

RULE 31. FILING AND SERVICE OF BRIEFS

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

(1) the appellant shall serve and submit for filing a brief not later than 60 days after the expiration of the 14-day period provided under Rule 10(b) (Disputes-Record Before the Agency) for the parties to notify the Court of any unresolved dispute regarding the Record Before the Agency. Briefing deadlines may be 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 shall serve and submit for filing a brief not later than 60 days after service of the appellant's brief; and

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

(b) Briefing Schedule After Staff Conference. Unless otherwise ordered,

(1) the appellant shall serve and submit for filing a brief not later than 45 days after the date the staff conference is conducted under Rule 33;

(2) the Secretary shall serve and submit for filing a brief not later than 45 days after service of the appellant's brief; and

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

(c) Effect of Failure to File. If a party fails to submit for filing a brief within the time established by these Rules, or within any time otherwise set by the Court, appropriate action may be taken to include dismissal of the appeal or imposition of judicial sanctions.

RULE 33. STAFF CONFERENCE

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

(b) Process. In cases scheduled for staff conferences:

(1) No later than 14 days prior to the staff conference, the appellant shall submit to the Secretary and the Court's 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) The appellant shall submit the summary of the issues by facsimile (fax) or e-mail; the appellant must also file 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; and the specific manner of service (fax or e-mail) and the names and addresses of the persons served;

(4) E-mail submissions shall be sent to the Central Legal Staff at CLS-Calendar@uscourts.cavc.gov.; fax submissions shall be sent to the CLS fax number at (202) 585-3951;

(5) The representatives of the parties shall 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.

(c) Briefing Schedule After Staff Conference. In cases where a staff conference has been conducted, the briefing schedule in Rule 31(b) shall apply.

(d) Nondisclosure to Judges. Statements made during a conference may not be disclosed to a judge of the Court unless the parties agree in writing to such disclosure. This subsection does not apply to disciplinary actions under this Court's Rules of Admission and Practice or judicial review of a dispute about the content of the Record Before the Agency or Record of Proceedings or subsequent applications for attorneys fees and expenses 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 shall be submitted for filing with the Clerk not later than 30 days after mandate. 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 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 shall submit for filing and serve a response to that application or supplemental application. If the Secretary disputes the amount of fees and expenses sought, the parties shall consult in good faith to seek expeditious resolution of the matter. The response 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 submit for filing and serve a reply addressing those matters contested by the Secretary. Any reply involving a supplemental application described in subsection (d) 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 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 submit for filing and serve a response within 20 days, and if filed, the applicant may submit for filing and serve a reply within 10 days.

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

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

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

(h) Multiple Representatives. Applications for attorneys fees and expenses 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 lawyer 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.

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