

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Misc. No. 1-99

IN RE:

RULES 3 AND 46

Before NEBEKER, *Chief Judge*, and KRAMER, FARLEY,
HOLDAWAY, IVERS, STEINBERG, and GREENE, *Judges*

ORDER

Pursuant to the authority of 38 U.S.C. § 7264(a) and consistent with 28 U.S.C. § 2071(b), the Court has adopted changes to Rules 3 and 46 of its Rules of Practice and Procedure and to Forms 1 and 3 in the Appendix of Forms to those rules. The Court has benefited from public comment and from the views of its Rules Advisory Committee. Accordingly, it is

ORDERED that the attached changes to Rules 3 and 46 and Forms 1 and 3 are published and will be effective May 1, 1999.

DATED: March 18, 1999

BY THE COURT:

FRANK Q. NEBEKER
Chief Judge

3 attachments

MISC. ORDER NO. 9-98 WAS THE LAST IN THE SERIES FOR 1998

Attachment to Miscellaneous Order No. 1-99 (only affected subsections shown)

RULE 3. HOW TO APPEAL

(f) Limited Appearance. See Rule 46(d)(6).

RULE 46. REPRESENTATION

(c) Appearance in a Particular Case. On motion and a showing of good cause, the Court may permit any attorney or non-attorney to appear on behalf of a party or amicus for the purposes of a particular case. See also Rule 8 of the Rules of Admission and Practice.

(d) Representation Requirements.

(1) *Practitioner defined.* A person who has been admitted to practice under subsections (a) or (b) or has been permitted to appear under subsections (c) of this Rule 46 is referred to in this subsection (d) as a practitioner.

(2) *Appearance.* No practitioner may appear on behalf of a party or amicus in any proceedings in a case without first filing:

(A) a written notice of appearance in the detail prescribed by Form 3 in the Appendix of Forms; and

(B) a copy of the fee agreement if the practitioner is representing an appellant or petitioner or intervenor, unless the representation is without charge to that party. If the agreement provides for direct payment out of past-due benefits under 38 U.S.C. § 5904, a copy must be served on the Secretary.

An appearance may not be made in the name of a law firm or other organization.

(3) *Papers filed by a non-attorney.* Each paper filed by a non-attorney practitioner must include the name, address, and signature of the responsible supervising attorney under Rule 46(b)(1) or the identification of the employing organization under Rule 46(b)(2).

(4) *Withdrawal.* A practitioner may withdraw from a case by filing a notice stating that the party has consented to the withdrawal, if another practitioner has previously entered an appearance on behalf of the party. Otherwise, a practitioner may not withdraw from a case without obtaining the Court's permission by filing a motion to withdraw that

(A) lists the client's current address and telephone number, and

(B) assures the Court that

(i) the client has been notified of the motion to withdraw, and

(ii) copies of all papers filed by the parties, all notices and orders accumulated by the practitioner, and all files belonging to the client have been sent to the client or to a named substitute practitioner.

The practitioner's authority and duty continue until he or she is relieved by the Court, subject to conditions that the Court considers appropriate.

(5) *Change of address.* Each practitioner and self-represented party must notify the Clerk and all other parties 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.

(6) *Limited representation.* This Rule 46(d) does not apply when a practitioner files a Notice of Appeal on behalf of an appellant and specifies that the representation is limited to that filing.

(7) Subsections (2)(B), (4), (5), and (6) of this Rule 46(d) do not apply to practitioners representing the Secretary.

(e) (Rescinded)

(g) Self-representation. Any appellant, petitioner, or intervenor may be self-represented before the Court.

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 address _____

Appellant's telephone number _____

Signature of person filing this notice _____

CERTIFICATE OF SERVICE

On _____, a copy of this Notice was mailed postage prepaid or served personally on General Counsel (027), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct.

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.

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***

It will be in time 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 too late if it arrives at the Court after the 120-day time limit. The Court cannot extend the 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 (Motion to Waive Filing Fee).

Send a copy of this NOA to VA General Counsel and complete the certificate of service shown above.

