

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Misc. No. 11-21

IN RE: RULES OF PRACTICE AND PROCEDURE

ORDER

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 its Rules of Practice and Procedure (Rules) should be revised to include a new Rule 27.1 (MOTION FOR INITIAL REVIEW BY PANEL). In making specific provision for a Motion for Initial Review by Panel, the Court is encouraged by the prospect that such motions might early encourage panel action, as well as early consideration of the potential for oral argument. This proposed change to the Rules was developed with the benefit of input from the Court's Judicial Advisory Committee and review by the Court's Rules Advisory Committee.

Accordingly, it is

ORDERED that the attached proposed addition to the Court's Rules is hereby published for public comment for a period of 30 days. Comments must be submitted to the Clerk of the Court by August 11, 2021, at comments@uscourts.cavc.gov or to 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004.

DATED: July 12, 2021

FOR THE COURT:

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

Attachment:
Proposed Rule

PROPOSED RULE 27.1

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.

(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).

(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).