United States Court of Appeals for Veterans Claims

INTERNAL OPERATING PROCEDURES (IOPs)

Preamble

These IOPs are promulgated pursuant to 38 U.S.C. § 7264, which provides: "The proceedings of the Court of Appeals for Veterans Claims shall be conducted in accordance with such rules of practice and procedure as the Court prescribes."

These IOPs are separate from and in addition to the Court's Rules of Practice and Procedure and are adopted and promulgated for informational purposes and internal instruction and guidance. Nothing in these IOPs confers any rights or obligations upon parties or individuals, or the Judges, the Clerk of the Court, the judicial law clerks, or the staff of the Court, except where mandated by statute or by a judicial decision binding upon the Court.

The Board of Judges may modify these IOPs at any time and, for good cause, the Chief Judge may extend any time period established herein.

Adopted by the Board of Judges January 9, 1992
Changed September 10, 1992
Revised October 5, 1994
Changed October 25, 1995
Revised June 2, 1997
Changed September 24, 1999
Changed November 10, 1999
Changed November 6, 2000
Changed December 18, 2000
Changed May 29, 2002
Changed February 14, 2003
Changed May 25, 2004
Changed August 1, 2011
Changed July 6, 2012
Changed November 30, 2012
Changed November 5, 2013
Changed April, 28, 2015
Changed June 3, 2016

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DEFINITIONS

Author Judge. The Judge responsible for drafting an order, memorandum decision, or opinion of the Court is the author Judge.

Board of Judges (BOJ). The BOJ is composed of all Judges serving in regular active service.

Case. A case is a matter pending or decided by the Court, based on the context of its use herein.

Central Legal Staff (CLS). The personnel responsible for conferencing with the litigating parties and preparing screening and other memoranda for the Court constitute the CLS.

Clerk. The Clerk is the Clerk of the Court.

Editors. The Editors are the Court's editors, who maintain the Court's *Style Manual* and review all final decisions of the Court for style and format consistency.

En Banc. All eligible and participating Judges serving in regular active service, acting on a matter together, constitute the En Banc Court.

Issuance. Issuance occurs when an action of the Court is posted by the Clerk on the Court's docket.

Judge. A Judge is any person appointed by the President of the United States, by and with the advice and consent of the U.S. Senate, to serve on the Court. Except where context indicates otherwise, "Judge" as used herein includes a Judge serving in regular active service and/or a Senior Judge.

Memorandum Decision. A memorandum decision is a nonprecedential final decision of the Court, issued by a single Judge.

Opinion. An opinion is a decision of the Court issued by a panel or en banc. Unless otherwise noted, an opinion is a precedential decision of the Court.

Order. An order is any direction or ruling of the Court.

Order of Precedence. The Chief Judge shall have precedence over the Judges of the Court, and the other Judges serving in regular active service shall have precedence based on the date of their original commissions. A Judge serving in regular active service shall have precedence over a Senior Judge. Senior Judges shall have precedence among the Senior Judges based on the date of their original commissions.

Panel. A panel consists of multiple Judges (usually three, and always at least three), acting on a matter together.

Period of Circulation or Notification. Any period of circulation or notification does not count the first day of the period.

Presiding Judge on a Panel or Senior Judge in the Majority. The Judge on a panel having the highest order of precedence is the presiding Judge on the panel, and the Judge having the highest order of precedence of the Judges in the majority is the senior Judge in the majority.

Public Office. The personnel responsible for processing cases and assigning them to Judges constitute the Public Office.

Published. A decision of the Court is published electronically or hard bound, in accordance with Section VIII of this IOP.

Quorum. A majority of a multiple Judge panel constitutes a quorum.

Screening Judge. The Judge making the initial review of the case is the screening Judge.

Senior Judge. A Senior Judge is a recall-eligible retired Judge as contemplated in 38 U.S.C. § 7257. NOTE: "Senior Judge" does not refer to status as a presiding or senior Judge on a panel.

I. SCREENING PROCESS

(a) Duties of the Central Legal Staff (CLS) and Public Office.

(1) After a case is filed with the Court and the record of proceedings is transmitted, as appropriate, the Public Office so notifies CLS.

(2) When an appellant is represented in an appeal, CLS generally holds a conference with the parties to discuss the issues and encourage joint resolution of the appeal, in whole or in part. In appropriate circumstances, CLS also may hold a conference when the appellant is pro se or on matters other than the merits of the appeal, such as on record disputes, petitions for extraordinary writs, or attorney fee disputes.

(3) When joint resolution of the entire case cannot be reached at conference or otherwise, CLS generally provides an evaluation of the case and a memorandum addressing the issues and possible disposition. Generally, the case is then assigned by the Public Office on a rotational basis to a Judge for screening.

(A) Any subsequent appeal of a Board decision on a matter previously remanded by a single Judge generally is referred to the author Judge of the remanded decision. *See* Section III(b)(1), below.

(B) If a Judge grants a motion to expedite, or denies a motion to file a late brief, that case generally is assigned to that Judge for screening. *See* Section IX(a)(2)(B), below.

