

UNITED STATES COURT OF VETERANS APPEALS

Misc. No. 7-98

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) and (e), the Court has determined the need to clarify the requirements for appearance by representatives of the parties. It is

ORDERED that the attached proposed changes to Rules 3 and 46 and Forms 1 and 3 are hereby published. Public comment on these changes is invited. Such comment must be submitted to the Clerk of this Court at 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004-2950, by September 30, 1998.

DATED: August 3, 1998

BY THE COURT:

FRANK Q. NEBEKER
Chief Judge

Attachments

ATTACHMENT TO USCVA MISCELLANEOUS ORDER NO. 6-98

**RULE CHANGES (only affected subsections shown)
(Former rule on left; changed rule on right)**

RULE 3. HOW TO APPEAL	RULE 3. HOW TO APPEAL
(f) Limited Appearance. The filing of a Notice of Appeal alone, or the filing of a motion to stay proceedings to permit evaluation of a case for possible representation, by a representative, will not amount to an appearance under Rule 46 by that representative if the Notice of Appeal or the motion contains the statement "This is a limited appearance."	(f) (Rescinded)

[Reason: Limited representation status has been abused by some practitioners, creating confusion about the true representation status of an appellant. Under the change, such representation will be allowed only for the filing of a Notice of Appeal. See Form 1 and amended Rule 46(d)(5), below. It will no longer be allowed while a person is contemplating but has not yet agreed to represent a party. Under those circumstances, the party remains self-represented for all purposes. The potential representative may draft necessary motions, such as those for extensions of time, but the party must sign and file them.]

RULE 46. REPRESENTATION	RULE 46. REPRESENTATION
<p>(d) Appearance, Withdrawal, and Change of Address.</p> <p>(1) <i>Appearance.</i> No attorney or non-attorney practitioner may participate in any proceedings in any case unless that individual has entered an appearance. The signing of a pleading or motion, or the physical appearance at oral argument, by an attorney or non-attorney practitioner constitutes an appearance by that individual as the representative in the case. The appearance must be accompanied by filing and service on all parties of a written statement that the representative is representing a designated client or clients, giving the name, address, and telephone number of the representative, and signed by him or her. See sample Notice of Appearance at Form 3 in the Appendix of Forms. In the case of a non-attorney practitioner, the name, address, and signature of the responsible supervising attorney (subparagraph (b)(1) of this rule) or the identification of the employing organization (subparagraph (b)(2) of this rule) must appear on each paper filed with the Court. Appearances may not be made in the name of a law firm or other organization. If a party is represented by more than one individual, one shall be designated as the representative of record for the purpose of receipt of papers sent by the Court and served by other parties.</p>	<p>(d) Representation Requirements.</p> <p>(1) <i>Appearance.</i> No person may participate on behalf of a party or amicus in any proceedings in a case without first filing:</p> <ul style="list-style-type: none"> (A) a written notice of appearance, which must be on the form prescribed at Form 3 in the Appendix of Forms; and (B) a copy of the fee agreement if the person 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. <p>An appearance may not be made in the name of a law firm or other organization.</p> <p>(2) <i>Papers filed by non-attorney representative.</i> Each paper filed by a non-attorney representative 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).</p>

(2) *Withdrawal.* A representative, other than a government attorney who has been properly replaced, may not withdraw without the Court's permission upon motion and written notice to the client and all other parties who have appeared. The motion must describe the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. The authority and duty of the representative will continue until he or she is relieved by order of the Court. Permission to withdraw may be granted subject to such conditions as the Court considers appropriate. This paragraph will not apply when a representative, without taking any other action, files a Notice of Appeal on behalf of an appellant under Rule 3(f).

(3) *Withdrawal.* A representative — except a government attorney who has been properly replaced — 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 counsel, and all files belonging to the client have been sent to the client or to a named substitute representative.

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

<p>(3) <i>Change of address.</i> Each representative and each party appearing on his or her own behalf has a continuing duty to notify the Clerk and all other parties of any change of address or telephone number. Absent such notice, service of documents at the most recently provided address of that representative or party will be fully effective.</p> <p>(e) Fee Agreement. A representative who enters an appearance (other than a limited appearance) must file a copy of a fee agreement or a statement indicating that the appellant is being represented without charge to the appellant. If the fee agreement provides for direct payment out of past due benefits under 38 U.S.C. § 5904, a copy must be served on the Secretary.</p> <p style="text-align: center;">* * *</p> <p>(g) Self-representation. Any appellant may appear and present his or her own case before the Court.</p>	<p>(4) <i>Change of address.</i> Each representative 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.</p> <p>(5) <i>Limited representation.</i> This Rule 46(d) does not apply when a representative files a Notice of Appeal on behalf of an appellant and specifies that the representation is limited to that filing.</p> <p>(e) (Rescinded)</p> <p style="text-align: center;">* * *</p> <p>(g) Self-representation. Any appellant, petitioner, or intervenor may be self-represented before the Court.</p>
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[Reason: To insure the Court's control over representatives' appearance and withdrawal by requiring clear and uniform procedures for each. Form 3 (Notice of Appearance) has been expanded and its use is mandatory. The self-representation provision has been reworded for clarity.]

UNITED STATES COURT OF VETERANS APPEALS
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 Veterans Appeals
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 to the Court. Send a check or money order, payable to "US Court of Veterans Appeals," 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.

