

CORRECTED COPY

UNITED STATES COURT OF VETERANS APPEALS

Misc. No. 4-94

IN RE:

RULES OF PRACTICE AND PROCEDURE

Before NEBEKER, Chief Judge, and KRAMER, FARLEY,
MANKIN, HOLDAWAY, IVERS, and STEINBERG, Judges.


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 adopted changes to Rules 3, 4, 6, 10, 11, 12, 15, 21, 24, 25, 26, 27, 28, 29, 32, 33, 35, 36, 41, 43, 44, 46, 47, and 48 of its Rules of Practice and Procedure. The current rules, with minor modification, have been in effect since May 1, 1991. The Court has benefited from the views of its Rules Advisory Committee and from public comment received between March 22 and May 6, 1994. Accordingly, it is

ORDERED that the attached Rules of Practice and Procedure, as changed, are hereby published to be effective August 1, 1994.

DATED: JUN 14 1994

BY THE COURT:


FRANK Q. NEBEKER
Chief Judge

ATTACHMENT TO MISCELLANEOUS ORDER NO. 4-94

UNITED STATES COURT OF VETERANS APPEALS
RULES OF PRACTICE AND PROCEDURE
(effective August 1, 1994)

RULE 1. SCOPE OF RULES

(a) **Scope.** These rules govern practice and procedure before this Court to review decisions of the Board of Veterans' Appeals (Board), and in applications for other relief which this Court or one of its judges is competent to give.

(b) **Rules not to Affect Jurisdiction.** These rules do not extend or limit the jurisdiction of this Court as established by law.

RULE 2. SUSPENSION OF RULES

To expedite a decision, or for other good cause shown, this Court may suspend the application of any of these rules in a particular case and may order proceedings in accordance with its direction, but the Court may not extend the time for filing a Notice of Appeal.

RULE 3. HOW TO APPEAL

(a) **Filing.** An appeal will be taken by filing a written Notice of Appeal with the Clerk within the time allowed by Rule 4(a). A Notice of Appeal may be filed by facsimile sent to the Clerk of the Court at (202) 501-5848. Failure of an appellant to take any step under these rules after the timely filing of a Notice of Appeal may be grounds for such action as the Court deems appropriate, which may include dismissal of the appeal.

(b) **Service.** The appellant shall serve on the Secretary of Veterans Affairs (Secretary), and any other party to the proceedings before the Board, a copy of the Notice of Appeal. See Rule 25.

(c) **Content.** The Notice of Appeal shall:

- (1) name the party or parties taking the appeal;
- (2) designate the Board decision appealed from; and
- (3) include the addresses of the appellant(s) and of any representative.

Form 1 in the Appendix of Forms is a suggested form of Notice of Appeal. An appeal will not be dismissed for informality of the Notice of Appeal.

(d) **Joint or Consolidated Appeals.** If more than one person is entitled to appeal from a decision of the Board and their interests make joinder practicable, they may file a joint Notice of Appeal or may join in an appeal after filing separate timely Notices of Appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Court on its own initiative or on motion of a party.

(e) **Payment of Fees.** Upon the filing of any separate or joint Notice of Appeal from a decision of the Board, each appellant shall include with the Notice of Appeal a \$50.00 nonrefundable filing fee payable to "U.S. Court of Veterans Appeals." If an appellant believes the payment of the fee will impose a financial hardship, the appellant may request a waiver of the fee by including with the Notice of Appeal a motion and affidavit on the form prescribed at Form 4 in the Appendix of Forms. See Rule 24. If the Court grants the motion, the

fee will be waived. If the motion is denied by the Court, the fee must be received by the Court within the time set by the Court's order or the appeal will be dismissed. If a facsimile Notice of Appeal is filed, the filing fee or motion to waive the fee must be received by the Court within 14 days after the facsimile was sent.