(C) Any petition related to a case already acted upon by a Judge or a panel generally is assigned to that Judge or the author Judge of the panel (or one of the other panel members based on seniority, if the author Judge is not available). *See* Section XI(a), below.

(D) Separate rosters for rotational assignment of a case to a Judge in regular active service are maintained for appeals, petitions, and motions.

(E) Based upon their limited availability, Senior Judges generally are assigned cases identified by CLS as not likely meeting the criteria for cases appropriate for panel consideration. *See* Section II(b)(2), below. Cases are assigned to Senior Judges on a rotational basis.

(4) CLS attorneys may be assigned to assist a Senior Judge directly in the review of cases and preparation of orders or memorandum decisions.

(b) Duties of the Screening Judge.

(1) The screening Judge reviews the case and determines whether the matter warrants single-judge decision, panel decision, or en banc review.

(2) The Court has adopted the standard enumerated in *Frankel v. Derwinski*, 1 Vet.App. 23 (1990), to decide whether matters should be decided by a panel or by a single Judge. If the screening Judge determines that a matter is of relative simplicity and panel decision is not warranted under *Frankel*, then a single Judge may affirm, reverse, modify, set aside, vacate, or remand the decision of the Board of Veterans' Appeals (Board).

(3) If the screening Judge determines that a case is appropriate for single-judge disposition, the screening Judge assumes responsibility for the decision and proceeds in accordance with Section II, below. A request for oral argument generally is not granted for cases deemed appropriate for single-judge disposition.

(4) If the screening Judge in regular active service determines that the case is appropriate for panel consideration, the Judge requests that the Clerk create a panel composed of the screening Judge and two additional Judges in regular active service selected at random and the matter proceeds in accordance with Section V, below.

(5) If a screening Judge in regular active service determines that en banc review is warranted, the screening Judge and CLS follow the procedure in Section VII(b)(2), below.

(6) If a Senior Judge determines that a case likely is appropriate for panel or full Court consideration, the matter generally is returned to CLS for reassignment to a Judge in regular active service.

II. SINGLE-JUDGE ACTION

(a) Policy. Memorandum decisions are used for any decision by a single Judge disposing of an appeal, unless the action is taken pursuant to a motion, in which case an order is issued.

(b) Procedure.

(1) *Circulation.* A screening Judge who determines that a matter is appropriate for single-judge disposition assumes responsibility for the matter and drafts a memorandum decision or an order as appropriate. The screening Judge circulates the decision (except one dismissing a case for failure to pay the filing fee or to file a brief) to all Judges for review and comment for the period prescribed in Section X(b), below. Within that circulation period, any editorial comments are sent to the author Judge, any substantive comments or requests for panel consideration are sent to all Judges, and any request for en banc review is sent to CLS with copies to all Judges pursuant to Section VII, below.

(2) *Call for Panel or En Banc Review.* If, during the circulation period or any extension thereof, two Judges in regular active service request panel consideration based on the criteria in *Frankel*, *see* Section I(b)(2) above, the screening Judge requests that the Clerk create a panel composed of the screening Judge and two additional regular active service Judges selected at random, and the matter proceeds in accordance with Section V, below. If the screening Judge is a Senior Judge and is unavailable to serve on the panel, a Judge

in regular active service generally will be substituted. *See* Policy for the Recall of Senior Judges. If any Judge in active regular service requests en banc consideration, CLS follows the procedure in Section VII(b)(2), below.

(3) *Editor Review*. During the circulation period the Court's editors review the draft decision and provide to the author Judge any format and style suggestions.

(4) *Final Review and Issuance.* If there is no call for panel or en banc consideration, as soon as possible after the comment period has expired and comments and edits have been considered, the screening Judge forwards the final memorandum decision or order to the Clerk for issuance.

III. RECONSIDERATION, REQUESTS FOR PANEL DECISION, AND SUBSEQUENT APPEALS

(a) Reconsideration and/or Request for Panel Decision.

(1) If a party timely moves for reconsideration of a single-judge memorandum decision or dispositive order, the motion is sent to the author Judge for decision. Reconsideration will be granted if the author Judge concludes that the movant has demonstrated that the memorandum decision overlooked or misunderstood a fact or point of law.

(2) If a party timely moves for panel decision in a case where a single-judge decision has been issued, without first seeking reconsideration by the author Judge, the motion nevertheless is referred to the author Judge for potential sua sponte reconsideration. If sua sponte reconsideration is granted, the request for panel decision is mooted.

(3) If a panel decision is requested and the author Judge of the single-judge decision denies reconsideration, the panel motion is forwarded to CLS for evaluation of the case and preparation of a memorandum addressing the issues and possible disposition. The memorandum is forwarded to a panel of three Judges that includes the author Judge of the single-judge decision and two Judges serving in regular active status, selected in accordance with Section V(b)(1), below.

