

**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS  
RULES OF PRACTICE AND PROCEDURE**

*Applies to all appeals filed at the Court on or after April 1, 2008*

**Table of Contents**

Rule 1.	Scope of Rules.
Rule 2.	Suspension of Rules.
Rule 3.	<del>How to Appeal</del> <u>Appellate Procedure.</u>
Rule 4.	Filing Appeal; Docketing; <u>Copy of Board Decision.</u>
Rule 5.	Stay of Appellate Proceedings.
Rule 6.	Protection of Privacy.
Rule 7.	(Reserved).
Rule 8.	Suspension of Secretarial Action or Suspension of Precedential Effect of Decision of this Court. <del>Pending Disposition of Appeal or Petition</del>
Rule 9.	(Reserved).
Rule 10.	<del>Designation of The</del> <u>Record Before the Agency.</u>
Rule 11-14.	(Reserved).
Rule 15.	Intervention.
Rules 16-20.	(Reserved).
Rule 21.	Extraordinary Relief.
Rules 22-23.	(Reserved).
Rule 24.	Waiver of Filing Fee.
Rule 25.	Filing and Service.
Rule 26.	Computation and Extension of Time.
Rule 27.	Motions.
Rule 28.	Briefs.
Rule 28.1	Record of Proceedings.
Rule 29.	Brief of an Amicus Curiae.
Rule 30.	Citation of Certain Authority.
Rule 31.	Filing and Service of Briefs.
Rule 32.	Form of Briefs, Appendices, and Other <del>Papers</del> <u>Documents.</u>
Rule 33.	Staff Conference.
Rule 34.	Oral Argument.
Rule 35.	Motions for Reconsideration, or for Decision by a Panel or by the Full Court.
Rule 36.	Entry of Judgment.
Rule 37.	<del>Contingency Planning</del> <u>Retention Requirements for Documents</u>
Rule 38.	Frivolous Filings.
Rule 39.	Attorney Fees and Expenses.
Rule 40.	Rules Advisory Committee.
Rule 41.	<del>Issuance of</del> Mandate.
Rule 42.	Voluntary Termination or Dismissal.
Rule 43.	Substitution of Parties.
Rule 44.	Judicial Conference.

- Rule 45. Duties of Clerk.
- Rule 46. Representation.
- Rule 46.1 Self-Representation.
- Rule 47. Expedited Proceedings.
- Rule 48. Sealing of Cases.
- Rule 49. Complaints Against Judges.

Index

Appendix of Forms.

## **RULE 1. SCOPE OF RULES**

**(a) Scope.** These rRules, as supplemented by the Interim E-Rules (E-Rules) specifically applicable to electronic filing for the Case Management/Electronic Case Filing (CM/ECF) system, govern practice and procedure in this Court; the United States Court of Appeals for Veterans Claims (the Court), a court of national jurisdiction. The E-Rules can be found on our Web site: [www.uscourts.cavc.gov](http://www.uscourts.cavc.gov).

**(b) Effect on Court's Jurisdiction.** Neither ~~These rRules~~ nor the E-Rules do not extend or limit the jurisdiction of the Court as established by law.

**(c) Electronic Filing.** Electronic filing is mandatory for all represented parties, absent a waiver from the Clerk. Individuals who have registered to participate in electronic filing are called CM/ECF Users. Only upon Court approval may a self-represented party become a CM/ECF User. See E-Rules 2(e) and 3. Where applicable in these Rules, the corresponding E-Rule has been cited. For CM/ECF Users, if there is any conflict between these Rules and the E-Rules, the E-Rules apply.

## **RULE 2. SUSPENSION OF RULES**

On its own initiative or on a party's motion, the Court may ~~to expedite its decision or for other good cause~~ suspend any provision of these rRules and order proceedings as it directs, consistent with applicable law and precedent.

## **RULE 3. HOW TO APPEAL APPELLATE PROCEDURE**

**(a) Filing.** To appeal a Board of Veterans' Appeals (Board) decision, ~~A~~ a person adversely affected by ~~the a Board of Veterans' Appeals decision may appeal that decision to the Court only by filing a written~~ must file a Notice of Appeal with the Clerk of the Court (Clerk), including transmission by facsimile (fax); 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. Failure of an appellant to take any other step under these rRules other than the timely filing of a Notice of Appeal does not affect the validity of the appeal, but may be grounds for such action as the Court deems appropriate, including dismissal of the appeal.

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

**(c) Content.** The Notice of Appeal ~~need not conform to Rule 32 and must~~ –

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

(2) shall reasonably identify the Board decision appealed from and be ~~able to 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 ~~other than one making a limited appearance, be accompanied by a notice of appearance and its attachments.~~ must have complied with Rule 46 (Representation). See Rule 46(d)(2) and (6).

FORM 1 in the Appendix of Forms ~~Form 1 is a suggested, but not required,~~ the recommended form for a Notice of Appeal. ~~Correspondence will be liberally construed in determining whether it is a Notice of Appeal.~~

**(d) Joint or Consolidated 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 or may join in an appeal after filing separate timely Notices of Appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Court on its own initiative or on a party's motion.

**(e) Payment of Fees.** ~~A Notice of Appeal must be accompanied by a~~ A \$50.00 nonrefundable filing fee, ~~paid by check or money order 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). An appellant who believes that the payment of the fee would be a financial hardship may obtain a waiver of the fee by filing a declaration of financial hardship in accordance with Rule 24. If a fax Notice of Appeal is filed, the filing fee or declaration must shall be received by the Court not later than 14 days after the fax was sent.~~

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

~~(g)~~ **(f) 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, D.C. 20004-2950. The Court's fax number is: (202) 501-5848. The Court's Web site is found at [www.uscourts.cavc.gov](http://www.uscourts.cavc.gov).

~~(h)~~ **(g) Translations.** The Court conducts its reviews and deliberations in English. Any document transmitted to the Court in a language other than English ~~must~~ shall be accompanied by

an English translation that is certified as true and correct by the translator, pursuant to 28 U.S.C. § 1746, ~~as true and accurate.~~

#### **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 to be received –

(1) on the date of its legible postmark, affixed by the United States Postal Service (not including a postage-metered date imprint other than one affixed by the United States 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 United States Postal Service, or if it is delivered or sent by means other than United States mail, ~~including fax~~. But see Rule 25(b)(3)(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 ~~will~~ shall be described as the appellee by name and official title.

(3) *Notice of Docketing.* The Clerk ~~will~~ shall send a Notice of Docketing to all parties advising them of the date when the Clerk received the Notice of Appeal.

