), and 39(a) (Attorney Fees and Expenses—Application).

(d) Combined Motions Prohibited. With the exception of a motion for leave to file an out-of-time motion to extend time, a motion to extend time may not be combined with any other motion. The Clerk will return any motion that violates this subsection.

RULE 27. MOTIONS

(a) Content of Motions. Unless another form is required by these Rules, an application for relief shall be made by filing a motion, with proof of service (*see* Rule 25(c) (Manner and Proof of Service)) on all other parties. The motion shall—

(1) contain or be accompanied by any material required by any of the Rules governing such a motion;

(2) state with particularity the specific grounds on which it is based;

(3) describe the relief sought;

(4) *not* be accompanied by a proposed implementing order; and,

(5) if the appellant is represented, indicate whether the motion is opposed and, if so, whether the moving party has been advised that a response in opposition will be filed.

(b) Response or Opposition.

(1) *Time to file.* Unless otherwise prescribed in these Rules (*see, e.g.*, Rule 26(b)(2) (Computation and Extension of Time–Opposition)), any party may file a response or opposition to a motion not later than 14 days after service of the motion; however, the Court may act on motions authorized by Rule 8 (Suspension of Secretarial Action or Suspension of Precedential Effect of Decision of This Court) after reasonable notice of the motion has been provided to all parties. The Court may shorten or extend the time for responding to any motion.

(2) *Form of opposition.* Unless the Court orders otherwise, an opposition to a motion shall be filed by an opposing party in writing, and a motion will be considered unopposed if such an opposition is not filed.

(c) Motions for Procedural Orders. Notwithstanding subsection (a) and except as provided in the next sentence, the Court may act upon motions for procedural orders at any time without awaiting a response, and, by rule or order of the Court, the Clerk may dispose of motions for certain procedural orders. The Clerk may act on motions to extend time for good cause (but not for extraordinary circumstances) if the motion is not opposed within 5 days after service on the other party. *See* Rule 26(b)(2) (Computation and Extension of Time–

Opposition). Any party who may be adversely affected by the action may, by motion, request that the Court reconsider, vacate, or modify the action not later than 10 days after the action is announced.

(d) Form and Length. Except by permission of the Court,

(1) a motion or response may not exceed 10 pages, and

(2) the form requirements in Rule 32 (Form of Briefs, Appendices and Other Documents) for principal briefs apply to motions and responses. *See also* Rule 6 (Protection of Privacy) and Rule 37 (Retention Requirements for Documents).

(e) Prohibited Nondispositive Motions. Except as permitted by Rules 26(d) (Combined Motions Prohibited) and 35(a)(1) (Motion for Reconsideration, Panel Decision, or Full Court Review–Motion for Reconsideration–Permitted), no more than one subject may be addressed in any nondispositive motion. The Clerk will return any motion that violates this subsection.

(f) Effect of Motions. Filing a motion does not suspend proceedings or otherwise alter the schedule for filing documents unless the Court grants the motion. *See* Rule 5(b) (Effect of Stay); Rule 26(b)(3) (Effect of Motion).

RULE 28. BRIEFS

(a) Appellant's Brief. The appellant shall file a brief that, unless the appellant is self-represented and submits an informal brief pursuant to subsection (e), shall contain, in the following order, the appropriate division headings and the following separate divisions:

(1) a table of contents, with page references;

(2) a table of authorities consisting of cases (alphabetically listed), statutes, other authorities cited, and pages of the record before the agency cited (including a title or description for each document) in numerical order by record citation, with references to the page of the brief where they are cited (*see* Form 18 (Sample Format for Table of Authorities) in the Appendix of Forms);

(3) a statement of the issues;

(4) (i) a statement of the case, showing briefly the nature of the case, the course of proceedings, the result below, and the facts relevant to the issues, with appropriate page references to the record before the agency;

(ii) when citing to the record, citations shall include the specific page(s) being cited, followed in parentheses by citation to all pages of the document from which the referenced page is cited. When relevant, specific pages for envelopes and date stamps associated with the document shall be included. Parties shall not cite solely to the Board decision for any factual underlying issues on appeal, unless the source document is unavailable;

Practitioner's Note: Parties are charged with exercising judgment in determining what constitutes the document from which a page is cited. For example, if there is a 3-page Notice of Disagreement (NOD) with 100 pages of attachments and the brief is citing page 2 of the NOD and the attachments are not essential to or referenced in the brief, the party need only cite the 3 pages of the NOD (e.g., R. at 44 (43-45)). As another example, service medical records as a whole would not constitute one document, but an entrance examination report would.

(5) an argument, beginning with a summary and containing the appellant's contentions with respect to the issues and the reasons for those contentions, with citations to the authorities and pages of the record before the agency; and,

(6) a short conclusion stating the precise relief sought.

(b) Secretary's Brief.

(1) *Content.* The Secretary shall file a brief that conforms to the requirements of subsection (a), but a statement of the issues or of the case need not be made unless the Secretary is dissatisfied with the appellant's statement.

(2) *Assertion of Board error.* The Secretary shall include in the argument section of the brief any agreement with the appellant's assertion of Board error, as well as any independent assertion of Board error deemed material and relevant to the matters on appeal.

(3) *Appropriate relief.* For any assertion of Board error by the Secretary, the Secretary shall identify the relief that the Secretary considers appropriate.

(c) Reply Brief. The appellant may file a brief in reply to the Secretary's brief. The reply brief shall contain a table of authorities that conforms to the requirements of subsection (a)(2).

(d) Intervenor's Brief. An intervenor may file a brief not later than 30 days after the appellant's reply brief is filed or due. *See* Rule 31(a) (Filing and Service of Briefs—Time Limits). An intervenor's brief shall conform to the requirements of subsection (a), but a statement of the issues or of the case need not be made if the intervenor adopts either the appellant's or the Secretary's statement.

(e) Self-Represented Party's Brief. Only a self-represented party may submit an informal brief. The informal brief form provided by the Court may be used. Informal briefs

are exempt from the requirements of subsection (a) of this Rule and from the requirements of Rule 32 (Forms of Briefs, Appendices, and Other Documents). An informal brief must comply with the Rule 32(f) identification requirement and may not be longer than 30 pages.

(f) Amicus Curiae Brief. *See* Rule 29 (Brief of an Amicus Curiae).

(g) Motions Prohibited. After the Court has issued the initial notice to file a brief to the appellant, the Court will not accept a motion, other than a joint motion for remand or termination, from any party in lieu of a brief required by subsections (a) through (c). A motion may not be included as part of any brief; the Court will not act on any motion so included. The Clerk will return any motion that violates this subsection.

(h) References to the Record Before the Agency. References in the briefs to the record before the agency shall be to the pages as transmitted by the Secretary, as described in Rule 10(a) (Record Before the Agency). *See also* Rule 28.1(a) (Preparation of the Record of Proceedings). Commonly understood abbreviations may be used.

(i) Reproduction of Documents. If determination of the issues requires consideration of superseded statutes, rules, or regulations, or unpublished authorities, relevant parts shall be reproduced in the brief or in an appendix. Documents in the record before the agency may not be reproduced in or attached to the brief.

(j) Multiple Appellants. In cases involving more than one appellant, including consolidated cases, any number of appellants may join in a single brief, and any appellant may adopt by reference any part of the brief of another. Appellants may similarly join in reply briefs.

RULE 28.1. RECORD OF PROCEEDINGS

(a) Preparation of the Record of Proceedings.