(4) On review by the assigned panel, the single-judge decision will be withdrawn and a decision of the panel substituted therefore if a majority of the panel find that the movant has demonstrated that

(A) the single-judge memorandum decision overlooked or misunderstood a fact or point of law and that error was prejudicial to the outcome of the appeal, or

(B) the single-judge memorandum decision is in conflict with precedential decisions of the Court, or

(C) the appeal otherwise raises an issue warranting a precedential decision.

If a majority of the panel find that the movant has not demonstrated that the single-judge decision should be withdrawn, the panel shall direct that the single-judge decision remains the decision of the Court. In such instance, the panel's decision is nonprecedential and the single-judge decision remains nonprecedential.

(5) A request for panel decision should be given priority consideration, consistent with Section V, below.

(6) If a case issued by a Senior Judge is subject to a motion by the parties for reconsideration or panel consideration, the Chief Judge shall determine whether the Senior Judge is available to consider the motion and serve on any resultant panel. *See* Policy for the Recall of Senior Judges.

(b) Subsequent Appeals.

(1) *Of Single-Judge Remands*.

(A) In the interests of judicial efficiency, for any subsequent appeal of a Board decision on a matter previously remanded by a single Judge, CLS prepares an evaluation of the matter and refers it to the author Judge of the remanded decision with a notation that the case is related to one that was previously before the Judge. If the author Judge is not available, the case is assigned according to the normal process, as described in Section I(a)(3), above.

(B) The author Judge promptly reviews any such case and if the author Judge determines that the new appeal involves substantially the same issue(s) raised in the prior appeal, the Judge retains the case for appropriate disposition and directs the Clerk to assign the matter to that Judge. If the author Judge determines that the new appeal involves new issues, the Judge returns the case for assignment to a Judge (potentially including that Judge) according to the normal process, as described in Section I(a)(3), above.

(2) *Of Panel-Ordered Remands.*

(A) In the interests of judicial efficiency, for any subsequent appeal of a Board decision on a matter previously remanded by panel, CLS prepares an evaluation of the matter and refers it to the author Judge of the panel, if still serving in regular active status, with a notation that the case is related to one that was previously before a panel that included that Judge. If the author Judge is not available, the appeal is referred to another available member of the panel serving on regular active status, based on seniority. If none of the original panel Judges is available, the appeal is assigned according to the normal process, as described in Section I(a)(3), above.

(B) The author Judge (or assigned panel member) promptly reviews any such case and if the Judge determines that the new appeal involves substantially the same issue(s)

raised in the prior appeal that was remanded by a panel, the Judge consults with the available members of the prior panel and determines whether the interests of judicial efficiency warrant consideration by the same panel. The Judge then directs the Clerk as to the appropriate assignment of the case. If the author Judge (or assigned panel member) determines that the new appeal does not involve substantially the same issue(s) raised in the prior appeal, the author Judge returns the case for assignment to a Judge (potentially including that Judge) according to the normal process, as described in Section I(a)(3), above.

IV. ORAL ARGUMENT

(a) When Allowed. Oral argument is held when ordered by the Court on motion of a party or sua sponte. Normally, oral argument is heard only by a panel upon the request of any panel Judge. Exceptions may be made as circumstances require to include proceeding without oral argument if a majority of the panel determine that scheduling delays and the interests of justice so warrant. Only the Court sitting en banc may order or grant a request for oral argument en banc.

(b) Time and Manner. Each party usually is allowed 30 minutes in which to present argument. The panel makes any changes it desires in the format or order for presentation of argument, including adjusting the time allowed, limiting the argument to certain issues, or altering the usual order of presentation. The Clerk may also advise the parties of additional issues any member of the panel wishes addressed at oral argument.

V. PANEL PROCESS

(a) Policy. Generally, opinions are used for any decision by a panel disposing of an appeal, unless the action is taken pursuant to a motion, in which case the panel issues an order.

(b) Forming Panels.

(1) Panels generally consist of the screening Judge and two other Judges. *See* Section II(b)(2), above. Panel selection is done by the Clerk and is random and rotational, with due regard to each Judge's availability, with the following exceptions: A panel considering a motion challenging a Judge's refusal to recuse him or herself does not include that Judge unless required by the rule of necessity; and a Senior Judge will sit on a panel only if available, and then generally only if he or she was the author Judge on the matter that thereafter is before a panel. *See* Policy for the Recall of Senior Judges.

(2) Substitution for an assigned panel member due to recusal or as directed by the Chief Judge due to circumstances such as illness, unavailability, or workload, is made by the Clerk at random, with due regard to workload and availability. For travel cases, the Chief Judge may direct substitution of panel members for reasons related to the nature of the travel and location of the hearing.

(3) When a pro se case is forwarded for panel disposition, the matter is stayed for 30 days to permit possible representation of the unrepresented party. In addition, the panel may direct that participation of amicus curiae, notwithstanding the stay, be invited by order of the Court.

(4) Once a panel is composed, a vacancy does not impair its ability to conduct business so long as there is a quorum.

(5) Assignment of a case for panel decision generally is reflected on the public docket; however, the names of the panel members generally are not so reflected.