(f) **Limited Appearance.** The filing of a Notice of Appeal alone, or the filing of a motion to stay proceedings to permit evaluation of a case for possible representation, by a representative, will not amount to an appearance under Rule 46 by that representative if the Notice of Appeal or the motion contains the statement "This is a limited appearance."

RULE 4. WHEN TO APPEAL

(a) **Time for Appeal.** To obtain review by the Court of a Board decision, a person adversely affected by that decision must file a Notice of Appeal within 120 days after the date on which notice of the decision was mailed by the Board to the last known address of the appellant and the appellant's authorized representative, if any. The Notice of Appeal, including one filed by facsimile, must be received by the Clerk within this time limit. The Clerk shall notify all parties of the date when the Clerk receives the Notice of Appeal.

(b) **Notice of Docketing.** The Clerk shall mail a Notice of Docketing to all parties advising them of the date when the Clerk received the Notice of Appeal.

(c) **Copy of Board Decision.** Within 30 days after the date of the Clerk's Notice of Docketing, the Secretary shall file and serve a certified copy of the Board's decision, showing the date the decision was mailed, the filing date of any motion for its reconsideration, and the date and nature of any action on such a motion.

RULE 5. SUSPENSION OF APPELLATE PROCEEDINGS

The Court may suspend proceedings after an appeal has been filed under Rule 4: (1) on motion by the appellant seeking reconsideration by the Board; or (2) by motion of the Secretary for reasons of confession of error, by specifying the error below and the proceedings or remedy deemed to be appropriate on remand. The Court, on its own initiative, may also suspend appellate proceedings. See also Rule 28(b)(2).

RULE 6. (RESERVED)

RULE 7. (RESERVED)

RULE 8. STAY OR INJUNCTION PENDING APPEAL

A party requesting immediate action by the Court to stay or enjoin an action by the Secretary or the Board pending an appeal to the Court shall do so by filing a motion and serving a copy of the motion on all other parties by an expedited method (including express mail, overnight delivery, facsimile or other printed electronic transmission, or hand delivery). The motion will not be accepted by the Clerk unless a Notice of Appeal has been filed. The motion must state the reason for the relief requested and the facts relied on. If the facts are subject to dispute, the motion must be supported by affidavits or other sworn statements or copies thereof. The motion normally will be considered by a panel of three or more judges of the Court, but in exceptional cases the motion may be acted on by a single judge pending consideration by a panel.

RULE 9. (RESERVED)

RULE 10. DESIGNATION OF THE RECORD ON APPEAL

(a) **Designation.** Within 60 days after the date of the Clerk's Notice of Docketing, the Secretary shall file with the Clerk and serve on the appellant a designation of all material in the record of proceedings before the Secretary and the Board that was relied upon by the Board in ruling against the appellant on the issues listed by the Board and any other material from the record which the Secretary considers relevant. The Secretary shall serve on the appellant a copy of those materials and a list of any record matter which cannot be duplicated.

(b) **Counter Designation.** Within 30 days after the Secretary serves the designation of the record on appeal, the appellant shall file with the Clerk and serve on the Secretary:

- (1) a counter designation of any additional material which was before the Secretary and the Board and which the appellant considers relevant to the appeal, or
- (2) a statement that the appellant accepts the content of the record as designated by the Secretary. See also Rule 11(c).

Failure of the appellant to do either will be conclusive of the appellant's acceptance of the record as designated by the Secretary. Within 14 days after the filing of the counter designation, the Secretary shall serve on the appellant a copy of those materials identified in the counter designation which are not already in the possession of the appellant.

(c) **Disputes.** If any difference arises as to the content of the record on appeal, the Court, on its own initiative or on motion of a party, shall resolve the matter. The motion of a party shall describe the good faith efforts that have been made to resolve the dispute.

(d) **Irrelevant Materials.** The parties should take note that the record on appeal may not include materials not relevant to the issues on appeal.