(1) *Preparation and contents.* The Secretary shall prepare and file the record of proceedings. The record of proceedings shall contain:

(A) the Board decision(s) being appealed;

(B) any document from the record before the agency cited in a brief, in its entirety, with any associated envelope or date stamp if relevant (*See Practitioner's Note to Rule 28(a)(4)(ii)*); and,

(C) any other documents before the Secretary and the Board that are relevant to the issues before the Board that are on appeal to the Court or relevant to issues otherwise raised in the appeal.

(2) *Arrangement and pagination.* The record of proceedings shall have a cover containing the official caption of the appeal and shall 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 not having consecutive numbers, e.g., page 22 may be followed immediately by page 43.

(3) *Time for filing.* The Secretary shall file and serve the record of proceedings on all parties 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) (Time Limits for Filing and Service of Briefs). *See also* Rule 47(b) (Expedited Proceedings—Filing and Service of Documents), as applicable.

(b) Disputes. If any dispute arises as to the preparation or contents of the record of proceedings, the Court, on its own initiative or on motion of any party, will resolve the matter. Any party's motion shall be filed within 14 days after the record of proceedings has been served and shall describe the good faith efforts that have been made to resolve the dispute. An opposing party may file a response to such a motion not later than 7 days after the motion is served.

(c) Additional Record Material. The Court may direct any party to file additional record material.

RULE 29. BRIEF OF AN AMICUS CURIAE

(a) When Permitted. A brief submitted to the Court by an amicus curiae will be filed by the Clerk only after the Court has granted a motion for leave to file.

(b) Motion for Leave To File. The motion must be accompanied by the proposed brief and state:

(1) the movant's interest and whether all parties consent to the filing of the brief;

(2) why the matters asserted are relevant to the disposition of the case; and

(3) why the Court should grant leave to file the motion.

(c) Time. An amicus curiae must submit the motion for leave to file not later than 7 days after the principal brief of the party being supported is filed unless the Court permits later filing. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed.

(d) Form and Content. An amicus brief must comply with Rules 25 (Filing and Service), 28(a)(1), (5), and (6), 28(h) and (i) (Briefs), 30 (Citation of Certain Authority), and 32 (Form of Briefs, Appendices, and Other Documents); state, at the outset of the brief, which party the amicus curiae supports, if any, and the interest of the amicus curiae; and provide a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file. The brief must avoid repeating the parties' briefs and should focus on the points not made or not emphasized in them.

(e) Length. An amicus brief may be no more than one-half the maximum length authorized by these Rules for a party's principal brief. If the Court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(f) Reply Brief. An amicus curiae may not file a reply brief.

RULE 30. CITATION OF CERTAIN AUTHORITY

(a) Citation of Nonprecedential Authority. A party, intervenor, or amicus curiae may not cite as precedent any action designated as nonprecedential by the Court or any other court, or that was withdrawn after having been published in a reporter, except when the cited action has binding or preclusive effect in the case on appeal (such as via the application of the law-of-the-case doctrine). Actions designated as nonprecedential by this Court or any other court may be cited only for the persuasive value of their logic and reasoning, provided that the party states that no clear precedent exists on point and the party includes a discussion of the reasoning as applied to the instant case. With the exception of decisions of this Court available electronically, a copy of any unpublished action referred to shall be attached to the document containing the reference.

(b) Citation of Supplemental Authority. When pertinent and significant authority comes to the attention of a party after the party's brief has been filed or after oral argument but before the decision, a party shall promptly file notice with the Clerk, and serve all other parties. In no case will supplemental authority-pertinent and significant or otherwise-be accepted by the Clerk for filing fewer than 7 days preceding a scheduled oral argument, without leave from the Court. The notice shall set forth the citation(s) to the authority or include a copy of the supplemental authority if it is not readily available in a reporter system. The notice shall refer to the page of the brief or to a point argued orally to which each citation pertains, and shall state without argument the reasons for the supplemental citation(s). Any response shall be made promptly and shall be similarly limited.

RULE 31. FILING AND SERVICE OF BRIEFS

(a) Time Limits. Except in cases covered by Rule 47 (Expedited Proceedings),

(1) the appellant shall serve and file a brief not later than

(A) 60 days after the expiration of the 14-day period provided under Rule 10(b) (Record Before the Agency–Disputes) for the parties to notify the Court of any unresolved dispute regarding the Record Before the Agency, or

(B) 30 days after the completion of the Rule 33 staff conference, whichever is later.

Briefing deadlines may be modified by the Court when the Court is required to resolve a dispute in connection with a motion under Rule 10(b);

(2) the Secretary shall serve and file a brief not later than 60 days after service of the appellant's brief; and

(3) the appellant may serve and file a reply brief not later than 14 days after service of the Secretary's brief.

(b) Effect of Failure To File. If a party fails to file a brief within the time provided by this Rule or within the time as extended, the Court, on its own initiative or on motion by a party, may take appropriate action, to include dismissal of the appeal or sanctions.

RULE 32. FORM OF BRIEFS, APPENDICES, AND OTHER DOCUMENTS

(a) Format. Briefs, appendices, and other documents shall be printed or typewritten. Pages shall be letter size (8 ½ by 11 inches), with margins at least one-inch wide from all edges, and with type or print on only one side of the page. *See also* Rule 6 (Protection of Privacy).

(b) Type; Spacing. If a proportionally spaced typeface is used, it shall be 13-point or larger. If a monospaced typeface is used, it shall not contain more than 10½ characters per inch. Text shall be double spaced (except that motions and responses under Rule 27(c) (Motions for Procedural Orders) may be single spaced). Quotations of 50 words or more must be single spaced. Footnotes must be single spaced and must conform to the typeface requirements. The parties may not use photo reproduction that reduces print size smaller than the size required by this subsection. This subsection does not apply to pages of an appendix that are legible, unreduced photocopies of documents.

(c) Caption. A document addressed to the Court shall contain a caption setting forth the name of the Court, the Court's case number when assigned, the title of the case, and a brief heading indicating the purpose of the document. Briefs

must begin with a separate caption page; a cover is not required. *See* Form 2 in the Appendix of Forms.

(d) Page Numbers. Pages shall be numbered in the center of the bottom margin, using Arabic numerals for the pages subject to the page limitation and lower case Roman numerals for the table of contents, table of authorities, certificate of service, and any appendix containing superseded statutes, rules and regulations, and unpublished authorities.

(e) Length of Briefs. Except by permission of the Court or as limited by Rule 47 (Expedited Proceedings), principal briefs may not exceed 30 pages and reply briefs may not exceed 15 pages, not counting the table of contents; the table of authorities; any appendix containing superseded statutes, rules, and regulations, and unpublished authorities; and the certificate of service.

(f) Identification. The signature, printed name, address, and telephone number of the representative of record (*see* Rule 46(a)(3) (Practitioner defined)) or of a self-represented party shall appear on a brief or other document submitted for filing to the Clerk.

(g) Noncompliance. *See* Rule 45(j) (Noncompliant Submissions).

RULE 33. STAFF CONFERENCE

(a) Participation. The Court may order the representatives and self-represented parties to participate in a staff conference, in person or by telephone, to consider refinement of the issues and such other matters as may help the Court resolve the case. When necessary, the Court will enter an appropriate order to control future proceedings. Parties are strongly encouraged to discuss settlement or alternative disposition of the matters on appeal.