(c) Panel Disposition. After oral argument, or after designation of the panel in a case without oral argument, the presiding Judge of the panel generally convenes a conference to discuss and tentatively decide the case. At the conference, the senior Judge in the majority assigns authorship responsibility for the opinion. The senior Judge is responsible for monitoring the timely processing of the case.

(d) Panel Action and Separate Statements.

(1) As soon as possible after drafting responsibility for the opinion is assigned, the author Judge circulates the draft decision within the panel for comment. A panel member who plans to write a separate statement notifies the other panel members promptly and circulates the separate statement within the panel as soon as practicable. The panel majority may then modify the draft opinion, and the Judge writing separately may also modify his or her statement, until the panel is in agreement that the decision and any separate statement are ready to circulate to the Board of Judges (BOJ).

(2) The author Judge circulates the panel's draft, including any separate statement, to all Judges for review and comment. (In circumstances of exceptional delay, the majority of the panel may circulate the majority decision without the statement of a Judge writing a separate statement if the separate statement has not been provided.) Within 5 working days, any substantive comments are sent to all Judges, and any request for en banc consideration is sent to CLS for processing in accordance with Section VII.

(3) During the 5-day circulation period the Court's editors also review the draft decision and provide to the author Judge and to any other writing Judge any format and style suggestions.

(4) If any substantive changes are made to the panel opinion, order, or separate statement, the author Judge recirculates the entire decision for an appropriate period of time to permit review and comment by the other Judges and the editors. If only nonsubstantive changes are made, the decision is forwarded to the editors for final review before it is forwarded to the Clerk for issuance.

(5) Unless action is pending on an en banc request, and after any comments and suggested editing have been addressed, the author Judge forwards the final opinion or order, with any separate statement, to the Clerk for issuance as soon as practicable.

(6) In circumstances of exceptional delay, the majority of the panel may provide notice that the majority decision will issue at the end of 5 working days, without any separate statement if such statement is not prepared at that time, unless an extension is granted by the Chief Judge for good cause.

(e) Dissolving Panels.

(1) For cases sent to panel pursuant to Section I(b)(4) or called to panel pursuant to Section II(b)(2), if the majority of the panel agrees, the case is returned to a single Judge of the panel for a decision on the matter.

(2) Any case returned to a single Judge by a majority of a panel shall, upon circulation of the single-judge decision, be subject to recall to panel by a vote of three Judges of the Court in regular active service. In the event of recall to a panel, the case is assigned to the original panel for a panel decision on the matter.

VI. POST-PANEL PROCESS

(a) Reconsideration. If a party moves for reconsideration of a panel action, the motion is referred to CLS for preparation of a vote package, which is then sent to the panel for decision.

(b) Review. Any motion by a party for review of a panel decision by the en banc Court is processed in accordance with en banc procedures in Section VII, below.

VII. EN BANC PROCESS

(a) Policy. Decisions by the Court sitting en banc are not favored except when necessary to secure or maintain uniformity of the Court's decisions or to resolve a question of exceptional importance. Generally, opinions are issued for any decision by the en banc Court disposing of an appeal unless the action is taken pursuant to a motion, in which case the en banc Court issues an order.

(b) Procedure.

(1) *Participation.*

(A) All Judges in regular active service may participate in a vote for en banc review, provided their vote is submitted within the times prescribed below. Whether or not an

eligible Judge participated in the vote, all Judges serving in regular active service at the time of the vote may participate in consideration of the en banc matter.

(B) A Judge appointed to the Court after a case has been selected for en banc review may participate in that consideration provided oral argument (or conferencing without oral argument) has not taken place prior to the appointment of the Judge. The Clerk shall promptly inform any newly appointed Judge of the time and place of any en banc oral argument or conferencing scheduled to take place after appointment of the Judge, and the Judge may participate in any such consideration if available to do so, but if not so available, the Judge shall not be eligible to participate in the decision, or any motion for reconsideration.

(C) A Judge who elects recusal from en banc consideration is not part of the en banc voting or panel review from the point of recusal forward.

(D) Assignment of a case for en banc review generally is reflected on the public docket.

(2) *Request for En Banc Review.*

(A) At the Request of a Judge.

A screening Judge requesting en banc review, or a Judge requesting en banc consideration of a matter circulating prior to issuance (either by a single Judge or by a panel), notifies all Judges and submits to CLS a memorandum in support of the request. CLS then circulates to all Judges serving in regular active status formal notice of the request, the accompanying memorandum, and a vote sheet. The formal notice (1) advises that the request will fail unless, during the voting period of 5 working days, at least a majority of the Judges support the request, (2) advises that the case will not proceed to any pending disposition until the expiration of the voting period, and (3) specifies the last day of the voting period.

(i) If a majority of the eligible Judges do not support the request during the 5-day voting period, the case proceeds to disposition and no order or statement is issued and no docket notation is made regarding the request for en banc review.

(ii) If at least a majority of the eligible Judges support the request, the matter proceeds in accordance with Section VII(b)(3), below.

(B) On Motion of a Party.