**(c) Copy of Board Decision.** Not later than 30 days after the date of the Clerk's Notice of Docketing (see subsection (b)(3)), the Secretary ~~must~~ shall file with the Clerk under separate docket entries, and serve on the appellant ~~a copy of the Board's decision, showing —~~

(1) a copy of the Board's decision showing the date on which notice of the decision was mailed; with any personal identifiers redacted, except the name of the appellant, (See E-Rule 1(a)(10) – definition of “personal identifier”), and

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

~~(2)(3)~~ if applicable, information showing the filing date of any motion for its 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.**

(1) On its own initiative or on a motion by a party or a pro bono consortium practitioner, ~~or on a party's motion~~, the Court may stay its proceedings when —

~~(A)~~(1) a motion has been filed for the Board to reconsider or vacate its decision; or ~~(B)~~ a pro bono representation program, operating under a grant or contract made under the authority first provided in Public Law No. 102-229, is conducting case evaluation; or

~~(C)~~(2) it is otherwise in the interest of judicial efficiency; ~~but not for the purpose of negotiating a settlement or remand (see paragraph (2) of this subsection) or of extending the time for making any filing (Rule 26(b))~~.

~~(2) A joint motion for a stay or stays of proceedings, not to exceed 60 days in total in a particular case, may be granted to allow the parties to negotiate a settlement or joint remand.~~

**(b) Effect of Stay.** Unless and until the Court grants a motion under this ~~r~~Rule, such a motion does not suspend proceedings or interrupt preexisting filing schedules. Unless otherwise ordered, ~~W~~ 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 may move for continuation of the stay, ~~except to the extent that the duration sought is prohibited by subsection (a)(2), above~~. Such motion must 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.

## **RULE 6. PROTECTION OF PRIVACY**

See also Rule 48 (Sealing of Cases) and E-Rule 4 (Locked Documents, Redaction)

**(a) Public Records.** ~~Because~~ 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 will~~ shall refrain from putting ~~the appellant's or petitioner's 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 motions, briefs, and responses ~~any filings not locked or sealed (but not the Notice of Appeal (see Rule 3(e)(1))); use of the Court's docket number is sufficient identification. In addition, parties should~~ shall redact ~~the appellant's or petitioner's any~~ VA claims file number or other personal identifier from other documents submitted to the Court that are not locked or sealed, in connection with motions, briefs, and responses.

**(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) 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 document's filing.

## **RULE 7. (RESERVED)**

### **RULE 8. SUSPENSION OF SECRETARIAL ACTION OR SUSPENSION OF PRECEDENTIAL EFFECT OF DECISION OF THIS COURT PENDING DISPOSITION OF APPEAL OR PETITION**

**(a) Filing of Motion.** After an appeal or petition has been filed, ~~an appellant or petitioner~~ a party seeking a Court order to suspend action by the Secretary or the Board ~~pending proceedings in the Court or the precedential effect of a decision issued by this Court pending its appeal~~ must 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 ~~printed~~ electronic transmission, or hand delivery).

**(b) Content.** The motion ~~must~~ 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.

~~**(c) Court Action.** The motion normally will be considered by a panel of three or more judges, but in exceptional cases the motion may be acted on by a single judge pending consideration by a panel.~~

## RULE 9. (RESERVED)

### RULE 10. ~~DESIGNATION OF THE 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 issues listed in~~ 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) prepare a list of any record matter that cannot be duplicated;~~

~~(3)~~ (4) assemble and paginate the materials copied and the list specified in paragraph (3) of this subsection so that the first document is all documents (keeping attachments with their respective document) except that 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 will be is the Record Before the Agency;

~~(4)~~ (5) serve a copy of the Record Before the Agency on the appellant; and

~~(5)~~ (6) file 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 ~~must~~ shall describe the good faith efforts that have been made to resolve the dispute and ~~must~~ 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.** ~~Because~~ The Record Before the Agency may include many documents not relevant to the issues decided by the Board that are on appeal, it will not be filed with the Court unless so ordered.



**(d) Access of Parties or Representatives to Original Record.**

~~(1) Material Not Subject to a Protective Order.~~ 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, the original material in the Record Before the Agency.

~~(2) Confidential Information.~~ On its own initiative or on a party's motion, the Court may take appropriate action to prevent disclosure of confidential information. See also Rule 48.

**(e) Contingency Planning. 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 ~~is entitled to~~ may intervene in ~~a case~~ 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 ~~a case~~ an appeal before the Court ~~must~~ 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 ~~must~~ shall contain a concise statement of the interest of the moving person or party and the grounds upon which intervention is sought. See also Rule 28(d) (Intervenor's Brief); Rule 27(b) (Motions – Response or Opposition)

**(c) 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) 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 intervention is sought. 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.** A party desiring extraordinary relief ~~must~~ may file 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 ~~must 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 petition should be granted, 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 ~~as the respondent~~ by name and official title.

The requirements of Rules 3(e)(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 ~~docket~~ submit the petition and ~~submit it~~ to the Court.

### **(b) (c) Form and Length of Papers Documents; Number of Copies; Translations.**

(1) ~~Except by permission of the Court,~~ 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. ~~An original and three copies must be filed with the Clerk, but the Court may direct that additional copies be furnished.~~ The petition ~~must shall~~ be captioned: "[Name of Petitioner], Petitioner, v. [Name and Title of Respondent], Respondent." See also Rules 6 (Protection of Privacy) and 48 (Sealing of Cases).

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

**(c)(b) Action on the Petition.** Unless the Court concludes that the petition should be denied, ~~it will order the~~ respondent(s) will be ordered to file an answer to the petition within a fixed time, ~~and will send copies of the order to all parties.~~ 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. ~~The proceeding will be given priority by the Court.~~

## RULES 22 and 23. (RESERVED)

### RULE 24. WAIVER OF FILING FEE

Payment of the filing fee required by Rule 3(e) (Payment of Fees) or Rule 21(a)(Extraordinary Relief Petition) will be waived, due to 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. Theat declaration of financial hardship will be subject to the penalty for perjury pursuant to 28 U.S.C. § 1746, and must 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 papers documents, either the fee must shall be paid or a new declaration that addresses the deficiencies in the noncompliant declaration must shall be submitted.

### RULE 25. FILING AND SERVICE

**(a) Document Submission and Filing.** A paper document required or permitted to be filed in the Court with regard to an appeal or petition for extraordinary relief must shall be filed with submitted to the Clerk with proof of service. See E-Rule 1(a)(6). Rule 3(g): Submitted documents otherwise proper for filing shall 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 Web site at <www.uscourts.cavc.gov>.

~~(1) Mail. Filing may be accomplished by mail addressed to the Clerk.~~

(1) 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, fax, or as an attachment to an e-mail, as designated in subsection (b).