RULE 11. TRANSMISSION OF THE RECORD ON APPEAL

(a) **Transmission of the Record.** The Secretary shall retain the original claims file. Within 30 days after the appellant's counter designation or statement was due under Rule 10, the Secretary shall transmit to the Clerk, as the record on appeal, in this order, an original and three copies of:

- (1) a table of contents of the documents transmitted;
- (2) a certified copy of the Board's decision showing the date it was mailed to the appellant, and the docket entries prepared by the Board; and
- (3) a certified copy of the designated record, assembled in chronological order, with pages consecutively numbered (e.g., R-1, R-2, etc.).

A copy of the record on appeal shall be served on all parties when the record is transmitted.

(b) **Supplementation of Transmitted Record.** If a party believes any additional part of the claims file before the Secretary and the Board is relevant to an issue on appeal, the party, within 30 days after the record on appeal has been filed with the Clerk, may cause the record to be enlarged or supplemented by serving notice on all other parties of the additional parts of the record to be transmitted. The Secretary shall then supplement the record on appeal by transmitting to the Clerk a certified copy, and three additional copies, of such supplemental record, assembled in chronological order and consecutively numbered (e.g., SR-1, SR-2, etc.) and shall serve a copy on the appellant. A party who

believes additional material sought by another party is clearly beyond the scope of matters relevant to the appeal may file a motion to limit the contents of the supplemental record. The motion shall describe the good faith efforts made to resolve the dispute. Unless the Court orders otherwise, supplementation of the record does not extend the time for filing the appellant's brief.

(c) Access of Parties or Representatives to Original Record.

- (1) Material not Subject to a Protective Order. After a Notice of Appeal has been filed, the Secretary shall permit a party or a representative of a party to inspect and to copy material in the record before the Board. Such inspection and copying shall be subject to reasonable regulation by the Secretary.
- (2) Confidential Information. On its own initiative or on motion of a party, the Court may take appropriate action to prevent disclosure of confidential information. See also Rule 48.

RULE 12. DOCKETING THE APPEAL; FILING THE RECORD ON APPEAL

(a) Docketing the Appeal. Upon receipt of the Notice of Appeal, the Clerk shall enter the appeal upon the docket under the appellant's name, identified as appellant, unless otherwise ordered by the Court.

(b) Filing the Record or Supplemental Record. Upon receipt of the record on appeal, the Clerk shall file it and notify all parties when appellant's brief is due. See Rules 31 and 47.

RULE 13. (RESERVED)

RULE 14. (RESERVED)

RULE 15. INTERVENTION

A party who was allowed to intervene before the Board may proceed before the Court as an intervenor without filing a motion, but shall serve on all parties and file with the Clerk, within 60 days after the date of the Clerk's Notice of Docketing in accordance with Rule 4(b), a notice of intent to intervene. A person who did not intervene before the Board and who desires to intervene before the Court in a proceeding initiated by a Notice of Appeal or a petition for extraordinary relief shall serve on all parties and file with the Clerk, within 30 days after the filing of a petition for extraordinary relief or within 60 days after the date of the Clerk's Notice of Docketing in accordance with Rule 4(b), a motion for permission to intervene. The motion must contain a concise statement of the interest of the moving person or party and the grounds upon which intervention is sought and should advise the Court of opposition to the motion, if any. A motion for permission to intervene beyond this time limit will be granted only in extraordinary circumstances.

RULE 16. (RESERVED)

RULE 17. (RESERVED)

RULE 18. (RESERVED)

RULE 19. (RESERVED)

RULE 20. (RESERVED)

RULE 21. EXTRAORDINARY RELIEF

(a) Mandamus or Prohibition; Petition; Service and Filing. A petition

for a writ of mandamus or of prohibition must be made by filing a petition with the Clerk with proof of service on the respondent(s), on any other party at interest, and on the Secretary. The petition must contain:

- (1) a statement of the precise relief sought;
- (2) a statement of the facts necessary to understand the issues presented by the petition;
- (3) a statement of the reasons why the petition should be granted, including why the petitioner has a clear and indisputable right to the writ and why there are inadequate alternative means to obtain the relief sought; and
- (4) copies of any order or decision or parts of the record necessary to understand the petition.