(i) If a party moves for en banc review, CLS circulates to all eligible Judges the motion and a formal notice (1) advising that en banc consideration is either appropriate or inappropriate, (2) advising that the motion will be denied unless, during a voting period of 5 working days, at least three of

the eligible Judges request that the Court seek a response from the other party, and (3) specifying the last day of the voting period.

(ii) If during the 5-day voting period, fewer than three eligible Judges have requested that the non-moving party be ordered to file a response to the motion, no response is ordered and the motion is denied. When a motion for en banc consideration is denied without seeking a response from the non-moving party, CLS prepares a per curiam order of denial that is circulated to the participating Judges and published on the fifth working day after the order began circulation, unless otherwise directed for good cause by the Chief Judge. Separate statements are not encouraged and will not be issued with the Court's order unless submitted in time to be so issued. If a separate statement is not timely prepared, the denial order may be issued and any separate statement may be issued at a later time and published with the denial order; however, a separate statement may not be issued if not prepared and issued within 10 days of the issuance of the dispositive order unless an extension is granted by the Chief Judge for good cause.

(iii) If during the 5-day voting period at least three eligible Judges have requested a response from the non-moving party, the Clerk issues a standard order seeking a response as to the motion for full Court consideration. A majority of the Board of Judges may elect to modify and/or amplify the Clerk's standard order for a response. Once the response is filed (or the time period expires and no response is filed), CLS circulates to all participating Judges the motion requesting en banc consideration, any response, and a vote sheet directing all participating Judges to vote for or against consideration of the matter en banc. CLS provides for a voting period of 10 working days and will specify the last day of the voting period.

(a) If, upon the expiration of the 10-day voting period, at least a majority of the participating Judges do not vote to grant the motion, the motion is denied. When a motion for en banc consideration is denied after a response from the non-moving party has been sought, CLS promptly prepares the order of denial, which is circulated to the participating Judges. Any participating Judge intending to write a separate statement must notify the participating Judges of such intent within 5 working days from the date of circulation of the denial order and must submit such separate statement to the participating Judges no later than 10 working days after the date of circulation of the denial order. Any adjustments to the denial order will be made promptly and any adjustment to any separate statement must be made within the same amount of time taken to adjust the denial order. If a separate statement is not timely prepared, the denial order may be issued and any separate statement may be issued at a later time and published with the denial

order; however, a separate statement may not be issued at all if not prepared and issued within 10 days of the issuance of the dispositive order unless an extension is granted by the Chief Judge for good cause.

(b) If within the 10-day voting period, at least a majority of the eligible Judges vote to grant the motion, the motion for en banc consideration is approved and the matter proceeds in accordance with Section VII(b)(3), below.

(3) *En Banc Review Granted*. If en banc review is granted, the Clerk generally issues an order to that effect and thereafter the Chief Judge, as presiding Judge, generally convenes a conference or directs the Clerk to schedule oral argument, as appropriate (*see* Section IV, above), to be followed by a conference. The senior Judge in the majority assigns authorship responsibility. If there is no majority, the presiding Judge on the en banc panel determines the consensus of the panel on how to proceed, and the panel so proceeds.

(4) *Drafting and Issuance of En Banc Opinion or Order*.

(A) Drafting. As soon as possible after drafting responsibility for the opinion is assigned, and following agreement of the majority on the draft, the author Judge circulates the draft decision to all participating Judges for comment.

(B) Original Circulation. By 5:00 p.m. on the fifth working day after the proposed opinion or order originally is circulated, any substantive comments are sent to all participating Judges and any Judge who intends to write a separate opinion or statement so notifies the en banc panel. Such separate statement is then circulated to the other participating Judges as soon as practicable but no later than 5:00 p.m. on the 10th working day after the day on which the proposed en banc order or opinion was originally circulated.

(C) Re-Circulation. The majority decision may be modified in response to any proposed separate statement and, whenever substantively modified, will be re-circulated to the en banc panel. Within 5 days of the re-circulation, any Judge who intends to write or modify a separate opinion or statement so notifies the en banc panel. Such separate statement is then circulated to the en banc panel as soon as practicable but no later than 5:00 p.m. on the 10th working day after the day on which the proposed en banc order or opinion was re-circulated. No separate opinion or statement will be issued unless timely circulated to all participating Judges and timely submitted for issuance with the Court's opinion. At the request of any participating Judge, for good cause the Chief Judge may extend the time to submit a separate opinion or statement for issuance with the Court's opinion or order, but the extension may not exceed an additional 30 calendar days.

(D) Editor Review. The author Judge of the Court's opinion or order forwards to the editors for format and style review a copy of the final opinion or order, with any separate opinion or statement, as soon as practicable after (1) the expiration of the comment

period, (2) the expiration of any period for the circulation of any separate opinion or statement if notice of intent to write separately has been timely circulated, and (3) any comments have been considered. Within 5 working days, the editors provide to the author Judge and to any other writing Judge any format and style suggestions.

(E) Issuance. Upon incorporation of all final format and style changes, and after all participating Judges have had the opportunity to review the final product, the author Judge forwards the final decision, with any concurrence or dissent, to the Clerk for issuance. Prior to sending to the Clerk for issuance, the panel may request an additional review by the editors, particularly in instances where the draft has undergone significant revision since the editors' last review.