~~(2) Fax. Any paper except a brief filed under Rule 28 or 29 may be filed by fax sent to the Clerk if the paper =~~

~~(A) is preceded by a cover sheet showing the sender's name, address, and telephone and fax numbers; the Court case number and caption; and the number of pages being sent; and~~

~~(B) has numbered pages and is not more than ten 8½"x11" pages long (the page limit does not include the cover sheet or the certificate of service but does include any supporting documents, and the paper document. may not be split into multiple transmissions to avoid this page limit).~~

~~The sender bears the risk of fax transmission. Court personnel will not provide a confirmed copy. If a transmission is illegible in whole or in part or is incomplete, the Court may, but need not, direct the sender to provide a legible or complete copy by mail.~~

(2) Representatives, amicus curiae, and others authorized to submit documents using Case Management/Electronic Case Filing (CM/ECF). Subject to the exceptions in Rules 25(a)(1) (Document Submission and Filing) and 25(b)(Method and Timeliness) for a Notice of Appeal or Petition for Extraordinary Relief, and a notice of appearance, fee agreement, or financial hardship declaration e-mailed concurrently with the Notice of Appeal or Petition for Extraordinary Relief, all submissions by a representative or amicus curiae and others authorized to use CM/ECF shall be submitted electronically using CM/ECF.

~~(3) Confirmation. Confirmation of the filing (but not of the adequacy of the content) of any paper by any means may be obtained by accessing the case docket on the Court's wWeb site (see Rule 3(g)).~~

(3) Self-Represented litigants and others exempt from using CM/ECF. Subject to the exception in Rule 25(a)(1) (Document Submission and Filing) for a Notice of Appeal or Petition for Extraordinary Relief, and a notice of appearance, fee agreement, or financial hardship declaration e-mailed concurrently with the Notice of Appeal or Petition for Extraordinary Relief, all submissions by a self-represented litigant and others who have not been approved for submitting documents electronically using CM/ECF may be submitted by mail, personal delivery, or other delivery service. Additionally, any document other than a brief may be submitted by fax. See Rules 28 (Briefs) and 29(Brief of an Amicus Curiae).

**(b) Method and Timeliness.**

~~(1) Fax filing. A paper may be sent by fax at any time. A paper except a Notice of Appeal or an application for attorney fees and expenses received by the Clerk by fax on any nonbusiness day, or on any business day before 7:00 a.m. Eastern Time on that day, is considered received by the Court on the preceding business day. A Notice of Appeal or an application for attorney fees and expenses filed by fax is considered received by the Court on the day on which it is received.~~

(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 actual date of receipt by the Clerk shall be used for filing purposes.

(B) A document submitted through the U.S. Postal Service by a self-represented appellant 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) Briefs. A brief is timely filed by a self-represented appellant if on or before the last day for filing it is—~~

~~(A) mailed to the Clerk via the United States Postal Service by first-class mail or other class of mail that is at least as expeditious, postage prepaid; or~~

~~(B) deposited with a private commercial carrier for delivery to the Clerk not later than the third calendar day after the date of deposit.~~

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

**NOTE:** (A) The length of a fax submission is limited. A document submitted by fax shall not exceed 10 pages, but the cover sheet of such submission does not count in determining the 10-page limit. A document shall not be submitted by multiple transmissions to avoid the 10-page limit.

(B) The actual date of receipt by the Clerk shall be used for filing purposes.

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

~~(3) Other papers. Except as provided in paragraph (1), all papers must be received by the Clerk or deposited in the night box within the time specified for filing. See Rule 45.~~

(4) E-Mail. A Notice of Appeal, Petition for Extraordinary Relief, or a notice of appearance, fee agreement, or financial hardship declaration submitted concurrently therewith, may be submitted as an attachment to an e-mail to the Clerk at [esubmission@uscourts.cavc.gov](mailto:esubmission@uscourts.cavc.gov).

**NOTE:** (A) Other than the documents noted in this section, no other documents may be submitted by e-mail.

(B) The actual date of receipt by the Clerk shall be used for filing purposes.

~~(4) Appellant confined in an institution. A paper document filed by a self-represented appellant who is an inmate confined in an institution is timely filed if the paper 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.

(5) CM/ECF. A separate docket entry shall be used for each document submitted using CM/ECF. The actual date of docket entry shall be considered the date of receipt by the Clerk for filing purposes and shall constitute the date of filing unless otherwise noted by the Clerk on the docket.

~~(c) Service of Papers Required.~~ A copy of any paper—except a Notice of Appeal and a Declaration of Financial Hardship—filed by any party or amicus must, at or before the time of filing, be served by a party or amicus on all other parties to the appeal and on any amici. Service on a represented party or amicus must shall be made on the representative.

(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, a Notice of Docket Activity will be electronically generated and 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.

(C) Proof of service may appear on or be attached to the paper document filed.

(D) 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, N.W., Washington, D.C. 20420-0002.

~~(d) Manner of Service.~~ Service may be personal, by mail, or by private commercial carrier for delivery not later than 3 calendar days after delivery to the carrier. In addition, service (but not filing, except as provided in subsection (a)(2)) of any paper may be made by fax in a particular case if the

~~proposed recipient has agreed in writing to such service. Personal service includes delivery of the copy to a responsible person at the office of the representative or the office or home of a party without a representative. 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, N. W., Washington, D.C. 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 e-mail, it shall contain an "electronic signature." See E-Rules1(a)(2)(Definitions) and 10 (Electronic Signatures).

**(e) Proof of Service:**

(1) A paper presented for filing must contain either of the following as proof of service:

(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 paper document filed.

~~(2) When a brief is filed by mail or commercial-carrier delivery in accordance with subsection (b)(2), the proof of service must shall also state the date and manner by which the brief was sent to the Clerk.~~

**(e) Requirements for CM/ECF Users.**

(1) Representatives. Unless exempt by the Court for good cause and except for documents initiating cases in the Court (such as a Notice of Appeal or Petition for Extraordinary Relief), all documents submitted by a representative must be transmitted electronically using CM/ECF. See E-Rules.

(2) Self-Represented litigants. Self-represented litigants may file documents using CM/ECF only if they are approved by the Court. See E-Rules.

## **RULE 26. COMPUTATION AND EXTENSION OF TIME**

**(a) Computing Time.**

(1) *General rule.* In computing a period of time set by these Rrules, 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, or legal holiday; or, day if the act to be done is filing a paper in the Court, unless it is a day when the Clerk's Office has been is closed by at the direction of the Chief Judge, or when the weather or another condition makes the Clerk's Office inaccessible, as declared by the Court or the Chief Judge.