Upon receipt of the \$50.00 filing fee (unless waived pursuant to Rule 24), the Clerk shall docket the petition and submit it to the Court.

(b) **Action on the Petition.** Unless the Court concludes that the petition should be denied, it will order the respondent(s) to file an answer to the petition within a time fixed by the order. The order shall be served by the Clerk on the named respondent(s), on the Secretary, and on any other party at interest. Two or more respondents may answer jointly. Any respondent who does not desire to appear in the proceeding may so advise the Clerk and all parties by letter, but such action will not amount to agreement that the petition should be granted. The Clerk shall notify the parties of the time limits for the filing of any briefs, and of the date of any oral argument. The proceeding will be given preference by the Court. The petition may be acted upon after reasonable notice of its filing to all parties.

(c) **Other Extraordinary Relief.** Application for extraordinary relief other than that provided for in subsection (a) of this rule must be made by petition filed with the Clerk with proof of service on the parties named as respondents. No response may be filed by any respondent unless ordered by the Court. Proceedings on such an application will follow, so far as is practicable, the procedures in subsections (a) and (b) of this rule.

(d) **Form and Length of Papers; Number of Copies.** Except by permission of the Court, the form and length requirements in Rule 32(g) for principal briefs apply to petitions and responses thereto. An original and three copies must be filed with the Clerk, but the Court may direct that additional copies be furnished. The petition must be entitled: "[Name of Petitioner], Petitioner v. [Name and Title of Respondent], Respondent."

RULE 22. (RESERVED)

RULE 23. (RESERVED)

RULE 24. WAIVER OF FILING FEE

An appellant who is unable, because of financial hardship, to pay the filing fee required by Rule 3(e) or Rule 21(a) may request a waiver of the payment of the fee by submitting a motion to waive the filing fee, on the form prescribed at Form 4 in the Appendix of Forms.

If the Court grants the motion, the payment of the filing fee will be waived. If the motion is denied by the Court, the Clerk shall promptly transmit to the appellant notice of the Court's order denying the motion; the fee must be paid within 14 days from the date of the Court's order.

RULE 25. FILING AND SERVICE

(a) **Filing.** All papers required or permitted to be filed in this Court must be filed with the Clerk. Filing may be accomplished by mail addressed to the Clerk.

(b) **Timeliness.**

(1) **Facsimile Filing.** Filing of a copy of all papers, except briefs, may be accomplished by facsimile addressed to the Clerk at (202) 501-5848, but only if the original papers and the required number of copies are received by the Clerk within 10 days after the time fixed for filing. However, if a Notice of Appeal or a motion to waive the filing fee has been filed by facsimile, there is no requirement to file an original copy with the Clerk. See Rules 3 and 24.

(2) **Other Papers.** All papers other than those filed by facsimile must be received by the Clerk or deposited in the night box within the time specified for filing. See Rule 45.

(b) **Service of All Papers Required.** Copies of all papers filed by any party or amicus and not required by these rules to be served by the Clerk must, at or before the time of filing, be served by a party or amicus on all other parties and amici to the appeal. Service on a represented party or amicus must be made on the representative.

(c) **Manner of Service.** Service may be personal or by mail. Personal service includes delivery of the copy to a responsible person at the office of the representative or the office or home of a party without a representative. The Secretary's representative is the General Counsel, Department of Veterans Affairs.

(d) **Proof of Service.** Papers presented for filing must contain an acknowledgement of service by the person served, showing that person's mailing address, or a statement certified by the person who made service (see sample on reverse side of Form 1), showing the date and manner of service and the names and addresses of the persons served. Proof of service may appear on or be attached to the papers filed. The Clerk may permit papers to be filed without proof of service but shall require such proof to be filed promptly thereafter.

