



**Fiscal Year 2019 Annual Report  
October 1, 2018, to September 30, 2019  
United States Court of Appeals for Veterans Claims**

1. *The number of appeals filed with the Court:*<sup>1</sup> **8,470 appeals** (27% pro se at the time of filing)
  
2. *The number of petitions filed with the Court:* **280 petitions** (39% pro se at the time of filing)
  
3. *The number of applications filed with the Court under the Equal Access to Justice Act (EAJA), section 2412 of title 28:* **5,948 EAJA applications**
  
4. *The total number of dispositions*<sup>2</sup> *by each of the following for FY 2019:*
  - (A) **The Court as a whole**
    - 7,261 appeals (12% pro se at time of disposition)
    - 304 petitions (37% pro se at time of disposition)
    - 5,332 EAJA applications
    - 170 requests for reconsideration/panel decision<sup>3</sup>
      - 139 appeals*
      - 31 petitions*
    - 13,067 total dispositions**

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<sup>1</sup> Under 38 U.S.C. § 7288, the United States Court of Appeals for Veterans Claims (Court) is required to submit an annual report to the U.S. Senate Committee on Veterans' Affairs and the U.S. House of Representatives Committee on Veterans' Affairs that includes the elements enumerated in this report.

<sup>2</sup> "Dispositions" include each resolution of a matter, including decisions on appeals, petitions, EAJA applications, and requests for reconsideration/panel decision.

<sup>3</sup> The number of requests for reconsideration by the Court as a whole, including a single judge of the Court, a multi-judge panel of the Court, and the full Court.

4. *The total number of dispositions by each of the following for FY 2019 (continued):*

**(B) The Clerk of the Court<sup>4</sup>**

5,411 appeals

2 petitions

5,304 EAJA applications

*There were no requests for reconsideration of the Clerk's orders*

**10,717 total dispositions**

**(C) A single judge of the Court**

1,802 appeals

298 petitions

24 EAJA applications

109 requests for reconsideration

*88 appeals*

*21 petitions*

**2,233 total dispositions**

**(D) A multi-judge panel of the Court**

47 appeals

4 petitions

4 EAJA applications

53 requests for panel decision following a single-judge decision/panel reconsideration

*45 appeals*

*8 petitions*

**108 total dispositions**

**(E) The full Court**

1 appeal

0 petitions

0 EAJA applications

8 requests for a full court decision following a panel decision

*6 appeals*

*2 petitions*

**9 total dispositions**

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<sup>4</sup> This number generally includes matters resolved through agreement of the parties, often with the aid of staff mediation conferencing.

5. *The number of each type of disposition by the Court, including settlement, affirmance, remand, vacation, dismissal, reversal, grant, and denial:*

## APPEALS

TYPE OF DISPOSITION	CLERK <sup>5</sup>	SINGLE JUDGE	THREE-JUDGE PANEL	FULL COURT	TOTAL
<i>Affirmed</i>	0	490	20	0	<b>510</b>
<i>Affirmed or dismissed in part, reversed or vacated and remanded in part</i>	2,843	177	3	0	<b>3,023</b>
<i>Reversed or vacated and remanded in whole or in part</i>	0	935	18	1	<b>954</b>
<i>Remanded</i>	1,953	4	1	0	<b>1,958</b>
<i>Dismissed for lack of jurisdiction or timeliness</i>	5	177	3	0	<b>185</b>
<i>Dismissed for default</i>	275	4	0	0	<b>279</b>
<i>Dismissed voluntarily</i>	335	15	2	0	<b>352</b>
<b>TOTAL</b>	<b>5,411</b>	<b>1,802</b>	<b>47</b>	<b>1</b>	<b>7,261</b>

## PETITIONS

TYPE OF DISPOSITION	CLERK	SINGLE JUDGE	THREE-JUDGE PANEL	FULL COURT	TOTAL
<i>Extraordinary relief granted</i>	0	0	3	0	<b>3</b>
<i>Extraordinary relief denied</i>	0	113	0	0	<b>113</b>
<i>Extraordinary relief dismissed</i>	0	123	1	0	<b>124</b>
<i>Dismissed for default</i>	0	0	0	0	<b>0</b>
<i>Dismissed voluntarily</i>	2	62	0	0	<b>64</b>
<b>TOTAL</b>	<b>2</b>	<b>298</b>	<b>4</b>	<b>0</b>	<b>304</b>

<sup>5</sup> Please see footnote 4.