(2) *Legal holidays.* As used in this Rrule, "legal holiday" means New Year's Day, Martin Luther King, Jr.'s Birthday, Washington'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 Web site, if circumstances permit. ~~and placed on a telephone recording.~~ See [www.uscourts.cavc.gov](http://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 ~~(by granting a motion for leave to file out of time or otherwise)~~, 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) ~~(joint motion for stays to negotiate settlement or remand Stay of Appellate Proceedings)~~. An Extensions of time not to exceed for a total of 45 days for any particular filing may be granted for good cause. Any motion to extend the time set by these Rrules 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, ~~which do not include workload considerations. In no case will a motion be granted to suspend the Rules (see Rule 2) in order to achieve an extension of time.~~

~~(1) *Additional Requirements.* Any motion to extend time based on extraordinary circumstances (see above) must be filed not less than 14 days before the date sought to be extended. Any motion filed later than 14 days before the date sought to be extended and not acted upon by the date sought to be extended is denied.~~

(2)(1) *Content of motion.* In addition to ~~showing good cause for an extension of time;~~ the information required by Rule 27(a)(Content of Motions), the motion ~~must~~ 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 ~~both for the same action and~~ for any action 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)~~(4)~~(5)(Content of Motions).



~~(3)~~(2) *Opposition.* Any opposition ~~must~~ 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; ~~no extension of this period will be granted for any reason.~~

~~(4)~~(3) *Effect of motion.* A motion to extend time does not extend the date on which a pleading or other paper document is due to be filed with the Court unless the Court grants that motion. See Rule 5(b)(Effect of Stay).

~~(5)~~(4) *Noncompliance.* See Rule 45~~(k)~~(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 paper document under these rRules on that party by another party and the paper document is served by mail, 5 days are added to the period for doing that act.

(2) *Service overseas by Secretary.* If a paper document is served by the Secretary by mail 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 rRule is not added to the periods set in Court orders and notices or in Rules 4 (Filing Appeal), 35 (Motions for Reconsideration or Decision by a Panel or by the Full Court), and 39(a)(Applications for Attorney Fees and Expenses).

**(d) Combined Motions Prohibited.** With the exception of a motion for leave to file a motion out of time 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 rRules, an application for relief ~~must~~ shall be made by filing a motion, with proof of service (see Rule 25~~(e)~~(c)(Manner and Proof of Service)) on all other parties. The motion ~~must~~ 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; ~~and,~~

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

~~(4)(5) if the appellant is represented, (A) describe the steps taken to contact the other party to determine whether the motion is opposed; and (B) indicate whether the motion is opposed and, if so, whether the moving party has been advised that a response in opposition will be filed.~~

~~A motion should not be accompanied by a proposed implementing order. If a motion is supported by briefs, affidavits, or other papers, they must be served and filed with the motion.~~

**(b) Response or Opposition.**

(1) *Time to file.* Unless otherwise prescribed in these Rrules (see e.g., Rule 26(b)(3)(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, but motions authorized by Rule 8 (Suspension of Secretarial Action Or Suspension of Precedential Effect of Decision of This Court) may be acted upon 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 ~~must shall~~ be submitted filed by the 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, motions for procedural orders may be acted on at any time, without awaiting a response, and, by rule or order of the Court, motions for certain procedural orders may be disposed of by the Clerk. Motions to extend time for good cause (but not for extraordinary circumstances) may be acted on by the Clerk if not opposed within 5 days after service on the other party. See Rule 26(b)(3)(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, Copies, and Length.** Except by permission of the Court,

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

(2) the form and copy requirements in Rule 32 (Form of Brief, Appendices and other Documents) for principal briefs apply to motions and responses, ~~except that a motion or response may not exceed 20 pages.~~ See also Rule 6 (Protection of Privacy) and Rule 37 (Contingency PlanningRetention Requirements for Documents).

**(e) Prohibited Nondispositive Motions.** Except as permitted by Rules 26(d)(Combined Motions Prohibited) and 35(a)(1) (Motion for Reconsideration), ~~No~~ no more than one subject may be

addressed in any nondispositive motion, ~~unless otherwise provided by these rules (see Rule 35(d)).~~  
The Clerk will return any motion that violates this subsection. ~~See also Rules 5(d) and 26(d).~~

**(f) Effect of Motions.** Filing a motion does not suspend proceedings or otherwise alter the schedule for filing ~~papers~~ documents unless the Court grants the motion. See Rules 5(b)(Effect of Stay) and 26(b)(~~4~~)(3) (Effect of Motion).

## RULE 28. BRIEFS

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

(1) a ~~t~~Table of ~~c~~Contents, with page references;

(2) a ~~t~~Table of ~~a~~Authorities consisting of cases (alphabetically listed), statutes, other authorities cited, and pages of the Record Before the Agency, cited in numerical order by record citation, with references to the page of the brief where they are cited [Please see the sample format for record citations which accompanies these proposed revisions.];

(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 all pages that comprise the original source document, including envelopes and date stamps, if available in the record; parties shall not cite solely to the Board decision for any factual underlying issues on appeal;

(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 ~~must~~ shall file a brief ~~which must~~ 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) *Confession of error.* Identification of Board error. If the Secretary wishes to confess error as to any issue or issues raised by the appellant, but not as to all the issues raised, and 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 asserted Board error, the Secretary shall identify the relief that the Secretary considers appropriate if the relief that the Secretary deems appropriate as to the confession of error is different from that sought by the appellant. the Secretary must include a statement of concession in the brief and identify the relief thereunder 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 ~~t~~Table of a 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)(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.

~~**(f)(e) Brief of Self-Represented Party.** Only a self-represented party may submit, without regard to the requirements of subsection (a) and Rule 32, an informal brief. on Tthe 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 Documents). An informal brief must comply with the Rule 32(f) identification requirement and may not be longer than 30 pages.~~

~~**(d)(f) Other Briefs.** Briefs may be filed by intervenors as directed by the Court. No briefs other than those described in this Rule. Any brief not described by these Rules may be filed except only with the Court's permission.~~

~~**(e)(g) Motions Prohibited.** After the initial notice to file a brief has been issued to the appellant, a motion, other than a joint motion for remand or termination, will not be accepted 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.~~

~~**(f)(h) References to the Record Before the Agency.** References in the briefs to the Record Before the Agency ~~must~~ 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**(b)(a)** (Preparation of the Record of Proceedings). Commonly understood abbreviations may be used.~~

~~(g)~~**(i) Reproduction of Materials Documents.** If determination of the issues requires consideration of superseded statutes, rules, or regulations, or unpublished authorities, relevant parts ~~must~~ 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.

~~(h)~~**(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.

~~(i) Brief of Self-Represented Party.~~ Only a self-represented party may submit, without regard to the requirements of subsection (a) and Rule 32, an informal brief on the form provided by the Court.

## **RULE 28.1. RECORD OF PROCEEDINGS**

~~(a) Purpose.~~ The purpose of this Rule is to ensure that the Court has before it those documents required to decide the appeal.