RULE 26. COMPUTATION AND EXTENSION OF TIME

(a) **Computation of Time.** In computing any period of time prescribed by these rules, by an order of Court, or by any applicable statute, the day of the event from which the time begins to run will not be included. The last day of the period will be included, unless it is a Saturday, a Sunday, or a legal holiday; in that case, the period extends until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in this rule, "legal holiday" means New Year's Day, Birthday of Martin Luther King, Jr., Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President or Congress. A "legal holiday" also includes a day on which the Clerk's Office has been closed by direction of the Chief Judge. Notice of such action will be posted publicly, if circumstances permit, and placed on a recording for telephone callers.

(b) **Extension of Time.** The Court, on its own initiative or on motion of a party for good cause shown, may extend the time prescribed by these rules for doing any act, or may permit an act to be done after the expiration of such time, but the Court may not extend the time for filing a Notice of Appeal.

(c) **Additional Time After Service by Mail.** Wherever a party is required

or permitted to do an act, other than the filing of a Notice of Appeal, within a prescribed period after service of a paper on that party by another party and the paper is served by mail, 3 days will be added to the prescribed period. Whenever such paper is served by the Secretary in a jurisdiction other than a state, the District of Columbia, Puerto Rico, or the Virgin Islands, 30 additional days will be added to the prescribed period. Except as provided in Rule 35(d), additional time is not added to the periods prescribed in orders and notices issued by the Court.

RULE 27. MOTIONS

(a) **Content of Motions; Response.** Unless another form is required by these rules, an application for relief must be made by filing a motion, with proof of service (see Rule 25(d)) on all other parties. The motion must

- (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) describe the steps taken to contact the other party to determine whether the motion is opposed, and
- (5) indicate if the motion is unopposed.

Motions should not be accompanied by proposed implementing orders. If a motion is supported by briefs, affidavits, or other papers, they must be served and filed with the motion. Any party may file a response or opposition to a motion within 14 days after service of the motion, but motions authorized by Rule 8 (Stay or Injunction Pending Appeal) may be acted upon after reasonable notice of the motion to all parties, and the Court may shorten or extend the time for responding to any motion.

(b) **Motions for Procedural Orders.** Notwithstanding subsection (a) of this rule, motions for procedural orders, including any motion for an extension of time under Rule 26(b), may be acted on at any time, without awaiting a response, and, by rule or order of the Court, motions for certain procedural orders may be disposed of by the Clerk. Any party adversely affected by such an action may, by motion, request that the Court reconsider, vacate, or modify the action within 10 days after the action is announced.

(c) **Form and Length of Papers; Number of Copies.** Except by permission of the Court, the form and length requirements in Rule 32 for principal briefs apply to motions and responses thereto. An original and three copies of all such papers must be filed with the Clerk, but the Court may require that additional copies be furnished.

RULE 28. BRIEFS

(a) **Appellant's Brief.** The appellant's brief must contain the appropriate headings and, in this order:

- (1) a table of contents, with page references;
- (2) a table of cases (alphabetically listed), statutes, and other authorities cited, with references to the page of the brief where they are cited, unless the case is expedited under Rule 47;
- (3) a statement of the issues;

- (4) a statement of the case, showing briefly the nature of the case, the course of proceedings, the result below, and the facts relevant to the issues, with appropriate references to the record;
- (5) an argument, beginning with a summary, and containing the appellant's contentions with respect to the issues and the reasons for them, with citations to the authorities and parts of the record relied on; and
- (6) a short conclusion stating the precise relief sought.

(b) Secretary's Brief.

- (1) The Secretary's brief must conform to the requirements of subsection (a) of this rule, but a statement of the issues or of the case need not be made unless the Secretary is dissatisfied with the appellant's statement.
- (2) If the Secretary wishes to confess error as to any issue or issues raised by appellant, but not as to all the issues raised, and the relief the Secretary deems appropriate as to the confession of error is different from that sought by the appellant, the Secretary shall include a statement of concession in the brief and identify the relief thereunder that is deemed appropriate.