^ **(b) Pre-Briefing Process.** In cases scheduled for pre-briefing staff conferences:

(1) No later than 14 days prior to the staff conference, the appellant shall submit to the Secretary and Central Legal Staff (CLS) a summary of the issues the appellant intends to raise in the appeal, including citations to relevant authorities and submission of pertinent material in the record before the agency;

(2) The summary of issues shall be limited to 10 pages, subject to the requirements of Rule 32(b); the 10-page limit does not include submission of pertinent material in the record before the agency;

(3) Submissions shall be emailed to CLS at CLS-Calendar@uscourts.cavc.gov or faxed to CLS at (202) 585-3951;

(4) The appellant shall also submit for filing with the Court and serve on the Secretary a certificate of service that includes the date of the appellant's submission to the Secretary and to CLS, the specific manner of service (fax or email), and the names and addresses of the persons served.

(c) Consultation. The representatives of the parties must consult with their respective clients in good faith to determine whether joint resolution of the appeal or settlement is possible. At the time of the staff conference, the representative must either possess the authority to enter into a joint resolution of the appeal or settlement to the extent authorized by the client or be in immediate contact with a person having such authority.

(d) Nondisclosure to Judges. Statements made during a conference, including written memoranda submitted for the conference, may not be disclosed to a Judge of the Court unless the parties agree in writing to such disclosure. This subsection

does not apply to disciplinary actions or judicial review of a dispute about the content of the record before the agency or record of proceedings or subsequent Equal Access to Justice Act (EAJA) applications, pursuant to 28 U.S.C. § 2412(d).

Practitioner's Note: Absent an order of the Court, the time period for taking any action under the Court's Rules is not tolled for the time required to prepare for the staff conference.

RULE 34. ORAL ARGUMENT

(a) In General. The U.S. Court of Appeals for Veterans Claims is a Court of national jurisdiction. Generally, oral argument will be held in Washington, D.C. However, the Court may hold oral argument anywhere in the United States. Oral argument will be allowed only when ordered by the Court and will be held where and when the Court orders.

(b) Motion for Oral Argument. Parties seeking oral argument should submit a motion for oral argument not later than 14 days after the reply brief is due or filed, whichever is sooner. Such motion shall specify therein why such argument will aid the Court. A motion for oral argument may not be included in any brief. Oral argument normally is not granted on nondispositive matters or matters being decided by a single Judge.

(c) Participation by Amicus Curiae in Oral Argument. An amicus curiae will be permitted to participate in oral argument only at the invitation of the Court.

(d) Notice of Argument; Postponement; Additional Time. The Clerk shall advise all parties and issue a public order as to when and where oral argument is to be heard and the time to be allowed each party. A request for postponement of the argument or for the allowance of additional time shall be

made by motion filed reasonably in advance of the date fixed for argument and shall contain a showing of good cause.

(e) Order and Content of Argument. The appellant will generally open and conclude the argument. In argument on motions, the movant generally will open and conclude the argument.

(f) Nonappearance of Parties. If any party fails to appear to present argument, the Court may hear argument by any other party who is present.

(g) Physical Exhibits. A party who wishes to use physical exhibits other than documents shall arrange with the Clerk to have them placed in the courtroom on the date of the argument before the Court convenes. After the argument, the party shall remove the exhibits unless the Court otherwise directs. If the exhibits are not reclaimed within a reasonable time after notice is given by the Clerk, they will be disposed of by the Clerk.

Practitioner's Note: The Court's oral argument *Guide for Counsel* is available on the Court's website at www.uscourts.cavc.gov or by request.

RULE 35. MOTIONS FOR RECONSIDERATION, PANEL DECISION, OR FULL COURT REVIEW

(a) Motion for Reconsideration.

(1) *Permitted.* A party in a case dismissed by the Clerk pursuant to Rule 45(h) (Sua Sponte Dismissal of Cases) may move for reconsideration by the Clerk. If the Clerk denies such reconsideration, the matter will be referred for decision by a Judge. A party in a case decided by a single judge may move (A) for reconsideration by the single Judge, (B) for panel

decision, or (C) in a single motion, for reconsideration by a single Judge or for panel decision in the event the single Judge denies reconsideration. A party in a case decided by a panel may move (A) for reconsideration by the panel, (B) for full Court review, or (C) in a single motion, for reconsideration by the panel or for full Court review in the event the panel denies reconsideration. A party in a case decided by the full Court may move for reconsideration by the full Court.

(2) *Prohibited.* A party may not move for reconsideration

(A) of a matter if that party has previously filed a motion for reconsideration of that matter and the Court has denied that motion, or

(B) of the grant of a motion under subsection (b) for a decision by a panel when the panel's decision is that the single-judge decision remains the decision of the Court, or

(C) of the denial of a motion under subsection (c) for full Court review.

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

(c) Motion for Full- Court Review. Motions for full-Court review 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. Subject to the requirements of subsections (d), (e), and (f), a party may move for a decision by the full Court—

(1) after a panel has decided a case, or

(2) after a panel has denied a motion for reconsideration or granted a motion for a decision by a panel but held that the single-judge decision remains the decision of the Court.

(d) Time for Motion. Any motion under this Rule shall be filed not later than 21 days (51 days if the motion is filed by an appellant, petitioner, or representative located outside the United States, Puerto Rico, or the Virgin Islands) after the date of the dispositive action for which reconsideration, panel review, or full Court review is sought.

Practitioner's Note: Because a motion for reconsideration by the single Judge may be combined with a motion for panel decision, the filing of a motion for reconsideration does not toll the running of the time for filing a separate motion for panel decision. Likewise, because a motion for panel reconsideration may be combined with a motion for full Court review, the filing of a motion for panel reconsideration does not toll the running of the time for filing a separate motion for full Court review. Thus, to be timely, any motion for panel or full Court review must be filed within the 21-day filing period.

(e) Content of Motion. A motion under this Rule shall contain a supporting argument. In addition—

(1) a motion for panel decision, or a motion for single-judge, panel, or full Court reconsideration shall state the points of law or fact that the party believes the Court has overlooked or misunderstood;

(2) a motion for panel decision also must state why the resolution of an issue before the Court would establish a new rule of law; modify or clarify an existing rule of law; apply established law to a novel fact situation; constitute the only recent, binding precedent on a particular point of law; involve a

legal issue of continuing public interest; or resolve a case in which the outcome is reasonably debatable; and

(3) a motion for full-Court review shall 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 and Length. Except by the Court's permission, a motion or response (including any supporting memorandum or brief) under this Rule may not exceed 15 pages. The motion shall otherwise comply with Rules 25 (Filing and Service) and 27 (Motions), but it need not indicate whether it is opposed.

(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 full Court review 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 review or for reconsideration of a full Court decision will be referred to all of the Judges in regular active service. Consideration by the full Court requires the vote of at least a majority of the eligible Judges in regular active service.

RULE 36. ENTRY OF JUDGMENT

(a) Judgment. Judgment begins the 60-day time period for appealing to the U.S. Court of Appeals for the Federal Circuit.

(b) Date of Judgment.

(1) Judgment is effective on

(A) the date prescribed in a Court order or decision, or

(B) the date of a Court order on consent (i) dismissing, terminating, or remanding a case, or (ii) granting or dismissing an uncontested application for attorney fees and expenses, when the order states that it constitutes the mandate of the Court.

(2) Unless the Court orders otherwise, judgment is effective when entered on the docket, which will be after the later of

(A) the date on which the time allowed in Rule 35(d) (Time for Motion) has expired, or

(B) the date on which the Court renders a decision on any motion(s) filed pursuant to Rule 35 (Motions for Reconsideration, Panel Decision, or Full Court Review) when no further motion under Rule 35 is permitted to be filed.