### **~~(b)~~(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 ~~must~~ shall be compiled exclusively from the Record Before the Agency and shall contain:

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

(B) any document from the Record Before the Agency cited in a brief, ~~included~~ in its entirety with any associated envelope or date stamp; and,

(C) any other documents before the Secretary and the Board that are relevant to the issues ~~decided by~~ 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 Record of Proceedings shall be filed and served 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), as applicable (Expedited Proceedings).

~~(4)Number of Copies.~~ The Secretary shall file an original and three copies of the Record of Proceedings with the Clerk and serve one copy on each party.

~~(5)Cover.~~ The cover of the Record of Proceedings must be white and must contain the official caption of the appeal.

~~(e)(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 ~~must~~ shall be filed within 14 days after the Record of Proceedings has been served and ~~must~~ 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.

~~(d)(c) Additional Record Material.~~ The Court may direct ~~the appellant or the Secretary~~ any party to file additional record material.

## **RULE 29. BRIEF OF AN AMICUS CURIAE**

~~(a) Time.~~ A brief of an amicus curiae ~~must~~ shall be filed within the time allowed the party whose position the amicus curiae supports unless the Court permits later filing, in which event the Court will specify the time limit for an opposing party's response. An amicus curiae will be permitted to participate in oral argument only at the invitation of the Court.

~~(b) Form and Content.~~ An amicus brief ~~must~~ shall comply with Rules 25(b)(2)(Method and Timeliness of Filing and Service), 28(a)(1), (5) and (6) (Appellants Brief), 28(f)(h)(References to the Record Before the Agency) and (g)(i)(Reproduction of Documents), 30(Citation of Certain Authority), and 32(Form of Briefs, Appendices, and Other Documents); and state, at the outset of the brief, which party the amicus curiae supports and the interest of the amicus curiae. The brief should avoid repeating the parties' briefs and should focus on the points not made or not emphasized in them.

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

(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. The motion for leave to file must be submitted 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.

(g) Oral Argument. An amicus curiae will be permitted to participate in oral argument only at the invitation of the Court.

### **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 an action may be referred to only when the binding or preclusive effect of that action (such as via the application of the law-of-the-case doctrine), rather than its quality as precedent, is relevant.~~ A copy of the any unpublished action referred to must 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 must shall promptly file notice with the Clerk, ~~by letter, with a copy to all other parties, setting forth the citation(s) and serve all other parties.~~ The notice shall set forth the citation(s) to the authority or include a copy of the supplemental authority ~~if the authority it is not readily available in a Reporter system, the party must provide the Clerk with a copy.~~ The letter notice must shall refer to the page of the brief or to a point argued orally to which each citation pertains, and ~~the letter must shall~~ state without argument the reasons for the supplemental citation(s). Any response must shall be made promptly and must shall be similarly limited.

## **RULE 31. FILING AND SERVICE OF BRIEFS**

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

(1) the appellant ~~must~~ shall serve and file a brief not later than 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. Briefing deadlines may be ~~otherwise~~ scheduled by the Court when the Court is required to resolve a dispute in connection with a motion under Rule 10(b);

(2) the Secretary ~~must~~ 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 ~~an appellant~~ a party fails to file a brief within the time provided by this ~~r~~Rule, or within the time as extended, the Court, on its own initiative or on motion by ~~the Secretary~~ a party, may take appropriate action, to include dismissal of the appeal or sanctions. ~~If the Secretary fails to file a brief, the Court may take appropriate action.~~

## **RULE 32. FORM OF BRIEFS, APPENDICES, AND OTHER ~~PAPERS~~ DOCUMENTS**

**(a) Format.** Briefs, appendices, and other ~~papers~~ documents ~~must~~ shall be printed or typewritten; ~~and may be produced by any copying process that produces a clear black image on white opaque paper; onion skin paper is not permitted except for papers sent by international mail.~~ Pages ~~must~~ 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 ~~must~~ shall be 13-point or larger. If a monospaced typeface is used, it ~~must~~ shall not contain more than 10½ characters per inch. Text ~~must~~ shall be double-spaced (except that motions and responses under Rule 27(c) (Motions for Procedural Orders) may be single-spaced), ~~but~~ Quotations more than two lines long and footnotes may 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.

~~e) Covers. Covers are not required on briefs or appendices but, if used, they should be blue for the appellant, red for the Secretary, green for an amicus curiae or an intervenor, gray for any reply brief, and white for an appendix if separate from the brief. See Form 2 (Sample Brief Cover).~~



~~(d) Binding.~~ All papers, including any Record of Proceedings, that contain 30 or fewer pages must be stapled at the upper left-hand corner. All papers, including any Record of Proceedings, that contain more than 30 pages must be bound on the left side in a manner that fully secures the pages, does not obscure the text, and allows the document to lie flat (for example, spiral binding).

~~(e)(c) Caption.~~ A paper document addressed to the Court must 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 paper document. Briefs must begin with a separate caption page.

~~(f)(d) Page Numbers.~~ Pages must 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, Tables of Citations, certificate of service, and any appendix containing statutes, rules, regulations, and unpublished authorities.~~

~~(g)(e) Length and Copies of Briefs.~~ ~~(1) Normal Course.~~ 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 Citations; any appendix containing superseded statutes, rules, and regulations, and unpublished authorities; and the certificate of service.~~ An original and three copies of all papers must shall be filed with the Clerk, but the Court may require that additional copies be furnished. But see Rule 25 (b)(2) (fax filings).

~~(2) Contingency Planning.~~ See Rule 37 for responsibilities of parties regarding maintaining copies of papers submitted to the Court for use in the event that the Court cannot access its regular files.

~~(h)(f) Identification.~~ The signature, printed name, address, and telephone number of the representative of record (See Rule 46 (e)(~~d~~)(1) (Practitioner defined)) or of a self-represented party must shall appear on a brief or other document submitted for filing to the Clerk.

~~(i)(g) Noncompliance.~~ See Rule 45(~~k~~)(j)(Noncompliant Submissions).

### RULE 33. STAFF CONFERENCE

~~(a) Participation.~~ The Court may ~~direct~~ 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 ~~following such a conference,~~ the Court will enter an appropriate order to control future proceedings. This rule does not prevent the pParties are strongly encouraged to from discussing settlement; or alternative disposition of the matters on appeal. agreeing to dismiss the appeal before argument or submission of the case.

**(b) 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 5 pages, subject to the requirements of Rule 32(b); the 5-page limit does not include submission of pertinent material in the Record Before the Agency;

(3) Submissions shall be emailed to the Central Legal Staff at CLS-Calendar@uscourts.cavc.gov, or faxed to the CLS fax number 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 the Central Legal Staff, the specific manner of service (fax or e-mail), 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.