(c) Reply Brief. The appellant may file a brief in reply to the Secretary's brief. No further briefs may be filed except with the Court's permission.

(d) References to the Record. References in the briefs to the record must be to the pages as transmitted by the Secretary. Commonly understood abbreviations may be used.

(e) Reproduction of Materials. If determination of the issues requires the study of statutes, rules, regulations, or other material, relevant parts must be reproduced in the brief or in an appendix at the end, or they may be supplied to the Court in pamphlet form.

(f) Length of Briefs. Except by permission of the Court, or as limited by Rule 47 (Expedited Briefs), the principal briefs may not exceed 25 pages and reply briefs may not exceed 15 pages, not counting the table of contents; the table of cases, statutes, and other authorities; and any appendix containing statutes, rules, regulations, etc.

(g) Multiple Appellants. In cases involving more than one appellant, including consolidated cases, any number may join in a single brief, and any appellant may adopt by reference any part of the brief of another. Appellants may similarly join in reply briefs.

(h) Citation of Supplemental Authorities. When pertinent and significant authorities come to the attention of a party after the party's brief has been filed or after oral argument but before the decision, a party shall promptly advise the Clerk, by letter, with a copy to all other parties, setting forth the citations. If the authority is not readily available in a Reporter system, the party shall provide the Clerk with a copy. The letter must refer to the page of the brief or to a point argued orally to which each citation pertains, and the letter must state without argument the reasons for the supplemental citations. Any response must be made promptly and must be similarly limited.

(i) Brief of Unrepresented Appellant. An unrepresented appellant may file an informal brief on the form prescribed by the Court. All other briefs

must conform to the requirements of these rules.

(j) **Citation of Nonprecedential Authority.** Single-judge actions and unpublished orders or judgments of this Court are not to be cited as precedent. A party may refer to such actions of this Court only when the binding or preclusive effect of that action, rather than its quality as precedent, is relevant. In that event, the party shall include, in an appropriately labeled addendum to the brief, a copy of the action cited therein. The addendum may be bound together with the brief; if bound separately, it shall be filed and served concurrently with and in the same number of copies as the brief itself.

RULE 29. BRIEF OF AN AMICUS CURIAE

(a) **Time; Argument.** A brief of an amicus curiae may be filed by any interested person or entity. The brief must be filed within the time allowed the party whose position it supports unless the Court permits later filing, in which event the Court will specify the time limit for an opposing party's answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.

(b) **Form and Content.** An amicus brief must comply with Rules 28(a)(1), (5) and (6); 28(d), (e), (f), (g) and (i); and 31(b); and state which party the amicus supports and the interest of the amicus. The brief should avoid repeating the parties' briefs and should focus on the points not made or not emphasized in them.

RULE 30. (RESERVED)

RULE 31. FILING AND SERVICE OF BRIEFS

(a) **Time Limits.** Except in cases covered by Rule 47 (Expedited Briefs), the appellant shall serve and file a brief within 30 days after the date of the notice from the Clerk that the record has been filed. The Secretary shall serve and file a brief within 30 days after service of the appellant's brief. The appellant may serve and file a reply brief within 14 days after service of the Secretary's brief, but, except for good cause shown, any brief must be filed at least 3 days before argument. Service must be pursuant to Rule 25 (Filing and Service).

(b) **Number of Copies.** The original and three copies of each brief must be filed with the Clerk, unless the Court orders otherwise, and one copy of each brief must be served on each party.

(c) **Effect of Failure to File.** If an appellant fails to file a brief within the time provided by this rule, or within the time as extended, the Court, on its own initiative or on motion by the Secretary, may dismiss the appeal. If the Secretary fails to file a brief or other response, the Court may take appropriate action.