5. *The number of each type of disposition by the Court, including settlement, affirmance, remand, vacation, dismissal, reversal, grant, and denial (continued):*

**E A J A**

TYPE OF DISPOSITION	CLERK	SINGLE JUDGE	THREE-JUDGE PANEL	FULL COURT	TOTAL
<i>Applications after decisions in appeals</i>	5,304	24	2	0	<b>5,330</b>
<i>Granted</i>	5,299	16	2	0	<b>5,317</b>
<i>Denied</i>	0	0	0	0	<b>0</b>
<i>Dismissed</i>	5	8	0	0	<b>13</b>
<i>Applications after decisions in petitions</i>	0	0	2	0	<b>2</b>
<i>Granted</i>	0	0	0	0	<b>0</b>
<i>Denied</i>	0	0	2	0	<b>2</b>
<i>Dismissed</i>	0	0	0	0	<b>0</b>
<b>TOTAL</b>	<b>5,304</b>	<b>24</b>	<b>4</b>	<b>0</b>	<b>5,332</b>

6. *The median time from filing an appeal to disposition (i.e., time from the veteran filing an appeal until initial dispositive action of the Court) by each of the following:*

- (A) **The Court as a whole:** The median time from filing an appeal to disposition of the case by the Court, as a whole, is **250 days (8.3 months)**. This involves pre-chambers procedural activity (to include record dispute resolution, staff mediation conferencing, briefing, screening, time for pro se appellants to seek counsel, and requests for additional time from the parties) and then disposition by a judge or a panel of judges (to include consideration of any requests for class certification and class action), or disposition by the Clerk of the Court
- (B) **The Clerk of the Court:** The median time from filing an appeal to disposition of the case by the Clerk is **218 days (7.3 months)**. This involves pre-chambers procedural activity (to include record dispute resolution, staff mediation conferencing, briefing, screening, time for pro se appellants to seek counsel, and requests for additional time from the parties) and then disposition by the Clerk.

6. *The median time from filing an appeal to disposition (i.e., time from the veteran filing an appeal until initial dispositive action of the Court) by each of the following (continued):*
- (C) **A single judge of the Court:** The median time for disposition of a single-judge decision once it has been assigned to chambers is **69 days (2.3 months)**. Activity once a matter is assigned to chambers includes judges and law clerks collaborating to draft a decision and circulating all draft decisions to all judges for a one-week comment period. The median time from filing an appeal to disposition by a single judge, which includes pre-chambers procedural activity, is **435 days (14.5 months)**. Pre-chambers procedural activity includes record dispute resolution, staff mediation conferencing, briefing, screening, time for pro se appellants to seek counsel, and requests for additional time from the parties.
- (D) **Multiple judges of the Court** (including a multi-judge panel of the Court or the full Court): The median time for disposition of a multi-judge panel decision once it has been assigned to a panel is **289 days (9.6 months)**. Activity once a matter is assigned to a panel includes judges collaborating with each other to determine the disposition and assign writing responsibilities; considering any requests for class certification and class action; possible orders for additional briefing; drafting the decision; circulating it to the panel for concurrence or the opportunity to write separately; and circulating all draft decisions to all judges for a one-week comment period. If oral argument is held, scheduling the argument adds a minimum of 45 days to the case-processing time. The median time from filing an appeal to disposition by a multi-judge panel, which includes pre-chambers procedural activity, is **682 days (22.7 months)**. Pre-chambers procedural activity includes record dispute resolution, staff mediation conferencing, briefing, screening, time for pro se appellants to seek counsel, and requests for additional time from the parties. In addition, scheduling a case for oral argument, which adds a minimum of 45 days, and additional time for supplemental briefing, contributes to the time for panel case disposition.
7. *The median time from filing a petition to disposition by the Court:* **48 days** (1.6 months)
8. *The median time from filing an EAJA application under section 2412 of title 28 to disposition by the Court:* **41 days** (1.4 months)
9. *The median time from the completion of briefing requirements by the parties to disposition by the Court:* **120 days** (4 months)  
*Note: This time includes approximately two weeks to raise issues relating to finalizing the Record of Proceedings (a compilation of all documents relevant to the appeal) in every case. If an objection to the Record of Proceedings is filed, resolution can take several more weeks.*

10. *The number of oral arguments before the Court:* **37 held** (49 scheduled, 10 settled, 2 cancelled)

11. *The number of cases appealed to the United States Court of Appeals for the Federal Circuit:* **99 total cases**  
 82 appeals  
 17 petitions  
 0 EAJA applications

12. *The approximate number and status of appeals and petitions and EAJA applications pending with the Court as of the end of the fiscal year:*