**(b)(d) Nondisclosure to Judges.** Statements made during a conference may not be disclosed to a judge of the Court as having been made during a conference unless the parties agree in writing to such disclosure. This subsection does not apply to a conference that has failed to resolve disciplinary actions or judicial review of a dispute about the content of the Record Before the Agency or Record of Proceedings or subsequent EAJA applications.

**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 United States 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. Oral argument normally is not granted on nondispositive matters. The Court may order oral argument on its own initiative or on a party's motion filed not later than 14 days after the reply brief is due or filed, whichever is

~~sooner. A motion for oral argument may not be included in any brief. A party may request that oral argument be held at a particular law school in the United States.~~

**(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.

**(b)(c) Notice of Argument; Postponement; Additional Time.** The Clerk ~~will~~ 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, ~~and the judge or judges assigned to the case.~~ Where possible, ~~the Clerk will schedule oral argument so as to minimize inconvenience to the parties.~~ A request for postponement of the argument or for the allowance of additional time ~~must~~ shall be made by motion filed reasonably in advance of the date fixed for argument and ~~must~~ shall contain a showing of good cause.

**(c)(d) Order and Content of Argument.** The appellant will generally open and conclude the argument. A party ~~will not be permitted to read at length from briefs, records, or authorities.~~ In argument on motions, the movant generally will open and conclude the argument.

**(d)(e) Nonappearance of Parties.** If any party fails to appear to present argument, the Court ~~will~~ may hear argument by any other party who is present.

**(e)(f) Physical Exhibits.** A party who wishes to use physical exhibits other than documents ~~must~~ 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 ~~must~~ 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 Web site at [www.uscourts.cavc.gov](http://www.uscourts.cavc.gov) or by request.**

## **RULE 35. MOTIONS FOR RECONSIDERATION, OR FOR DECISION BY A PANEL OR BY THE FULL COURT**

### **(a) Motion for Reconsideration.**

(1) *Permitted.* A party in a case dismissed by the Clerk pursuant to Rule 45~~(f)~~(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 for reconsideration by the single judge: or for panel review, or, in a single motion for reconsideration by a single judge or for panel review ~~should single-judge reconsideration~~

be denied. A party in a case decided by a panel may move for reconsideration by the panel- or for full Court review or, 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 denial of a motion under subsection (b) or (c) for a panel decision or a full Court decision, as the case may be.

**(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 Decision.** Subject to the requirements of subsections (d), (e), and (f), a party may move for a decision by the full Court –

~~(1) in the first instance, or~~

~~(2)~~(1) after a panel has decided a case, or

~~(3)~~(2) after a panel has denied a motion for a panel decision or for reconsideration.

A motion for a decision by the full Court in a case decided only by a single judge is not permitted. Motions for a full-Court decision 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.

**(d) Time for Motion.**

~~(1) Clerk or single-judge action. A motion for Clerk reconsideration, a motion for single-judge reconsideration, a motion for a panel decision, or a motion for both single-judge reconsideration and a panel decision, Any motion under this Rule must 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 Clerk's or single-judge's dispositive action: for which reconsideration, panel review, or full-Court review is sought. The filing of a motion for single-judge reconsideration does not toll the running of the time period set forth in the preceding sentence; for filing a motion for panel or full-Court review. †Thus, any motion for a panel decision or full-Court review that is not filed within that same time period will be untimely.~~

~~(2) *Panel action.* A motion for panel reconsideration, a motion for a full-Court decision, or a motion for both panel reconsideration and a full-Court decision, must 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 initial panel decision or order denying a motion for a panel decision. The filing of a motion for panel reconsideration does not toll the running of the time period set forth in the preceding sentence; thus, any motion for a full-Court decision that is not filed within that same time period will be untimely.~~

~~(3) *Full-Court consideration in the first instance.* A motion for consideration of a case by the full Court in the first instance must be filed not later than 30 days after the date on which~~  
~~(A) the appellant's brief was served in an appeal or~~

~~(B) the petitioner's petition was filed in a petition for extraordinary relief.~~

~~(4) *Full-Court reconsideration.* A motion for reconsideration of a case decided by the full Court must 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 initial full-Court decision.~~

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

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

(2) a motion for a panel decision 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, result in an outcome of the case that is reasonably debatable, and,

~~(2)~~(3) a motion for a full-Court decision ~~must~~ 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; Copies.** Except by the Court's permission, a motion or response (including any supporting memorandum or brief) under this ~~r~~Rule may not exceed 15 pages. The motion ~~must~~ shall otherwise comply with Rules 25 (Filing and Service) and 27 (Motions), but it need not indicate whether it is opposed. ~~A motion for a full-Court decision, and any response, must be filed in an original and 7 copies.~~

**(g) Response; Action on the Motion.** No response to a motion under this ~~r~~Rule may be filed unless it is requested by the Court, but a motion for a panel or full-Court decision or a motion for reconsideration under section (a)(1) 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 a panel decision will be referred to a panel. A motion for a full-Court decision 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 one half of the judges in regular active service who are not disqualified.

### **RULE 36. ENTRY OF JUDGMENT**

Unless the Court orders otherwise, ~~the~~ judgment will be entered on the docket 21st day after the later of

**(a)** the date on which the time allowed in Rule 35(d) (Time for Motion) ~~(1), (2) or (4)~~ has expired, or

**(b)** the date on which the Court has denied a motion for reconsideration or has denied a motion for full-Court decision after a panel decision, if no other timely motion under Rule 35 (Motions for Reconsideration or For Decision by Panel or Full Court) is pending. ~~Entry of the~~ judgment begins the 60-day time period for any appeal to the United States Court of Appeals for the Federal Circuit: and will be reflected on the docket accordingly.

### **RULE 37. ~~CONTINGENCY PLANNING~~ RETENTION REQUIREMENTS FOR DOCUMENTS**

~~(a) General. In the event that the Court's regular files become inaccessible due to an unforeseen contingency, the following responsibilities are imposed on parties before the Court in order to be able to provide the Court with replacement copies of essential papers filed in the cases before the Court.~~

**(a)(1) Represented Parties.** When the appellant or petitioner is represented, the representative ~~must~~ shall retain copies of the Record Before the Agency, ~~and all papers~~ documents filed with the Court by the parties or any intervenor or amicus curiae, ~~and of~~ all actions issued by the Court.

**(b)(2) Self-Represented Parties.** When the appellant or petitioner is self-represented, the Secretary ~~must~~ shall retain copies of the Record Before the Agency, ~~and all papers~~ documents filed with the Court by the parties or any intervenor or amicus curiae, ~~and of~~ all actions issued by the Court. ~~However, if retention of a copy of the Record Before the Agency is not feasible, the Secretary~~

~~must maintain the capability to reconstruct the Record Before the Agency from the claims file and to certify the accuracy of the reconstructed Record Before the Agency.~~

~~(c)(b) **Application of Rule; Duration of Retention.** This Rule is applicable to all cases in which all proceedings have not been concluded as of the date of the adoption of this Rule, and to all cases docketed thereafter. Documents described in subsections (a) and (b) will shall be retained for not less than one year after all proceedings are concluded, including those concerning attorney fees and expenses. (see Rule 39); are concluded.~~

(d) On request of the Court, original documents shall be provided for review.

