

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Misc. No. 10-22

IN RE: RULES OF PRACTICE AND PROCEDURE

O R D E R

Pursuant to the authority of 38 U.S.C. § 7264(a) and consistent with 28 U.S.C. § 2071(b), the Court has determined that Rule 27 (MOTIONS), Rule 27.1 (MOTION FOR INITIAL REVIEW BY PANEL), Rule 34 (ORAL ARGUMENT), and Rule 47 (EXPEDITED PROCEEDINGS) of its Rules of Practice and Procedure (Rules) should be revised.

The proposed revision of Rules 27 (MOTIONS), 27.1 (MOTION FOR INITIAL REVIEW BY PANEL), and 34 (ORAL ARGUMENT) is in response to public comments regarding issues that have arisen after the Court published Rule 27.1 in 2021, as well as to ensure consistency with recent revisions to the Court's Internal Operating Procedures.

The proposed revision to Rule 47 (EXPEDITED PROCEEDINGS) would broaden the class of medical providers who can submit a statement in support of expedited proceedings. As a result, the Court would have wider discretion to determine whether expedited proceedings are appropriate in an individual case.

The revisions to these four Rules were reviewed by and have the support of the Court's Rules Advisory Committee.

Accordingly, it is

ORDERED that the attached proposed revisions to the Court's Rules are hereby published for public comment for a period of 30 days. Comments must be submitted to the Clerk of the Court by December 22, 2022, at comments@uscourts.cavc.gov or 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004.

DATED: November 22, 2022

FOR THE COURT:

/s/Gregory O. Block
GREGORY O. BLOCK
Clerk of the Court

Attachments:

1. Proposed Revised Rules
2. Proposed Revised Rules with Changes Shown

Proposed Revisions to Rules 27, 27.1, 34, & 47 (November 14, 2022)

Rule 27: Motions

(a) Content of Motions. Unless another form is required by these Rules, an application for relief shall be made by filing a motion, with proof of service (*See* Rule 25(c) (Manner and Proof of Service)) on all other parties. The motion 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;
- (4) not be accompanied by a proposed implementing order; and,
- (5) if the party is represented, indicate whether the motion is opposed and, if so, whether the moving party has been advised that a response in opposition will be filed.

(b) Response or Opposition.

(1) *Time to file.* Unless otherwise prescribed in these Rules (*See*, e.g., Rule 26(b)(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, however, the Court may act on motions authorized by Rule 8 (Suspension of Secretarial Action or Suspension of Precedential Effect of Decision of this Court) 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 shall be filed by 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, the Court may act upon motions for procedural orders at any time without awaiting a response, and, by rule or order of the Court, the Clerk may dispose of motions for certain procedural orders. The Clerk may act on motions to extend time for good cause (but not for extraordinary circumstances) if the motion is not opposed within 5 days after service on the other party. *See* Rule 26(b)(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 and Length. Except by permission of the Court,

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

(2) the form requirements in Rule 32 (Form of Briefs, Appendices, and other Documents) for principal briefs apply to motions and responses. *See also* Rule 6 (Protection of Privacy) and Rule 37 (Retention Requirements for Documents).

(e) Prohibited Nondispositive Motions. Except as otherwise permitted, no more than one subject may be addressed in any nondispositive motion. *See* Rules 26(d), 27.1(c)(2), 34(b)(2), and 35(a)(1). The Clerk will return any motion that violates this subsection.

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

Rule 27.1: Motion for Initial Review by Panel

(a) In General. To assist the Court in determining whether a matter should be resolved by a panel of the Court, a party or parties may file a motion for initial review by panel when resolution of an issue would meet one or more of the criteria set forth in subsection (c)(1).

(b) Time for Motion.

(1) A motion for initial review by panel pertaining to the underlying merits of an appeal must be filed no later than 14 days after the reply brief is due or filed.

(2) A motion for initial review by panel pertaining to a petition for extraordinary relief must be filed no later than 7 days after the respondent(s) files an answer to the petition.

(3) A motion for initial review by panel pertaining to all other matters may be filed concurrently with the filing (including a Notice of Appeal, motion, or application) that raises the issue warranting panel review, but no later than 14 days after the last responsive pleading for that action is due or filed. If no responsive pleading is contemplated, then the motion for initial review by panel may be filed no later than 14 days after the filing that raises the issue warranting panel review.