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 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 37. RETENTION REQUIREMENTS FOR DOCUMENTS

(a) **Represented Parties.** When the appellant or petitioner is represented, the representative shall retain copies of the record before the agency, all documents filed with the Court by the parties or any intervenor or amicus curiae, and all actions issued by the Court.

(b) **Self-Represented Parties.** When the appellant or petitioner is self-represented, the Secretary shall retain copies of the record before the agency, all documents filed with the Court by the parties or any intervenor or amicus curiae, and all actions issued by the Court.

(c) **Duration of Retention.** Documents described in subsections (a) and (b) shall be retained for not less than one year after all proceedings are concluded, including those concerning attorney fees and expenses.

RULE 38. FRIVOLOUS FILINGS; FAILURE TO ACT

(a) **Frivolous Filings.** If the Court determines that an appeal, petition, motion, or other filing is frivolous, it may, after a separately filed motion by a party or notice from the Court and reasonable opportunity to respond, enter such order as it deems appropriate, to include sanctions, dismissal of the appeal, or reduction in any award under 28 U.S.C. § 2412(d).

(b) **Failure To Act.** Failure to take any step under these Rules, or to comply with an order of the Court, may be grounds for such action as the Court deems appropriate, including dismissal of the appeal or assessment of costs.

RULE 39. ATTORNEY FEES AND EXPENSES

(a) Application. An application pursuant to 28 U.S.C. § 2412(d), the Equal Access to Justice Act (EAJA), for award of attorney fees and/or other expenses shall be submitted for filing with the Clerk not later than 30 days after the Court's judgment becomes final. *See* Rule 36 (Entry of Judgment) and Rule 41 (Mandate). The time for filing an application under this subsection is set by statute. The application shall include the fees and expenses claimed for the submission of that application.

(1) *Response.* Not later than 30 days after the date on which an application described in section (a) is filed, the Secretary shall submit for filing and serve a response to that application. If the Secretary disputes the amount of fees and expenses sought, before the Secretary files a response the parties shall consult in good faith to seek expeditious resolution of the matter. The response shall state which elements of the application are not contested and explain the Secretary's position on those elements that are contested.

(2) *Reply.* Not later than 30 days after service of any response by the Secretary, the applicant may submit for filing and serve a reply addressing those matters contested by the Secretary.

(b) Supplemental Application. Except as provided in paragraph (3) of this section, a party whose application described in section (a) has been granted in whole or in part may, not later than 20 days after the Court action granting such application, file a supplemental application for attorney fees and other expenses in connection with the defense of such application. A supplemental application shall include the fees and expenses claimed for the submission of that supplemental application.

(1) *Response.* Unless unopposed, and except as provided in paragraph (3) of this section, not later than 20 days

after the date on which a supplemental application is filed, the Secretary shall submit for filing and serve a response to that supplemental application. If the Secretary disputes the amount of fees and expenses sought, before the Secretary files a response the parties shall consult in good faith to seek expeditious resolution of the matter. The response shall state which elements of the supplemental application are not contested and explain the Secretary's position on those elements that are contested.

(2) *Reply.* Not later than 10 days after service of any response by the Secretary, the applicant may submit for filing and serve a reply addressing those matters contested by the Secretary.

(3) *Supplemental applications for work performed before other courts.*

(A) Appeals to the Federal Circuit. When an action on an application appealed to the U.S. Court of Appeals for the Federal Circuit is returned to the Court and the application has been granted in whole or in part by any court, any supplemental application (over which the Court has jurisdiction) based on representation provided in that appeal may be filed in the Court not later than 20 days after the mandate is issued by that court. *See* FED. R. APP. P. 41; FED. CIR. R. 41.

(B) Appeals to the U.S. Supreme Court. When an action on an application appealed to the Supreme Court is returned to the Court and the application has been granted in whole or in part by any court, any supplemental application (over which the Court has jurisdiction) based on representation provided in that appeal may be filed in the Court not later than 20 days after the expiration of the time for filing a petition for a rehearing by the Supreme Court. *See* SUP. CT. R. 45.

(C) **Timing of Supplemental Responses and Replies.** When a supplemental application is filed under paragraph (A) or (B) of this section, the Court will issue an order specifying the timing of responses and replies to ensure that all previous applications have been resolved before requiring a response to the next application.

(c) **Dispute Resolution.** In addition to the good faith resolution requirements of subsections (a)(1) and (b)(1), either party may request or the Court may direct that a staff conference, pursuant to Rule 33, be conducted in person or by telephone to discuss resolution of the contested elements of the application.

(d) **Appendices.** The parties shall attach as appendices to any pleading submitted for filing under this Rule those documents that are not already before the Court that are necessary to meet the application content requirements of 28 U.S.C. § 2412(d).

(e) **Form and Length.** All documents submitted for filing under this Rule shall conform to the requirements set forth in Rule 32 (Form of Briefs, Appendices, and Other Documents), except that no submission for filing may exceed 20 pages, not counting any appendix containing pages necessary to meet the application content requirements of 28 U.S.C. § 2412(d).

(f) **Multiple Representatives.** Applications for EAJA fees in cases in which reimbursement is sought for the work of more than one representative must include a single, consolidated, chronological billing statement for the full fee award requested. That single billing statement shall be in tabular form with entries listed in chronological order and depict the work done on the case on each date, identifying the representative who did the work, and must be signed by the lead representative, who will be responsible for its accuracy and completeness. The lead representative must sign the

combined billing statement under a certification that he or she has (1) reviewed the combined billing statement and is satisfied that it accurately reflects the work performed by all representatives and (2) considered and eliminated all time that is excessive or redundant.

(g) Additional Requirements for Non-Attorney Practitioners. A non-attorney practitioner must include in the application for EAJA fees a statement of the non-attorney practitioner's education and experience in representing claimants before this Court and a justification for the hourly fee sought.

RULE 40. RULES ADVISORY COMMITTEE

(a) General. The Court will have a Rules Advisory Committee (Committee) to study and advise the Court on possible changes to Rules of the Court, either sua sponte or at the request of the Court. The Committee will submit its recommendations to the Chief Judge through the Clerk.

(b) Appointment. The Chief Judge, with the concurrence of the Board of Judges, will appoint nine members of the Court's bar to serve on the Committee, eight as members and one as the chair. At least two members of the Committee will be attorneys employed by the Department of Veterans Affairs.

(c) Terms.

(1) *Length of terms.* Each member and each new chair will be appointed for a term of two years. Notwithstanding the terms provided for in the preceding sentence, the term of any person serving by virtue of employment by VA will end automatically at such time as the person is no longer so employed.

(2) *Reappointment.* Except as otherwise provided, a member may serve three terms consecutively; a break in service permits a new series of three consecutive terms. A person may be appointed to three consecutive terms as the chair notwithstanding any term or terms as a member; a break in service as the chair permits a new series of such terms or a new series of three terms as a member. There is no limit on the number of nonconsecutive terms to which any person may be appointed as a member or the chair of the Committee. A member or the chair may continue to serve until a successor has been appointed.

(3) *Resignation or removal.* A member or the chair of the Committee may resign from the Committee. The Chief Judge, with the concurrence of the Board of Judges, may, based on the disability of the member or the chair or for other good cause, revoke an appointment at any time.