### **RULE 38. 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).

### **RULE 39. ATTORNEY FEES AND EXPENSES**

**(a) Application.** An application pursuant to 28 U.S.C. § 2412(d) for award of attorney fees and/or other expenses in a case ~~must~~ shall be submitted for filing with the Clerk not later than 30 days after mandate. ~~the Court's judgment becomes final pursuant to 38 U.S.C. § 7291(a) (which occurs 60 days after entry of judgment under Rule 36) or, consistent with Rule 41(b), upon the issuance of an order on consent dismissing, terminating, or remanding a case. See Rule 41(Mandate).~~ The time (which is set by the statute) for filing an application under this subsection may not be extended. See Rule 25 (Filing and Service). The application ~~must~~ shall include the fees and expenses claimed for the submission of that application.

**(b) Response.** Not later than 30 days after the date on which an application described in subsection (a) or a supplemental application described in subsection (c) or (d) is filed, the Secretary ~~must~~ shall file submit for filing and serve a response to that application or supplemental application. The response ~~must~~ shall state which elements of the application or supplemental application are not contested and explain the Secretary's position on those elements that are contested.

**(c) Reply.** Not later than 30 days after service of any response by the Secretary, the applicant may ~~file~~ submit for filing and serve a reply addressing those matters contested by the Secretary. Any reply involving a supplemental application described in subsection (d) ~~must~~ shall include a supplemental application that includes the fees and expenses claimed for the submission of that reply.

**(d) Supplemental Application.**

(1) *General.* Except as provided in paragraphs (2) or (3) of this subsection and in subsection (c), a party whose application described in subsection (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 subsection (a) application.

(2) *Appeals to the Federal Circuit.* When an action on an application appealed to the United States 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.

(3) *Appeals to the 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.

(4) *Preparation costs.* A supplemental application ~~must~~ shall include the fees and expenses claimed for the submission of that supplemental application.

(5) *Timing of supplemental responses and replies.* When a supplemental application is filed under paragraph (1), (2) or (3) of this subsection, the Secretary may file a response within 20 days; and, if filed, the applicant may file a reply within 10 days. Court will issue an order specifying the timing of responses and replies, in order to ensure that all previous applications have been resolved before requiring a response to the next application.

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

**(f) Form; Copies and Length.** All papers ~~documents~~ filed ~~submitted~~ for filing under this rRule ~~must~~ shall conform to the requirements set forth in Rule 32 (Form of Briefs, Appendices and Other Documents), except that no filing an application or response may not exceed 20 pages, not counting any appendix containing pages necessary to meet the 28 U.S.C. § 2412(d) application content requirements. ~~See also Rule 37 (Contingency Planning).~~

**(g) Multiple Representatives.** Applications for EAJA fees in cases in which reimbursement is sought for the work of more than one attorney, 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 attorney who did the work and must be signed by the lead counsel, who will be responsible for its accuracy and completeness. The lead counsel 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 counsel and (2) considered and eliminated all time that is excessive or redundant.

(h) Additional Requirements for Non-Attorney Representatives. A non-attorney representative must include in the representative's application for fees a statement of the representative's education, 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) ~~for the~~ to study of; and ~~advise~~ advise to the Court on possible changes to; Rules of the Court, either sua sponte or at the request of the Court. Recommendations from the Committee are submitted to the Chief Judge through the Clerk.

**(b) Appointment.** The Chief Judge, with the concurrence of the Court, 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 (Department). ~~The membership of the Committee as of the date of the adoption of this rule will continue under this rule.~~

**(c) Terms.**

(1) *Length of terms.* ~~The term of a member continued under subsection (b) will expire on June 30, 2003, unless, on that date, the member (A) has served on the Committee for less than three years or (B) is serving as the Chair. Except as provided in paragraph (3) of this subsection, each member appointed thereafter and each new Chair appointed 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 the Department will end automatically at such time as the person is no longer so employed.~~

(2) *Reappointment.* ~~Except as otherwise provided in the next two sentences, a member may serve three terms consecutively; a break in service permits a new series of three consecutive terms. The person serving as the Chair on January 1, 2003, will be permitted to so serve to the end of his or her current term as the Chair and, upon the end of that term, may be appointed as the Chair, or as a member, of the Committee for one additional consecutive term only. 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. If a member or the Chair holds over after his or her term expires, the holdover period shall be part of the successor's term.

(3) *Resignation or removal.* A member or the Chair of the Committee may resign from the Committee, or the Chief Judge, with the concurrence of the Court, may, due to the disability of the member or the Chair or other good cause, revoke an appointment at any time; the successor appointed will serve the unexpired term of his or her predecessor. Time served as a successor to a member or the Chair whose position became available due to death, resignation, or revocation of appointment will not be considered a "term" for the purposes of paragraph (2) of this subsection.

#### **RULE 41. ISSUANCE OF MANDATE**

**(a) Date of Issuance Mandate.** The mandate of the Court (which is executed by the Clerk as a ministerial action and is merely evidence that a judgment has become final) will ~~issue no earlier than 60 days~~ be on the 60th day after the date of ~~entry of~~ the judgment pursuant to Rule 36 (Judgment), ~~unless the time is shortened or extended by order otherwise directed by the Court.~~ If a timely ~~N~~notice of Appeal to the United States Court of Appeals for the Federal Circuit is filed with the Clerk, the mandate of the Court will issue in accordance with 38 U.S.C. § 7291(a).

**(b) Mandate in Consent Dispositions.** An order on consent (1) dismissing, terminating, or remanding a case or (2) granting or dismissing an uncontested application for attorney fees and expenses will also constitute the final judgment and mandate of the Court.

#### **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, an appeal, petition, or application for attorney fees and expenses may be dismissed by the Clerk 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, the Notice of Appeal may be filed within the time limit in Rule 4 (Filing of Appeal: Docketing; Copy of Board Decision) by any person permitted by law to do so.

(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 assure 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 ~~must~~ 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 ~~must~~ 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 Court is always open for the purpose of receiving a facsimile transmission of any paper, except a brief. (see Rule 25(a)(2)).~~ The office of the Clerk, ~~with the Clerk or a deputy clerk in attendance,~~ 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 1(c) for electronic filing.