RULE 32. FORM OF BRIEFS, APPENDICES, AND OTHER PAPERS

(a) **Format.** Briefs, appendices, and other papers must be printed or typewritten, and may be produced by any copying process that produces a clear black image on white opaque paper, and onion skin paper is not permitted except for papers sent by international mail. Pages must be letter size (8 1/2 by 11 inches), with margins at least one inch wide from all edges, and with type or print on only one side of the page.

(b) **Type; Spacing.** The type or print must be at least 11 points with horizontal spacing (pitch) of no more than 11 characters per inch, for both text and footnotes. Text must be double spaced, with no more than three lines of type per inch, but quotations more than two lines long and footnotes may be single

spaced. The parties may not use photo reproduction that reduces print size smaller than the size required by this rule. This subsection does not apply to pages of an appendix that are legible, unreduced photocopies of documents of record.

(c) **Covers.** Covers are not required on briefs or appendices but, if used, they should be blue for the appellant, red for the Secretary, green for an amicus curiae or an intervenor, gray for any reply brief and white for an appendix if separate from the brief. See Form 2 (Sample Brief Cover).

(d) **Binding.** All papers, other than the record on appeal, must be attached at the upper left-hand corner. The record on appeal must be bound at the top.

(e) **Caption.** A paper addressed to the Court must contain a caption setting forth the name of this Court, the Court's case number when assigned, the title of the case, the Department of Veterans Affairs claims file number, and a brief title indicating the purpose of the paper.

(f) **Page Numbers.** Pages must be numbered in the center of the bottom margin, using Arabic numerals for the pages subject to the page limitation and lower case Roman numerals for the table of contents, tables of citations, and any appendix containing statutes, rules, and regulations.

(g) **Page Limits.** Except by permission of the Court, or as limited by Rule 47, principal briefs may not exceed 25 pages and reply briefs may not exceed 15 pages, not counting the table of contents; the table of cases, statutes, and other authorities; and any appendix containing statutes, rules, regulations, etc.

(h) **Identification of Proponent.** The names, addresses, and telephone numbers of all representatives and of all parties without representatives must appear on briefs or other documents being filed with the Clerk.

RULE 33. PREHEARING CONFERENCE

(a) **Participation.** The Court may direct the representatives and parties without representatives to participate in a prehearing conference, in person or by telephone, to consider simplification of the issues and such other matters as may help the Court resolve the case. The Court will enter an appropriate order to control future proceedings.

This rule does not prevent the parties from discussing settlement or agreeing to dismiss the appeal at any time before argument or submission of the case.

(b) **Use of Contents.** Unless the parties agree to the contrary in writing, nothing that occurs during prehearing conferences may be used in argument or pleadings before any court.

RULE 34. ORAL ARGUMENT

(a) **In General.** Oral argument will be allowed only when ordered by the Court and will be held where and when the Court orders. The Court may order oral argument on its own initiative or on the motion of a party filed with that party's principal brief. The appellant may also request that oral argument be held in a location other than Washington, D.C.

(b) **Notice of Argument; Postponement.** The Clerk shall advise all parties whether oral argument is to be heard, and, if so, where and when, and the time to be allowed each side. Where possible, the Clerk will schedule oral argument so as to minimize inconvenience to appellants or their representatives. A request for postponement of the argument or for the allowance of additional time

must be made by motion filed reasonably in advance of the date fixed for argument.

(c) **Order and Content of Argument.** The appellant may open and conclude the argument. A party will not be permitted to read at length from briefs, records, or authorities. In argument on motions, the movant may open and conclude the argument.

(d) **Non-appearance of Parties.** If any party fails to appear to present argument, the Court will hear argument by any appellant who is present, and may hear argument by any other party who is present. If no party appears, the case will be decided on the briefs and the record on appeal unless the Court orders otherwise.

(e) **Use of Physical Exhibits at Argument; Removal.** A party who intends 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.

(f) **Motions.** Oral argument normally is not granted on motions.