VIII. PUBLICATION OF COURT ACTIONS

(a) Policy. All dispositive panel actions are submitted for publication in the *Veterans Appeals Reporter* and for electronic publication on WESTLAW and LEXIS. All single-judge dispositive actions are submitted for electronic publication. All nondispositive panel and single-judge actions are sent only to the parties unless they are designated for electronic publication by the authoring panel or single Judge.

(b) Designation for Publication. Designation of an action of the Court for publication in the *Veterans Appeals Reporter*, other than as noted above, may be requested by any Judge. The requesting Judge circulates a justification statement to all Judges serving in regular active status and the matter is published upon majority approval of the BOJ.

IX. MOTIONS, CONSOLIDATION

(a) Motions.

(1) *Action by the Clerk*. The Clerk disposes of uncontested or routine procedural motions in accordance with the Court's *Rules of Practice and Procedure* and as otherwise determined by the Court.

(2) *Action by the Court*.

(A) Motions filed in a case generally are sent to CLS for assignment or other disposition. Motions generally are assigned to the Judge next in rotation, except that

(i) if the case is pending before a panel or a screening Judge, the motion generally is sent directly to that panel or screening Judge for disposition, and

(ii) if a Judge has acted on a previous motion in the case, and the case is not yet before a panel or a screening Judge, the motion generally is sent to the Judge who acted on the previous motion in the case.

(B) If a Judge grants a motion to expedite, or denies a motion to file a late brief, that case generally is assigned to that Judge for screening.

(b) Consolidation. In the interest of judicial economy, matters pending before the Court may be consolidated by order of the Court sua sponte or on motion of a party.

(1) *Consolidation by a Single Judge.* A single Judge acting as a motions or screening Judge may consolidate cases involving the same appellant, or cases where different appellants are contesting the same decision of the Board of Veterans' Appeals, provided none of the proposed cases to be consolidated is assigned to another Judge. A Judge who grants a consolidation motion will not necessarily be assigned the consolidated case: Screening assignment will be made by the Clerk in the normal process.

(2) *Consolidation approved by the en banc Court.* Any case may be consolidated with any other case(s) with the concurrence of a majority of the en banc Court. Notice of the proposed consolidation shall be provided to the en banc Court and is deemed approved after 5 days, absent objection by at least one-half of the Judges. For cases consolidated at panel, the consolidated matter generally shall proceed before the panel that was first constituted, unless the Chief Judge, in consultation with the en banc Court, determines otherwise based on judicial economy, availability of Judges, or any other appropriate basis. If none of the cases proposed for consolidation were at panel, the consolidated matter generally shall proceed before the screening Judge, if any, assigned the matter having the oldest docket number. If none of the cases proposed for consolidation were assigned to a screening Judge, the Clerk generally shall assign a screening Judge, and panel members if appropriate, in the normal process.

(3) *Issuance of Consolidation Order.* When consolidation is proposed by the Court sua sponte, the Clerk generally shall issue a "Notice and Order of Consolidation," advising the parties that absent objection within a defined period of time (generally 7 days), consolidation will become effective on a date certain.

X. INTERNAL CIRCULATION OF DECISIONS

(a) Policy. Before issuing any dispositive decision (except one dismissing a case for failure to pay the filing fee or to file a brief, see Section II(b)(1)), the author Judge circulates a draft of the decision to all Judges for the period indicated in Section X(b), below, and shall not issue such decision until after the circulation period has ended. This procedure will keep each Judge informed of the decisions being issued by other Judges and allow time for any Judge to provide comments or request panel or en banc consideration, as appropriate. This procedure will also serve to provide the editors with sufficient time to review the decision and provide format and style suggestions to the author Judge before the case is issued. Although nondispositive orders generally are not subject to this procedure, all nondispositive orders granting equitable tolling are circulated.

(b) Procedure. Single-judge memorandum decisions and orders to be circulated per Section X(a), above, are circulated for 5 working days. Re-circulated decisions and orders, and decisions and orders in cases where briefing was expedited, are clearly identified as such and are circulated for 3 working days. Panel decisions and orders are clearly identified as such and are circulated for 5 working days. En banc decisions may not need to be circulated, as the draft will not be final until all participating Judges have approved it, but the final draft is sent to the editors for format and style suggestions.

XI. PETITIONS FOR EXTRAORDINARY WRITS

(a) Policy. Petitions for extraordinary writs generally are assigned to a screening Judge in the normal course, except that for judicial efficiency purposes, the processes for assignment of subsequent appeals (*see* Section III(b), above) will also apply to subsequent petitions.

(b) Procedure.

(1) A petition for an extraordinary writ is granted only by a panel. A screening Judge may order that a response be filed by the appropriate party before denying the petition or referring the matter to a panel selected in the normal process.

(2) Proceedings on petitions generally are given priority by the Court.