(c) Content, Form, and Length of Motion.

(1) A motion for initial review by panel shall state why the resolution of an issue 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 resolve a case in which the outcome is reasonably debatable.

(2) Except by permission of the Court, a motion or response under this Rule may not exceed 10 pages and must comply with the form requirements in Rule 32 (Form of Briefs, Appendices, and Other Documents) for principal briefs and Rule 25 (Filing and Service). *See* Rule 6 (Protection of Privacy) and Rule 37 (Retention Requirements for Documents). The motion shall also comply with Rule 27 (Motions), but it need not

indicate whether it is opposed. A motion under this Rule may be combined with a motion filed pursuant to Rule 34(b) (Motion for Oral Argument).

(d) Response; Action on the Motion. No response to a motion under this Rule may be filed unless the response is requested by the Court. A motion for initial review by panel pertaining to the underlying merits of an appeal or a petition for extraordinary relief will be assigned to the screening Judge. A motion for initial review by panel pertaining to all other matters will be assigned to the Judge next in rotation, unless another Judge has acted on a previous motion in the case or the case is pending before a screening Judge.

(e) Effect of Motions. Filing a motion under this Rule does not suspend proceedings or otherwise alter the schedule for filing documents unless the Court so orders. *See* Rules 5(b) (Effect of Stay) and 26(b)(3) (Effect of motion).

Rule 34: Oral Argument

(a) In General. The U.S. 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.

(b) Motion for Oral Argument.

(1) Time for Motion. Parties seeking oral argument on the underlying merits of an appeal must file a motion no later than 14 days after the reply brief is due or filed. Parties seeking oral argument related to a petition for extraordinary relief must file a motion no later than 7 days after the respondent(s) files an answer to the petition. Parties seeking oral argument related to all other matters may file a motion concurrently with the filing that raises the issue warranting oral argument, but no later than 14 days after the last responsive pleading for that action is due or filed. If no responsive pleading is contemplated, then the motion for oral argument must be filed no later than 14 days after the filing that raises the issue warranting oral argument.

(2) Content of Motion. A motion for oral argument shall specify why such argument will aid the Court. A motion for oral argument may not be included in any brief, but may be combined with a motion filed pursuant to Rule 27.1 (Motion for Initial Review by Panel). Oral argument normally is not granted on nondispositive matters or matters being decided by a single Judge.

(c) Participation by Amicus Curiae in Oral Argument. An amicus curiae will be permitted to participate in oral argument only at the invitation of the Court.

(d) Notice of Argument; Postponement; Additional Time. The Clerk 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. A request for postponement of the argument or for the allowance of

additional time shall be made by motion filed reasonably in advance of the date fixed for argument and shall contain a showing of good cause.

(e) Order and Content of Argument. The appellant will generally open and conclude the argument. In argument on motions, the movant generally will open and conclude the argument.

(f) Nonappearance of Parties. If any party fails to appear to present argument, the Court may hear argument by any other party who is present.

(g) Physical Exhibits. A party who wishes to use physical exhibits other than documents 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 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 website at www.uscourts.cavc.gov or by request.

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 medical provider's statement (including identification of the provider'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 medical provider's statement (including identification of the provider's licensing authority and current license number), such that expeditious proceedings are necessary to avoid an injustice to the appellant or petitioner; or
- (3) any other exceptional circumstances that make expeditious proceedings necessary to avoid an injustice to the appellant or petitioner, as shown by credible evidence.

* * *

Proposed Revisions to Rules 27, 27.1, 34, & 47 (November 14, 2022)

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(b) Response or Opposition.

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(e) Prohibited Nondispositive Motions. Except as otherwise permitted by Rules 26(d) (Combined Motions Prohibited and 35(a)(1) (Motion for Reconsideration, Panel Decision, or Full Court Review Motion for Reconsideration Permitted), no more than one subject may be addressed in any nondispositive motion. See Rules 26(d), 27.1(c)(2), 34(b)(2), and 35(a)(1). The Clerk will return any motion that violates this subsection.

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

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