

Annual Report
United States Court of Appeals for Veterans Claims
October 1, 2015 to September 30, 2016 (Fiscal Year 2016)

Pursuant to 38 U.S.C. § 7288, the United States Court of Appeals for Veterans Claims (Court) submits the following report summarizing the workload of the Court for Fiscal Year (FY) 2016.

- 1. The number of appeals filed with the Court:** 4,140 (28% pro se at time of filing)
- 2. The number of petitions filed with the Court:** 359 (33% pro se at 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:** 2,984
- 4. The total number of dispositions¹ by each of the following for FY 2016:**
 - (A) The Court as a whole:** 7,599
Appeals: 4,212 (12% pro se at time of disposition)
Petitions: 345 (32% pro se at time of disposition)
EAJA: 2,855
Requests for Reconsideration/Panel Decision:² 139 appeals, 48 petitions
 - (B) The Clerk of the Court:³ 5,487**
Appeals: 2,651
Petitions: 12
EAJA: 2,824
There were no Requests for Reconsideration of the Clerk's orders.
 - (C) A single judge of the Court:** 1,993
Appeals: 1,532
Petitions: 332
EAJA: 27
Requests for Reconsideration of a Single Judge Decision: 80 appeals, 22 petitions
 - (D) A multi-judge panel of the Court:** 106
Appeals: 29
Petitions: 1
EAJA: 2
Requests for Panel Decision following a Single Judge Decision/Reconsideration: 52 appeals, 22 petitions

¹ "Dispositions" include each resolution of a matter, including decisions on appeals, petitions, EAJA applications, and requests for reconsideration/panel decision.

² The number of requests for reconsideration by the Court as a whole, a single judge of the Court, a multi-judge panel of the Court, and the full Court.

³ This number generally includes matters resolved through agreement of the parties, often with the aid of staff conferencing.

(E) The full Court: 13

Appeals: 0

Petitions: 0

EAJA: 2

Requests for Full Court Decision following a Panel Decision/Reconsideration:

7 appeals, 4 petitions

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

	Total	Clerk⁴	Single Judge	3 Judge Panel	En Banc
APPEALS					
Affirmed	457	0	452	5	0
Affirmed or dismissed in part, reversed/vacated and remanded in part	1623	1456	164	3	0
Reversed or vacated and remanded in whole or in part	739	0	723	16	
Remanded	898	890	6	2	0
Dismissed for lack of jurisdiction/timeliness	179	3	175	1	0
Dismissed for default	96	90	6	0	0
Dismissed voluntarily	220	212	6	2	0
TOTAL	4212	2651	1532	29	0
PETITIONS					
Extraordinary relief granted	1	0	0	1	0
Extraordinary relief denied	139	0	139	0	0
Extraordinary relief dismissed	140	0	140	0	0
Dismissed for default	3	3	0	0	0
Dismissed voluntarily	62	9	53	0	0
TOTAL	345	12	332	1	0
EAJA on Appeals					
Grant	2835	2815	17	1	2
Denied	3	0	3	0	0
Dismissed	15	9	5	1	0
EAJA on Petitions					
Grant	0	0	0	0	0
Denied	2	0	2	0	0
Dismissed	0	0	0	0	0
TOTAL	2855	2824	27	2	2

⁴ Please see footnote 3.

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 272 days (9 months). This involves pre-chambers procedural activity, which includes record dispute resolution, staff conferencing, briefing, screening, time for pro se appellants to seek counsel, and requests for additional time from the parties.
 - (B) **The Clerk of the Court:** The median time from filing an appeal to disposition of the case by the Clerk is 208 days (6.9 months). This involves pre-chambers procedural activity, which includes record dispute resolution, staff conferencing, briefing, screening, time for pro se appellants to seek counsel, and requests for additional time from the parties.
 - (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 59 days (2 months). The median time from filing an appeal to disposition by a single judge, which includes pre-chambers procedural activity, is 420 days (14 months). Pre-chambers procedural activity includes record dispute resolution, staff 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 panel is 155 days (5.2 months). The median time from filing an appeal to disposition by a multi-judge panel, which includes pre-chambers procedural activity, is 658 days (21.9 months). Pre-chambers procedural activity includes record dispute resolution, staff 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 contribute to the time for panel case disposition.
7. **The median time from filing a petition to disposition by the Court:** 38 days (1.3 months)
8. **The median time from filing an application under section 2412 of title 28 to disposition by the Court:** 30 days (1 month)
9. **The median time from the completion of briefing requirements by the parties to disposition by the Court:** 109 days (3.6 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. This fiscal year, very few cases were screened by the Court's Central Legal Staff before assignment to chambers. When a case was screened, screening took less than 30 days.

10. **The number of oral arguments before the Court:** 19 held (25 scheduled, 5 settled, 1 cancelled).
11. **The number of cases appealed to the United States Court of Appeals for the Federal Circuit:** 98
 Appeals: 78
 Petitions: 16
 EAJA: 4
12. **The approximate number and status of appeals and petitions and EAJA applications pending with the Court as of the end of such fiscal year:**
 Appeals and Petitions: 4,581
 Pre-chambers procedural activity:⁵ 3,148
 Pending decision by a Judge or Panel: 445
 Post decision:⁶ 988
 EAJA procedural activity: 416
 EAJA pending decision by a Judge or Panel: 1
 On appeal before the Federal Circuit: 75
13. **The number of cases pending with the Court more than 18 months as of the end of such fiscal year: Appeals: 343 Petitions 0**
 Pre-chambers procedural activity:⁷ 32
 Pending decision by a Judge or Panel: 44
 Post decision: 267
14. **A summary of any service performed for the Court by a recalled retired judge of the Court:** Recall retired (Senior) judges resolved 31 appeals and 1 petition, resulting in 32 single judge decisions. In addition, Senior judges participated on 3 three-judge panels; 2 en banc; and 1 panel for reconsideration and decided several motions. Senior judges were also actively involved in committee work for the Court.

⁵ 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 conferencing, briefing, screening, time for pro se appellants to seek counsel, and requests for additional time from the parties.

⁶ 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.

⁷ 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.

- 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 questions 1-13 above, each active judge⁸ on the Court carries a substantial workload. The judges' primary responsibilities are rendering decisions on appeals, petitions, and related motions (e.g., procedural motions and motions for reconsideration or for panel review), and applications filed pursuant to 28 U.S.C. § 2412 (EAJA). The judges, through the Board of 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.

In FY 2016, the Court averaged 182 cases (appeals and petitions) decided on the merits per active judge. With the average number of merits decisions decided per active judge in the 13 Circuit Courts of Appeals ranging from 41 to 398, the Court's average was the 5th highest number of merits decisions per active judge. The Court had 562 filings per active judge, based on the 4,499 cases (4,140 appeals and 359 petitions) filed in FY 2016. The number of filings per active judge for the circuit courts of appeals ranged from 109 to 729.

Of note, in its Fiscal Year 2017 report, the Board of Veterans' Appeals has projected a significant and inevitable increase in its workload. At the same time, the Court is quickly losing judges to retirement. The number of active judges fell to eight in FY 2015. As the second quarter of FY 2017 begins, the Court has only six active judges. As of May 2017, there will be only five active judges. In recent legislation, Public Law 114-315, which became effective December 16, 2016, Congress renewed the Court's temporary authority for nine active judges. In order for the Court to keep pace with its considerable caseload and projected workload increase, the Court has the immediate need for swift action by the President and Congress to fill the vacant judgeships.

⁸ 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.