XII. APPLICATIONS FOR ATTORNEY FEES AND EXPENSES

(a) Procedure. After the filing of an application for award of attorney fees and expenses, the Secretary's response, and any reply, the Public Office notifies CLS that action is required. CLS evaluates the contested case and, in most instances, drafts a memorandum recommending a particular disposition of the application. The memorandum, application, response, reply, and any other pertinent documents are then sent to the assigned Judge or panel. If reasonableness of the requested fee is the only contested issue, CLS conducts a conference with the parties to attempt to resolve the disagreement. All actions relating to an application will carry the designation "(E)" after the docket number.

(b) Judge or Panel Assignment.

(1) *Single Judge*. If the Judge who decided the underlying appeal or petition is available, the application is assigned to that Judge. If the Judge who decided the underlying appeal or petition is not available, a Judge is assigned in the normal process. The assigned Judge serves as the screening Judge on the matter.

(2) *Panel*.

(A) If a panel issued the underlying decision, the application is assigned to the author Judge of the panel if he or she is still serving in regular active status. If the author Judge is not available, the application is assigned to another available member of the panel serving in regular active status, based on seniority. If none of the original panel Judges is available, the application is assigned in the normal process.

(B) If the assigned Judge determines panel consideration is appropriate, or if the single-judge decision is called to panel on circulation, the application is assigned to the same panel that decided the underlying matter, with Judges assigned as needed, in the normal process.

(c) Bifurcated Applications. In the interest of judicial efficiency, if some but not all issues in a case have been disposed of and a judgment has been entered, a timely application pursuant to 28 U.S.C. § 2412 for attorney fees and expenses regarding those issues normally is held in abeyance until all issues on appeal have been resolved and an application for attorney fees and expenses for the remainder of the appeal is timely received or the time for such an application has elapsed. This does not prevent the parties from settling the initial application without judicial intervention.

(d) Finality. Once final action has been taken on an application, judgment and mandate in connection with the application are entered in accordance with the Court's *Rules of Practice and Procedure*. This is done in addition to the judgment and mandate associated with disposition of the merits of the case.

XIII. COURT GOVERNANCE, MANAGEMENT, AND LEADERSHIP

(a) Governing Principles. Court governance policies, procedures and organizational mechanisms provide a means for:

– fostering institutional cohesiveness
– establishing and maintaining communications channels
– defining decision-making authorities and processes for making decisions
– planning for and overseeing the effectiveness of Court programs and operations
– identifying institutional issues and problems, and recommending solutions

Court management is a shared responsibility among all Court officials. This IOP spells out a number of these responsibilities in more detail. However, the Court should always act consistently with the following supporting principles:

– The Court should take advantage of the talent and experience of its Judges and other personnel; for example, in considering appointments to committees, the unique prior experiences of Judges is a relevant factor, among others, to be considered.

– The Court should seek to foster a cooperative working environment in which good ideas are readily shared and where potential problems are discussed before they become serious.

– The Chief Judge should meet regularly with unit executives, other Judges, and top managers to discuss important Court-wide issues and to coordinate approaches across organizational lines.

(b) Board of Judges Defined. The Board of Judges (BOJ) is composed of all Judges of the Court in regular active service. The BOJ is the Court when acting on all matters in which authority or responsibility is given to the "Court" by statute. *See* 38 U.S.C. § 7254(c)(1) ("A majority of the judges of the Court shall constitute a quorum for the transaction of the business of the Court."). Recalled or recall-eligible retired judges (Senior Judges) are not part of the BOJ.

(c) Chief Judge Defined. The Chief Judge is a member of the BOJ and acts as the head of the Court in accordance with 38 U.S.C. § 7253(d)(1).

(d) Statutory Authority of the Board of Judges and Chief Judge. Certain roles and responsibilities for the Board of Judges (Court) and the Chief Judge are prescribed by statute. These are summarized as follows:

(1) **The Board of Judges (Court):**

§ 7253(g)(1): Prescribe rules regarding judicial misconduct complaints, including awards of fees or costs.
§ 7254(b): Determine whether cases are heard by individual judges or panels and the power to establish procedures for assigning judges to each panel, including the determination of the chief of each panel.
§ 7262: Set the maximum amount for the Court filing fee and establish procedures for waiving the filing fee.
§ 7263(b): Allow persons to practice before the Court who are not members of the Court's bar.
§ 7264(a): Prescribe rules of practice and procedure.
§ 7268(c): Prescribe rules to protect privacy and security relating to all filings and to public availability.
§ 7269(a): Provide for the publication of decisions or non-publication of decisions, with the option of transferring the power to except decisions from publication to the Chief Judge.
§ 7281: Appoint a clerk, approve the clerk's deputies and employees, fix and adjust rates of pay, and to procure the services of experts or consultants.
§ 7282: Submit the budget and make expenditures in order to execute the functions of the Court.
§ 7284: Fix a fee for comparing, preparing, or copying any record, entry, or transcript.
§ 7285: Impose registration fees and determine their frequency and amount, and use these fees for investigating disciplinary matters or for defraying the costs of conferences and public engagements.
§ 7287: Exercise the authority provided to a court of the United States for purposes of management, administration, and expenditure of Court funds, if not inconsistent with §§ 7251 et seq.