**(b) The Docket; Calendar; Other Records Required.** The Clerk ~~will~~ shall –

(1) maintain a docket containing a record of all ~~papers~~ 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 awaiting 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 entry of the judgment, or issuance of the mandate, the Clerk ~~will~~ 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 ~~will have custody~~ is custodian of the records and ~~papers~~ documents of the Court. The Clerk ~~will~~ shall not permit any original record or ~~paper document~~ to be taken from the Clerk's custody except as authorized by ~~the Supreme Court of the United States, the United States Court of Appeals for the Federal Circuit, or the Court law.~~ Any original papers transmitted as part of the Record of Proceedings will be returned upon disposition of the case. The Clerk will shall preserve retain, archive, or otherwise dispose of documents submitted for filing, as required or otherwise permitted by law. copies of briefs and appendices and other printed papers filed.

**(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 ~~will~~ shall maintain in the Public Office and on the Court Web site 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) stay a case or 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) consolidate appeals;

(6) withdraw or substitute an appearance; or;

~~(7) withdraw or substitute an appearance; or;~~

~~(7)~~(8) correct a brief or other paper document.

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

~~**(h) Applications for Attorney Fees and Expenses.** The Clerk may grant an application for attorney fees and expenses filed pursuant to 28 U.S.C. § 2412(d) when the Secretary does not contest the application, and may grant joint motions to dismiss such applications.~~

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

~~**(j)**~~**(k)** **Nonconforming Papers: Noncompliant Submissions.** Except where return of a paper document is required by these rRules 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~~(e)~~(g)(Motions Prohibited), if the Court receives any paper document that does not conform to these rRules, the Clerk will receive, but not file, the paper submission; however, if it is a jurisdiction-

conferring paper document, ~~the paper~~ it will be filed notwithstanding any other provision of these ~~r~~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 Board of Judges, stay proceedings for a reasonable time in order to permit submission of a conforming paper document. Failure to submit such conforming paper 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.**

#### **(a)(1) Admission of attorneys to bar of court.**

~~(1)~~(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).

~~(2)~~(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 ~~(1)~~(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.

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

~~(1)~~(A) under the direct supervision (including presence at any oral argument) of an attorney admitted to the bar of the Court, or

~~(2)~~ (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 —

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

~~(B)(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.

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

~~(d)(5)~~ (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. ~~Such a notice by a practitioner must list, by docket number and title, each pending case in which that practitioner is a representative in the Court.~~ Absent such notice, the delivery of documents to the address most recently provided by that person will be fully effective.

~~(e) 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.~~

#### ~~(d)~~(b) Representation Requirements.

~~(2)~~ (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 the practitioner's retainer and any fee agreement for representation before the Court.

(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 (RBA), a notice of appearance. The Secretary may substitute its 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.

~~No practitioner may appear as a representative of a party or amicus in any proceedings in a case, without first filing=~~

~~(A) a written notice of appearance in the detail set out in Form 3 in the Appendix of Forms, served in compliance with Rule 25; and unless the representation is without charge to that party, a copy of~~

~~the fee agreement if the practitioner is representing an appellant, a petitioner, or intervenor. A copy of the agreement must be served on the Secretary. An appearance may not be made in the name of a law firm or other organization.~~

(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).

~~(3) Filings by non-attorney practitioner. Each notice of appearance and pleading filed by a non-attorney practitioner must include the name, address, and signature of the responsible supervising attorney under subsection (b)(1) or the identification of the employing organization under subsection(b)(2).~~

~~(4) Withdrawal. If another practitioner has previously entered an appearance on behalf of a party, a practitioner may withdraw from a case by filing a notice stating that the party has consented to the withdrawal. 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) avers to 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.~~

(D) Appearance by Multiple Attorneys. In cases where multiple attorneys submit for filing a notice of appearance, one attorney must be designated as lead counsel.

(E) Appearance by an Organization Prohibited. With the exception of the Veterans Consortium Pro Bono Program (Consortium), an appearance may not be made in the name of a law firm or other organization.

~~(e)~~ (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).

~~(f)~~ (G) Appearance by Law Students.

~~(1)~~ (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.

~~(2)~~ (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.

~~(3)~~ (iii) Conditions of appearance. In order to make an appearance pursuant to this Rule, the student shall –

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

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

~~(C)~~ (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);

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

~~(E)~~ (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;

(F)(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).

~~(d)(6) *Limited appearance.* Paragraphs (2) through (4) of this subsection do not apply when a practitioner files a Notice of Appeal on behalf of an appellant and specifies that the appearance is limited to that filing. The practitioner must include his or her name, address, and telephone number on such a Notice of Appeal.~~

(2) *Limited appearance.*

(A) Notice of Appeal. Any practitioner appearing for the limited purpose of submitting for filing with the Court a Notice of Appeal 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 the Consortium 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). A limited appearance and stay request may be presented in a single motion for stay.

**(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;

(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 sent 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 has 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) Veterans Consortium Pro Bono Program(Consortium). Withdrawal is automatic upon submission for filing of a notice that the Consortium will not take the case.

## **RULE 46.1. SELF-REPRESENTATION**

Any appellant, petitioner, or intervenor may be self represented before the Court. A self-represented party ~~must~~ 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~~)(~~4~~)-(b)(1)(B)(filing by inmate), 28(~~i~~)(e) (informal brief), 32(~~h~~)(f) (identification ~~in~~ brief), 33(a) (staff conference), and 45 (~~j~~)(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;

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

~~Consideration of good cause under clauses (2) and (3) of this subsection may take into account the overall caseload of a judge or judges.~~

**(b) Filing and Service of Papers Documents.** Expedited proceedings will be scheduled as directed by the Court. Unless otherwise ordered, the appellant's principal brief ~~must~~ shall be served and ~~filed~~ submitted for filing not later than ~~25~~20 days after the Record Before the Agency has been served on the appellant; the Secretary's brief ~~must~~ shall be served and ~~filed~~ submitted for filing not later than ~~15~~ 20 days after service of the appellant's brief; and any reply brief ~~must~~ shall be served and ~~filed~~ submitted for filing not later than 10 days after ~~service~~ filing of the Secretary's brief. Unless otherwise ordered, the time to ~~file~~ submit the Record of Proceedings for filing under 28.1(b)(a)(3) (Time for Filing) is reduced to 7 days.

**(c) Form and Length of Briefs.** Briefs ~~filed~~ submitted for filing under this rRule ~~must~~ shall comply with Rules 25 (Filing and Service), 28 (Briefs), and 32 (Form of Briefs, Appendices and Other Documents), except that principal briefs ~~must~~ shall be limited to 15 pages (~~10 pages, if faxed; see Rule 25~~), reply briefs ~~must~~ shall be limited to 7 pages, and a ~~t~~Table of ~~a~~Authorities is not required.

~~(Rule 47(d) has been eliminated.)~~

## **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 (Designation of 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 ~~must~~ shall make immediate application therefor, 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 ~~must~~ 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, ~~must~~ 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 rRule 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.