RULE 41. MANDATE

(a) **Mandate.** Mandate is when the Court's judgment becomes final and is effective as a matter of law pursuant to 38 U.S.C. § 7291.

(b) **Date of Mandate.** Mandate generally is 60 days after judgment entered unless—

(1) a timely notice of appeal to the U.S. Court of Appeals for the Federal Circuit is filed with the Clerk, *see* 38 U.S.C. § 7291(a) *et seq.*, or

(2) mandate was issued as part of an order on consent (i) dismissing, terminating, or remanding a case, or (ii) granting or dismissing an uncontested application for attorney fees and expenses (*see* Rule 36(b)(1)(B)), or

(3) the Court directs otherwise.

Practitioner's Note: Mandate 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 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.

RULE 42. VOLUNTARY TERMINATION OR DISMISSAL

If the parties file with the Clerk a motion to terminate a matter (other than an application for attorney fees and expenses) based upon a settlement agreement to be effective upon the Court's termination of the case, the Clerk may enter the case terminated. On motion of the appellant or petitioner for dismissal, the Clerk may dismiss an appeal, petition, or application for attorney fees and expenses on terms requested by the appellant or petitioner, agreed upon by the parties, or previously fixed by the Court.

RULE 43. SUBSTITUTION OF PARTIES

(a) Death of a Party.

(1) *Before Notice of Appeal.* If a party entitled to appeal dies before filing a Notice of Appeal, any person permitted by law to do so may file the Notice of Appeal within the time limit in Rule 4 (Filing of Appeal; Docketing; Copy of Board Decision).

(2) *After Notice of Appeal.* If a party dies after a Notice of Appeal is filed or while a proceeding is pending in the Court, the personal representative of the deceased party's estate or any other appropriate person may, to the extent

permitted by law, be substituted as a party on motion by such person. Any party or representative who becomes aware of the appellant's death shall notify the Court of the death of an appellant and proceedings will then be as the Court directs.

(b) Substitution for Other Causes. If substitution of a party in the Court is necessary for any reason other than death, the Court may order substitution on its own initiative or on a party's motion.

(c) Death or Separation from Office of Public Officer. When a public officer is a party in an official capacity and during the proceedings dies, resigns, or otherwise ceases to hold office, the proceedings are not stopped and the public officer's successor is automatically substituted as a party. Proceedings following the substitution will be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties will be disregarded.

RULE 44. JUDICIAL CONFERENCE

(a) Purpose. Pursuant to 38 U.S.C. § 7286, there shall be convened, at such time and place as the Chief Judge designates, a conference to consider the business of the Court and to recommend means of improving the administration of justice within the Court's jurisdiction.

(b) Committee. The Chief Judge will appoint a Judicial Conference Planning Committee to plan and conduct the conference. The Planning Committee may appoint such subcommittees as may be necessary to ensure the efficient operation of the conference.

(c) Attendance. The Chief Judge presides at the conference. All persons admitted to practice before the Court, and such other persons as are designated by the Chief Judge, may be members of and participate in the conference.

(d) Registration Fee. Each member of the conference other than Judges of the Court shall pay a registration fee in an amount fixed by the Court to defray expenses of the conference. The Chief Judge may excuse the payment of the fee in individual cases. These fees are governed by 38 U.S.C. § 7285.

(e) Responsibility of the Clerk. The Clerk is responsible for receipt and disbursement of conference funds, for all conference records and accounts, and for conference staff support, and performs such other duties pertaining to the conference as may be directed by the Chief Judge.

(f) Delegation. The Chief Judge may delegate any or all of his or her responsibilities to another Judge of the Court.

RULE 45. DUTIES OF CLERK

(a) General Provisions. The Clerk shall take the oath required by law. Neither the Clerk nor any deputy clerk may practice as an attorney or counselor in any court while continuing in office. The office of the Clerk is open during business hours on all days except Saturdays, Sundays, legal holidays, and other days when the Court is closed (*see* Rule 26(a) (Computing Time)) from 9:00 a.m. to 4:00 p.m. A night box is available at the entrance to the Public Office from 4:00 p.m. to 6:00 p.m. on all days that the Court is open. *But see* Rule 25(a) (Document Submission and Filing); (b)(2), and (b)(3) (Method and Timeliness-Fax and Email) and E-Rule 5(c)(Effects of Filing Through CM/ECF).

(b) The Docket; Calendar; Other Records Required.
The Clerk shall—

(1) maintain a docket containing a record of all documents filed with the Clerk, and all process, orders, and judgments;

(2) maintain an index of cases contained in the docket;

(3) prepare, under the direction of the Court, a calendar of cases submitted or waiting argument; and

(4) keep such other books and records as may be required by the Court.

(c) Notice of Court Actions. Immediately upon issuance of an opinion, memorandum decision, or order, or upon entry of judgment or mandate, the Clerk shall send a copy or notification to each party to the proceeding and note in the docket the issuance or entry date. Electronic transmission of the notice of docket activity constitutes such notice for all CM/ECF Users.

(d) Custody of Records and Papers. The Clerk is custodian of the records and documents of the Court. The Clerk shall not permit any original record or document to be taken from the Clerk's custody except as authorized by law. The Clerk shall retain, archive, or otherwise dispose of documents submitted for filing, as required or otherwise permitted by law.

(e) Court Seal. The Clerk is the custodian of the seal of the Court. The seal will appear as ordered by the Court. The seal is the means of authentication of all records, certificates, and process issued from the Court.

(f) Schedule of Fees. The Clerk shall maintain in the Public Office and on the Court website a schedule of fees approved by the Court.

(g) Motions. Unless a case has been assigned to a Judge or Judges or unless otherwise directed by the Court, the Clerk may act on motions and applications, if joint, consented to, or unopposed, that seek to—

(1) dismiss or terminate an appeal or petition with or without prejudice to reinstate it;

(2) remand a case;

(3) reinstate a case that was dismissed for failure to comply with the Rules;

(4) extend the time for taking any action required or permitted by the Rules or by an order of the Court, unless the motion is made after the time limit has elapsed or unless the basis for the motion is extraordinary circumstances as required by Rule 26(b) (Extension of Time);

(5) stay a case, with the exception that for the purpose of allowing the parties time to negotiate a settlement or other joint resolution, the Clerk may stay a case for only up to a total of 60 days;

(6) consolidate appeals;

(7) withdraw or substitute an appearance;

(8) correct a brief or other document; or

(9) obtain attorney fees and expenses pursuant to 28 U.S.C. § 2412(d).

(h) Sua Sponte Dismissal of Cases. The Clerk may dismiss a case for the appellant's failure to pay the filing fee or to file a brief. *See also* Rule 35(a) (Motion for Reconsideration).

(i) Construction of Rules in Self-Representation Cases. Consistent with the practice of the Court, the Clerk will liberally construe the Rules as they apply to self-represented appellants.

(j) Noncompliant Submissions. Except where return of a document is required by these Rules for a specific reason (*see* Rules 5(d) (Stay of Appellate Proceedings–Combined Motions Prohibited), 24 (Waiver of Filing Fee), 26(d) (Computation and Extension of Time–Combined Motions Prohibited), 27(e) (Prohibited Nondispositive Motions) and 28(g) (Motions Prohibited)), if the Court receives any document that does not conform to these Rules, the Clerk will receive, but not file, the submission; however, if it is a jurisdiction-conferring document, it will be filed notwithstanding any other provision of these Rules. In every case, the Clerk will promptly notify the party of the defect(s) to be corrected and may, in accordance with guidance from the Court, stay proceedings for a reasonable time in order to permit submission of a conforming document. Failure to submit such conforming document in a timely manner may result in the dismissal of the matter.