(2) **The Chief Judge:**

§ 7253(d)(1): "The chief judge of the Court is the head of the Court."
§ 7256: The Chief prescribes the times and places of sessions of the Court.
§ 7257(b)(1), (3): The Chief may recall, if eligible, retired judges and may remove judges from recall-eligible status in certain instances.
§ 7265(b): Request a U.S. marshal at any session.
§ 7281(g): If there are not at least two other judges of the Court, the Chief exercises the power to adjust pay and hire certain employees, such as the Clerk of the Court.
§ 7282(c): Designate certifying officers.
§ 7286: Summon judges to annual judicial conference.
§ 7288: Submit an annual report to Congress concerning the workload of the court, including statistics on cases filed, dispositions, and the Court's efficiency.
§ 7292(b)(1): Certify interlocutory appeals of legal questions to the Federal Circuit.
§ 7296: Transmit information to OPM on retired pay and furnish certificates of disability to the President if a judge retires because of a disability.
§ 7297: Set conditions and amount of annuity deposits and assist with next of kin determinations and other estate matters.
§ 7298: Undertake periodic reviews of the judges' retirement fund and submission of information, as required, to the President.

Additional Delegated Powers. In addition to the Chief's statutory powers, the BOJ has, on three occasions, delegated powers to the Chief: (1) On September 26, 1989, the BOJ adopted a resolution authorizing the Chief to hire or approve the hiring of subordinate Court personnel who are not heads of offices. (2) On September 25, 2003, the BOJ adopted a resolution granting the Chief the power to "exercise supervision over the work of the Clerk of the Court . . . on behalf of the [BOJ]" unless the BOJ has specified otherwise for a particular matter. The same resolution requires the Clerk to report and communicate to the BOJ through the Chief Judge. (3) On April 18, 2016, per BOJ Resolution 01-2016, the BOJ delegated to the Chief Judge the authority to submit the Court's budget request each year, and the authority to direct expenditures as necessary to execute the functions of the Court, with some limitations.

(e) Meetings. The BOJ meets at the call of the Chief Judge or any three members of the BOJ, and meetings may be called to address general business, or for limited discussion on a specific issue. Generally, the BOJ should be provided 30 days notice of a meeting date, and with that notice, should be advised of a reasonable window of time during which agenda topics may be submitted. Any Judge in regular active service may timely add an agenda item for discussion at a general meeting, and at the close of the agenda-submission window, an agenda will be disseminated to the BOJ. Agenda topics submitted after the reasonable time window provided will only be included on the agenda if supported by three members of the BOJ. BOJ meetings will generally be held on the Monday of an oral argument week. Any Senior Judge may attend any BOJ meeting and, at the invitation of the Chief Judge in consultation with the BOJ, may attend any Executive Session of the BOJ. Any Senior Judge may submit an agenda item for consideration, and such item will be added to the agenda upon the assent of three members of the BOJ. Unless excused by the BOJ, the Clerk of the Court and the Counsel to the BOJ attend BOJ meetings. Minutes of the BOJ meetings are approved and kept by the BOJ.

(f) Committees. To assist the BOJ and the Chief Judge, the Chief Judge shall appoint among volunteers Judges in regular active service to standing committees on Legislative Affairs, Budget and Finance, Policy and Personnel, Information Technology (IT), and Facilities, and any additional committees deemed helpful by the Chief Judge or the BOJ. The purpose of these committees is to gather information and suggest courses of action to further the effective operation of the Court. Committees shall meet as necessary and operate by consensus. Committees are free to and should consult with the Clerk of the Court, and any member of the Court's staff as may be helpful. Each committee will advise and consult with the Chief Judge and full Board of Judges as necessary and the Chief Judge will keep the BOJ apprised as to Judges appointed to each Committee. The Chief Judge shall bring any significant issues to the appropriate committee in a timely manner. The Chief Judge shall submit the Congressionally required annual report concerning the workload of the Court to the Budget and Finance Committee and the full Board of Judges for their review and comment before submission to Congress.

(g) Representation. As head of the Court, the Chief Judge frequently represents the Court in external matters, including legislative matters and discussions with Congress and members of the Congressional staff. Only the BOJ, however, may authorize the external representation of a position on any matter for which authority or responsibility is given to the Court by statute. If any Judge, including the Chief Judge, is asked for or is otherwise presenting a policy or legislative position externally on any such matter that has not been approved by the BOJ, or on which the Judge has a position not in accord with that of the BOJ, the Judge should make clear to the audience that the BOJ has not rendered a position yet or has a differing view.

(h) Resolutions. Formal decisions of the BOJ are implemented by issuance of numbered and dated BOJ Resolutions.

XIV. STANDING PANEL ON ADMISSION AND DISCIPLINE

Pursuant to Misc. Order 1-05 and BOJ Resolution 01-2011, Judges serve on a rotational basis on the Court's Standing Panel on Admission and Discipline, to review matters arising under the Court's *Rules of Admission and Practice*.