	APPEALS & PETITIONS	EAJA APPLICATIONS	TOTAL
<i>Pre-chambers procedural activity</i> <sup>6</sup>	6,470	1,038	<b>7,508</b>
<i>Pending decision by a judge or panel</i>	325	6	<b>331</b>
<i>Post decision</i> <sup>7</sup>	819	6	<b>825</b>
<i>Pending a motion for reconsideration or panel</i>	14	0	<b>14</b>
<i>Pending entry of judgment</i>	221	2	<b>223</b>
<i>Pending entry of mandate</i>	503	4	<b>507</b>
<i>On appeal before the Federal Circuit</i> <sup>8</sup>	81	0	<b>81</b>
<b>TOTAL</b>	<b>7,614</b>	<b>1,050</b>	<b>8,664</b>

13. *The number of cases pending with the Court more than 18 months as of the end of the fiscal year:* **518 total cases**  
 513 appeals  
 5 petitions

<i>Pre-chambers procedural activity</i> <sup>9</sup>	93
<i>Pending decision by a judge or panel</i>	50
<i>Post decision</i>	375

<sup>6</sup> Pre-chambers procedural activity, which occurs during the period of time from filing an appeal to assignment of the appeal to chambers, includes record dispute resolution, staff mediation conferencing, briefing, screening, time for pro se appellants to seek counsel, and requests for additional time from the parties.

<sup>7</sup> This number reflects cases pending during the time required for judgment, mandate, and EAJA (if applicable) as well as cases on appeal to the Federal Circuit.

<sup>8</sup> This represents the number of cases that were pending on appeal to the Federal Circuit at the end of FY 2019, which is different than the number of notices of appeal filed during FY 2019 reported in element 11.

<sup>9</sup> Delays associated with these cases are due primarily to parties' requests for stays, requests for additional time from the parties, or complexity of the case.

***14. A summary of any service performed for the Court by a recalled retired judge of the Court:***

Recalled retired (Senior) judges issued 115 single-judge decisions. In addition, Senior judges participated on one panel decision, one three-judge panel for reconsideration of a single-judge decision; and decided three motions. One Senior judge was also involved in committee work for the Court.

***15. An assessment of the workload of each judge of the Court, including consideration of the following:***

- (A) The time required of each judge for disposition of each type of case.***
- (B) The number of cases reviewed by the Court.***
- (C) The average workload of other Federal appellate judges.***

As reflected in the responses to elements 1-13 above, each active judge<sup>10</sup> on the Court carries a substantial workload. The judges' primary responsibilities are rendering decisions on appeals, petitions, related motions (e.g., procedural motions and motions for reconsideration or for panel review), applications filed pursuant to 28 U.S.C. § 2412 (EAJA), and a new and growing class action caseload. The judges are also responsible for the general direction and oversight of the operations of the Court and serve on various committees in furtherance of those obligations.

The number of new cases filed at the Court in FY 2019 increased dramatically over the previous year, due in large part to the substantial increase in final decisions issued by the Board of Veterans' Appeals (Board) during the same period – the Board increased production of final decisions from 85,000 to 95,000. Specifically, over the course of FY 2019, the Court averaged 706 appeals filed per month, and reached a high of 741 appeals filed in August 2019. These numbers are significantly larger than any other in the 30-year history of the Court. In addition, the Court received five requests for class certification and class action, and certified two classes. As the Board sustains or even further increases production, the Court sees the potential to receive an even greater number of appeals in the future, and average monthly case filings for the first quarter of FY 2020 are already up to 776 new appeals. The Court has kept pace with this historic increase in the number of appeals in large part due to a significant increase in the percentage of cases that are resolved through the mandatory pre-briefing mediation conferences conducted by Court staff attorneys.

In FY 2019, the Court averaged 166 cases (appeals and petitions) decided on the merits per active judge. For that same time period, the average number of merits decisions decided per active judge in the 13 Circuit Courts of Appeals ranged from 38 to 237. The Court received 972 filings per active judge, based on the 8,750 cases (8,470 appeals and 280 petitions) filed in FY 2019. The number of filings per active judge for the circuit courts of appeals ranged from 84 to 491.

Effective December 16, 2016, Congress renewed the Court's temporary authority for nine active judges at a time when appeals were being filed at the Court in numbers well below those

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<sup>10</sup> Consistent with calculations of data performed by the Administrative Office of the United States Courts, "active judge" refers only to a judge who has been active for the entire fiscal year.

experienced in FY 2019. After operating with nine active judges for the past couple of years, two judges retired in 2019 and the Court faces a real possibility of experiencing caseload demands beyond its judicial capacity if new judges are not appointed. Further, although the impact of the recently enacted Veterans Appeals Improvement and Modernization Act of 2017 is not known, the Court may need authorization for more than nine active judges should the current trajectory of case filings continue.