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 Supreme Court of the United States, or 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. 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)(F) 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' Representatives. Each practitioner representing an appellant 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 the appellant, 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) Secretary's Representatives. Each practitioner representing the Secretary shall submit for filing with the Court and serve on the appellant, no later than the date on 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 the appellant a notice of appearance of the new practitioner.

(C) 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).

(D) Appearance by Multiple Representatives. In cases where multiple representatives submit for filing a notice of appearance, one representative must be designated as lead representative.

(E) 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.

(F) 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 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).

(G) Appearance by Law Students.

(i) General. An eligible law student, with the written consent of the appellant 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) 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).

RULE 46.1. SELF-REPRESENTATION

Any appellant, petitioner, or intervenor may be self represented before the Court. A self-represented party shall give the Clerk and all other parties written notice (not included in another filing) of any change of his or her address or telephone number. Absent such notice, the mailing of documents to the address most recently provided by that person will be fully effective. *See also* Rules 25(b)(1)(B) (filing by inmate), 28(e) (informal brief), 32(f) (identification), 33(a) (staff conference), and 45(i) (Rules construed liberally for self-represented appellants).

RULE 47. EXPEDITED PROCEEDINGS

(a) Motion and Order. On a party's motion for good cause shown, on written agreement of the parties, or on its own initiative, the Court may order that any matter before the Court be expedited with respect to some or all procedural steps. The following may constitute good cause:

(1) a serious health condition that makes the death of the appellant or petitioner imminent, as shown by a physician's statement (including identification of the physician's licensing authority and current license number);

(2) the advanced age (over 75 years) of the appellant or petitioner and a state of failing health due to a nontemporary condition, as shown by a physician's statement (including identification of the physician's licensing authority and current license number), such that expeditious proceedings are necessary to avoid an injustice to the appellant or petitioner; or

(3) any other exceptional circumstances that make expeditious proceedings necessary to avoid an injustice to the appellant or petitioner, as shown by credible evidence.

(b) Filing and Service of Documents. Expedited proceedings will be scheduled as directed by the Court. Unless otherwise ordered, the appellant's principal brief shall be served and submitted for filing not later than 20 days after the record before the agency has been served on the appellant; the Secretary's brief shall be served and submitted for filing not later than 20 days after service of the appellant's brief; and any reply brief shall be served and submitted for filing not later than 10 days after filing of the Secretary's brief. Unless otherwise ordered, the time to submit the record of proceedings for filing under Rule 28.1(a)(3) (Record of Proceedings–Time for Filing) is reduced to 7 days.

(c) Form and Length of Briefs. Briefs submitted for filing under this Rule shall comply with Rules 25 (Filing and Service), 28 (Briefs), and 32 (Form of Briefs, Appendices, and Other Documents), except that principal briefs shall be limited to 15 pages, reply briefs shall be limited to 7 pages, and a table of authorities is not required.

RULE 48. SEALING OF CASES
***See also* Rule 6 (Protection of Privacy)**

(a) Cases Involving Protected Records. If, during the time periods set out in Rule 10 (The Record Before the Agency) or at any other time during a proceeding before the Court, the parties identify records protected by 38 U.S.C. § 7332 and at least one of the parties believes that disclosure of such records is required in such proceedings and further, the parties cannot agree with respect to the disclosure of such records, the party requesting disclosure shall make immediate application therefore, pursuant to 38 U.S.C. § 7332(b)(2)(D), caption the case "IN RE: SEALED CASE NO. [insert Court docket number]" (not disclosing the identity of any individual), and serve on the protected person or successor in interest a copy of the application. Such application shall include a statement specifying those steps taken by the parties to reach agreement before application was made to the Court. Upon receipt of

such application, unless otherwise directed by the Court, the Clerk will enter the case as "withdrawn" on the docket, assign a new docket number and recaption the case using an encoded identifier, and seal the record of proceedings and the file of the Court. Thereafter, any party or representative of a party, unless otherwise ordered by the Court, shall make reference in any subsequent filing only to the new docket number and caption assigned by the Clerk.

(b) Other Cases. The procedures described in this Rule may, in the Court's discretion, be applied to cases that the Court orders sealed but that do not contain records protected by 38 U.S.C § 7332.

RULE 49. COMPLAINTS AGAINST JUDGES

Rules for the processing of complaints of judicial misconduct or disability have been adopted by the Court pursuant to 28 U.S.C. § 372(c) (superseded by §§ 351-64). Copies are available from the Clerk on request.

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**UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

NOTICE OF APPEAL

The following named appellant appeals to the Court from a final Board of Veterans' Appeals (BVA) decision. The Board's decision was dated _____.

Appellant's printed name

VA claims file number

Appellant's telephone number

Appellant's address

Signature of person filing this notice

Only if this Notice of Appeal is filed by a representative, check one of the following:

- My Notice of Appearance is attached.
- My representation is limited to the filing of this Notice of Appeal, and I aver to the Court, in accordance with Rule 46(b)(2), 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. *(Complete items below).*

Representative's printed name

Representative's phone number

Representative's fax number

Representative's address

Representative's email address

INSTRUCTIONS

***Send this Notice of Appeal (NOA)
(original only) to:***

***Clerk,
US Court of Appeals for Veterans
Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950***

***The NOA will be timely if it is properly
addressed to the Court and bears a
legible postmark affixed by the United
States Postal Service (USPS) within 120
days after the mailing date of the BVA
decision that you are appealing. A
postage-metered date imprint other than
one affixed by USPS does not qualify.***

***You may send this NOA by facsimile
transmission to (202) 501-5848 or by
means other than US mail. If you do
that, or if you mail the NOA and it does
not bear a legible USPS postmark, the
NOA will be late if it arrives at the Court
after the 120-day time limit.***

***There is a \$50 filing fee for an appeal.
Send a check or money order, payable to
"US Court of Appeals for Veterans
Claims," with this NOA. Do not send
cash. To request a waiver of the filing
fee, attach a completed Form 4
(Declaration of Financial Hardship).***

[S-A-M-P-L-E]

APPELLANT'S BRIEF

**UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

No. 00-0000

JOHN Q. VETERAN,

Appellant

v.

SECRETARY OF VETERANS AFFAIRS,

Appellee

**Oliver W. Counsel
Lawyer & Lawyer
1111 J Street, NW
Washington, DC 20000
(202) 555-1212**

Attorney for Appellant

Form 2
(Rev 8/11)

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NOTICE OF APPEARANCE

_____, OAppellant,
OPetitioner,
v. Docket No. _____
Secretary of Veterans Affairs, Appellee / Respondent.

- 1. Please enter my appearance for O the appellant or petitioner
O the Secretary
O the intervenor
O amicus curiae:_____
2. I am:
O admitted to practice before this Court as: O attorney O non-attorney practitioner
O awaiting admission to practice; my application was submitted on (date) _____
O seeking to appear in this case only, under Rule 46(b)(1)(F); my motion is attached.
3. I am:
O the lead representative of record. I will accept service for the party and will inform
all of the party's co-representatives of matters served upon me.
O not the lead representative of record, but am joining as co-representative.
O replacing the lead representative of record, who:
O has been permitted or is seeking to withdraw.
O remains as co-representative.
4. If I am representing the appellant, petitioner, or intervenor, my representation is:
O 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 awarded under the Equal Access to Justice
Act (EAJA), 28 U.S.C. § 2412(d).
O without charge to the appellant, petitioner, or intervenor; however it is subject to the
attached retainer agreement.
O pursuant to the fee/retainer agreement already on record in this case.

Signature _____ Date _____
Printed name _____ Veterans Service Org., if R. 46(a)(2)(B) applies

Address _____ Signature and printed name and address of
supervising attorney, if R. 46(a)(2)(A) applies.
Telephone number _____ Email address _____

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

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

DECLARATION OF FINANCIAL HARDSHIP

_____, Appellant/Petitioner, Docket No. _____

v.

Secretary of Veterans Affairs, Appellee/Respondent.

I am the appellant/petitioner. I declare by my signature below, that payment of the fifty dollar (\$50.00) filing fee required by Rule 3(f) or Rule 21(a) of the Court's Rules of Practice and Procedure would be a financial hardship for me.

Pursuant to 28 U.S.C. § 1746, I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Signature of Appellant/Petitioner

Date

(To be signed by Appellant, NOT Appellant's Representative.)

INSTRUCTIONS

Send this Declaration (original only) to:

*Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950*

OR Fax (202) 501-5848

Form 4
(Rev. 08/11)

SAMPLE FORMAT FOR TABLE OF AUTHORITIES

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Form 18
(08/11)

Case Management/Electronic Case Filing System **(CM/ECF)E-Rules**

The following E-Rules govern the submission of documents through the CM/ECF system in cases before the U.S. Court of Appeals for Veterans Claims (the Court). These E-Rules may be amended from time to time, with or without prior notice, by further order of the Court. The Court may deviate from these E-Rules in specific cases as deemed appropriate.

E-Rule 1 - Definitions

(a) For the purposes of these E-Rules:

(1) The term "CM/ECF" means Case Management/Electronic Case Filing. CM/ECF is an automated system for case management and document filing.

(2) The term "electronic signature" refers to an electronic symbol attached to or associated with an electronic document and executed or adopted with the intent to sign the document. The electronic signature shall be positioned on a document in the place where a signature would normally appear. To indicate the authority of the signatory, the electronic signature will typically be followed by the typed name and title of the signatory. The following is an example of how a document with an electronic signature will generally appear:

Submitted,

/s/ John S. Doe
John S. Doe, Attorney

(3) The term "CM/ECF User" means a registered CM/ECF participant (party or representative).

(4) The term "locked" means that an electronic file will be inaccessible to the public and only accessible to CM/ECF Users in a particular case.

(5) The term "log-in" means the password and username issued to each CM/ECF User.

(6) The term "Notice of Docket Activity" means an electronic notification generated by the CM/ECF system that is transmitted by email to all parties and representatives for that case. This Notice of Docket Activity constitutes "notice" and "service" to all CM/ECF Users who have registered for electronic filing participation in a particular case.

(7) The term "official record" means the electronic version of a document that is stored by the Court within the CM/ECF system, which is time and date-stamped by CM/ECF when filed.

(8) The term "password" means a sequence of characters and letters used to verify the authenticity of a CM/ECF User's log-in.

(9) The term "PDF" means portable document format. PDF is a universal electronic file format designed to allow documents to be viewed, navigated, and printed from any computer.

(10) The term "personal identifier" means a Social Security number, date of birth, financial account number, or name of a minor child. It is each CM/ECF User's responsibility to redact personal identifiers from any documents filed electronically that are not designated as locked documents.

(11) The term "pro bono limited appearance" refers to participation by a pro bono representation program for purposes of filing a motion for stay of proceedings, pursuant to Rule 5 of the Court's Rules of Practice and Procedure. U.S. VET. APP. R. 5.

(12) The term "single consolidated document" means the electronic conversion of multiple documents into one word processing document that will become the single PDF document.

(13) The term "Non-CM/ECF User" means a self-represented or other party exempted by the Court from using the CM/ECF system.

E-Rule 2 - Scope of Electronic Filing

(a) Except as otherwise prescribed, all cases filed in the Court are assigned to the CM/ECF system. Administrative matters, including attorney disciplinary actions and judicial complaints, are not assigned to CM/ECF.

(b) Self-represented parties are exempt from submitting documents through CM/ECF, but may submit any document as an attachment to an email to the Clerk of Court at self-rep@uscourts.cavc.gov. All documents attached to emails must be in pdf format; have at the top the names of the parties and the docket number of the case, if one has been assigned; and bear an electronic signature. Also, the subject line of the email forwarding the document should include the name of the document (e.g., Motion to Dispute RBA), the names of the parties and the docket number of the case, if available. See Rule 25(b)(3) (Method and Timeliness-Email); E-Rule 1(a)(2) and (9)(Definitions); and E-Rule 10(Electronic Signatures).

(c) Except for documents initiating cases in the Court (such as a Notice of Appeal or petition for extraordinary relief), all submissions filed by a representative must be filed electronically using CM/ECF. *But see* (e) below. For documents initiating a case, in addition to conventional methods of filing, *see* U.S. VET. APP. R. 3, 4, 25, such documents may also be filed by attaching the document to an email sent to esubmission@uscourts.cavc.gov.

(d) If a document is filed electronically, paper copies are not to be filed. The Court may request paper copies of electronically filed documents as needed, and the CM/ECF User must promptly file the requested copies.

(e) Upon motion and a showing of good cause, the Court may exempt a representative from these provisions and authorize filing by means other than use of CM/ECF.

(f) All electronic documents must be filed in pdf format.

E-Rule 3 -CM/ECF Eligibility, Registration, Passwords

(a) All representatives before the Court must register as CM/ECF Users by reviewing the information supplied on the Court's website www.uscourts.cavc.gov and completing the appropriate registration form.

(b) A pro bono limited appearance will have CM/ECF User status commencing at the time a motion for a stay of proceedings for the purpose of conducting case evaluation is filed. *See* U.S. VET. APP. R. 5. Such CM/ECF User status will cease when any stay granted is lifted.

(c) Completion of the Court's CM/ECF filer registration constitutes consent to electronic service through CM/ECF of all documents as provided in these E-Rules and Misc. Order 19-07.

(d) CM/ECF Users agree to protect the security of their passwords and immediately notify the CM/ECF Help Desk (202-418-3453) if they learn that their password has been compromised. CM/ECF Users may be sanctioned for failure to comply with this provision.

(e) A CM/ECF User who does not have any open cases with the Court and who desires to become inactive may withdraw from participation in CM/ECF. Withdrawal is accomplished by providing the Clerk with written notice (to efiling@uscourts.cavc.gov) of the intent to withdraw. *See also* E-Rule 2(e).

E-Rule 4 - Locked Documents, Redaction

(a) All CM/ECF Users must strive to protect personal identifiers. In order to allow electronic access to documents,

but also to protect personal privacy and other legitimate interests, certain documents in a case will be accessible to the public using CM/ECF, and certain documents will be locked and available only to CM/ECF Users in that case.

(b) Once a Notice of Appeal is received by the Court, the Clerk will docket the appeal, designate the Secretary as the appellee, and create an electronic record of the Notice of Appeal. *See* U.S. VET. APP. R. 4(b). Because the Notice of Appeal will likely contain personal identifiers, that electronic record will be locked and accessible through CM/ECF only to CM/ECF Users in that case.

(c) Once a petition for extraordinary relief is received by the Court, the Clerk will docket the petition, designate the Secretary as the respondent, and create an electronic record of the petition. *See* U.S. VET. APP. R. 21(a). Because the petition will likely contain personal identifiers, that electronic record will be locked and accessible through CM/ECF only to CM/ECF Users in that case.

(d) When the Secretary files the Board of Veterans' Appeals decision in a particular case, *see* U.S. VET. APP. R. 4(c), the Secretary must file at least two separate documents under separate docket entries: (1) a reference transmittal identifying the Board decision with any necessary personal identifiers; and (2) the Board decision with any personal identifiers redacted.

(e) The Record of Proceedings that the Secretary must file pursuant to Rule 28.1 of the Court's Rules of Practice and Procedure will be locked and available only to CM/ECF Users in that case. *See* U.S. VET. APP. R. 28.1.

E-Rule 5 - Effects of Filing Through CM/ECF

(a) Electronic filing of a document with the Court consistent with these E-Rules, and the transmission of a notice of docket activity from the Court, constitutes filing of the document under Rules 4 and 25(c)(1) of the Court's Rules of Practice and Procedure. U.S. VET. APP. R. 4, 25.

(b) The Court will not accept for electronic filing any document that is not legible, complete, and in PDF format. When a document has been filed electronically, the official record is the electronic document stored by the Court, and the CM/ECF User is bound by the official record.

(c) A document filed electronically is deemed filed at the time and date stated on the notice of docket activity generated by CM/ECF. To be timely filed on a specific date, electronic filing must be completed before midnight Eastern Time, as shown on the notice of docket activity.

(d) If a CM/ECF-submitted electronic document is not timely filed because of a power failure or other emergency circumstance, a CM/ECF User must notify the Court in a timely manner, explain the reasons for such circumstance, and seek appropriate relief.

(e) A CM/ECF User who is adversely affected by a technical failure at the Court in connection with filing or receipt of an electronic document may seek appropriate relief from the Court.

E-Rule 6 - Service of CM/ECF Documents

(a) The Court's electronically-generated notice of docket activity constitutes service of the filed document on all

CM/ECF Users in that case. Parties who are not registered CM/ECF Users or CM/ECF-exempt representatives must be served conventionally (in accordance with Rule 25(b) and (c) of the Court's Rules of Practice and Procedure) with a copy of any document filed electronically. U.S. VET. APP. R. 25.

(b) The Secretary is always considered a CM/ECF User. The Secretary shall provide to the Court a general email address where notices of docketing activity may be sent in any case prior to the entry of an appearance of a specific attorney.

E-Rule 7 - Attachments and Exhibits

Unless the Court permits or requires traditional paper filing, CM/ECF Users must submit all documents such as exhibits or attachments as a single consolidated document in electronic PDF format. If a CM/ECF User submits a PDF document consisting of more than one attachment or exhibit, then the first page of the consolidated PDF should be a table of contents corresponding to the pagination of the PDF file.

E-Rule 8 - Sealed Documents

CM/ECF Users must file sealed material or motions to seal using CM/ECF and a specific docket entry (SEALED DOCUMENT FILED). Sealed material must also be filed in accordance with Rule 48 of the Court's Rules of Practice and Procedure, which requires filing the material with a motion to seal. If the motion is granted, electronic access to the sealed material will be automatically limited to the Court and CM/ECF Users in that case. *See* U.S. VET. APP. R. 48.

E-Rule 9 - Retention Requirements

(a) Documents that are electronically filed and require an original signature of a person other than the CM/ECF User must be maintained in paper form by the CM/ECF User for a period of one year after issuance of the Court's final mandate in the case. *See* U.S. VET. APP. R. 37(c).

(b) On request of the Court, the CM/ECF User must provide original documents for review. *See* E-Rule 2(d).

E-Rule 10 - Electronic Signatures

(a) Where a signature is required, the typed underlined name of the CM/ECF User, under whose log-in and password the document is submitted, must be preceded by an "/s/" and typed in the space where the signature would otherwise appear. *See* E-Rule 1(a)(2).

(b) CM/ECF Users are responsible for protecting the security and integrity of a CM/ECF User's log-in and password. No person may knowingly permit or cause to permit a CM/ECF User's log-in and password to be used by anyone other than an authorized agent of the CM/ECF User. *See* E-Rule 3(e).

(c) Electronically represented signatures are considered valid signatures. If any individual objects to the representation of his or her signature on an electronic document, he or she must, within 10 calendar days of its filing, file a notice setting forth the basis of the objection.

E-Rule 11 - Notice and Entry of Court-Issued Documents

(a) Upon issuance of a notice, order, memorandum decision, opinion, entry of judgment, or mandate in a case assigned to

CM/ECF, a notice of docket activity is automatically generated and transmitted to CM/ECF Users in the case. Electronic transmission of the notice of docket activity constitutes the notice and service required by Rules 36(b) and 45(c) of the Court's Rules of Practice and Procedure. U.S. VET. APP. R. 36, 45.

(b) Unless a self-represented party or representative exempted by the Court from using CM/ECF elects otherwise, the Clerk will send a copy in paper form of any Court-issued documents to a party who is a Non CM/ECF User. *See* U.S. VET. APP. R. 45(c). A Non-CM/ECF User may elect to receive Court - issued documents via email by submitting written notification to the Clerk. The written notification may be submitted by mail, fax (to (202) 501-5848), or email (a self-represented party should use self-rep@uscourts.cavc.gov; a representative exempted by the Court from CM/ECF should use efiling@uscourts.cavc.gov.)

(c) Except as otherwise provided by the Court's Rules of Practice and Procedure or a Court order, all actions of the Court relating to cases filed and maintained in the CM/ECF system will be filed electronically in accordance with these E-Rules, which will constitute entry on the docket maintained by the Clerk under Rule 45(b) of the Court's Rules of Practice and Procedure. U.S. VET. APP. R. 45.

(d) A judicial order or other Court-issued document filed electronically without the original signature of a Judge or authorized Court personnel, but that includes an electronic signature, has the same force and effect as if the Judge or authorized Court personnel had signed a paper copy of the order.

E-Rule 12 - Technology and Compatibility

All CM/ECF Users must create and maintain an electronic filing system compatible with the Court's CM/ECF system. The failure to create and maintain an electronic filing system compatible with the Court's electronic filing system will not be accepted as a reason for the failure to timely file any electronic document. The Court's electronic filing system may be periodically modified or upgraded, and all CM/ECF Users must modify or upgrade their electronic filing system to maintain compatibility. Every effort will be made by the Court to provide advance notice of system modifications or upgrades that may impact CM/ECF Users.

E-Rule 13 - Public Access

(a) Except for the cases sealed under Rule 48 of the Court's Rules of Practice and Procedure, documents filed electronically are public documents and once filed are not protected by federal privacy statutes or regulations. Documents filed electronically are automatically linked to automated docket entries without prior review by personnel of the Court. Because of the worldwide access to these electronic records, this fact should be carefully considered by all parties when filing documents. *See* U.S. VET. APP. R. 48.

(b) It is the responsibility of all parties to refrain from and prevent the filing with the Court of any electronic document that will not be locked that contains personal identifiers or information such as medical information otherwise protected by privacy statutes or regulations or that is deemed personal in nature and not necessary for the resolution of the matters under consideration by the Court. Redaction of private information not necessary for the resolution of the matters before the Court

from documents submitted through CM/ECF or by email or fax is permitted. Parties wishing to challenge such redactions may do so by filing a motion with the Court within 15 days of the document's filing. *See* U.S. VET. APP. R. 6.