(g) **Oral Argument.** Oral argument will be held as announced by the Chief Judge. The announcement will indicate the composition of the panel, although there is no guarantee that the panel on the argument date will be identical to that announced since a judge may be recused from a case or, for a number of reasons, may be unavailable.

**RULE 35. MOTIONS FOR RECONSIDERATION, FOR PANEL REVIEW,
OR FOR CONSIDERATION OR REVIEW BY THE FULL COURT**

(a) **Motion for Reconsideration.** A party in a case decided by a single judge may move for reconsideration by the single judge. A party in a case decided by a panel may move for reconsideration by the panel. Such a motion must be made within 14 days after the date of the decision of which reconsideration is being requested. If such a motion is filed, judgment will not be entered until the motion is acted upon. A party in a case decided by the full Court may move for reconsideration by the full Court. However, the filing of such a motion will not postpone the entry of judgment. A motion for reconsideration of the full Court's denial of review of a panel decision will not be entertained.

(b) **Motion for Panel Review.** A party in a case decided by a single judge may move for review by a panel of the Court. A party in a case decided by a panel may move for review by the full Court. If such a motion is filed, judgment will not be entered until the motion is acted upon.

(c) **Motion for Consideration or Review by the Full Court.** A party may move for initial consideration of a case, or for review of a panel decision in a case, by the full Court. Such motions are not favored and ordinarily will not be granted except when such action is necessary to secure or maintain uniformity of the Court's decisions or to resolve a question of exceptional importance. A motion for direct review by the full Court of a single-judge decision is not permitted. The filing of a motion for review by the full Court will not postpone the entry of judgment.

(d) **Time for Motion.** A motion, whether separate or in the alternative, for single-judge reconsideration or panel review of a single-judge decision must be made within 14 days, plus the additional time allowed in Rule 26(c), after the date of the initial single judge decision. A motion, whether separate or in the alternative, for panel reconsideration or full Court review of a panel decision (including panel denial of review) must be made within 14 days, plus the

additional time allowed in Rule 26(c), after the date of the initial panel decision. A motion for initial consideration of a case by the full Court must be made not later than the date on which the Secretary's brief is first due.

(e) **Content of Motion.** A motion for reconsideration or review must state the points of law or fact which the party believes the Court has overlooked or misunderstood, and must contain an argument in support of the party's position. A motion for full Court consideration or review must state (1) how such action will secure or maintain uniformity of the Court's decisions or (2) what question of exceptional importance is involved, and must contain an argument in support of the party's position.

(f) **Form; Length; Number of Copies.** Except by permission of the Court, a motion (including any memorandum or brief filed in support thereof) under this rule may not exceed 15 pages and must otherwise comply with Rules 25, 27 (except that the motion need not indicate whether it is opposed) and 32. A motion for consideration or review by the full Court must be filed in an original and 7 copies.

(g) **Response; Action on the Motion.** No response to a motion under this rule may be filed unless requested by the Court, but a motion for review ordinarily will not be granted without such a request. Except by permission of the Court, a response (including any memorandum or brief filed in support thereof) may not exceed 15 pages. A motion for oral argument will not be permitted. A motion for reconsideration will be decided by the judge or panel which rendered the decision. A motion for review of a single-judge decision will be referred to a panel. A motion for review of a panel decision will be referred to all of the judges. Consideration or review by the full Court requires the vote of a majority of the judges, but such a vote need not be taken unless a judge requests it. The Clerk may return an untimely motion or one which fails to include the statement required by subsection (e) of this rule.

RULE 36. ENTRY OF JUDGMENT

Upon receipt of an opinion, the Clerk shall send copies to all parties. The Clerk shall enter the judgment after the time allowed in Rule 35(d) has expired unless otherwise ordered by the Court. Entry of the judgment begins the 60-day time period for any appeal to the United States Court of Appeals for the Federal Circuit. On the date judgment is entered, the Clerk shall send copies of the judgment to all parties.

RULE 37. (RESERVED)

RULE 38. FRIVOLOUS APPEALS

If the Court determines that an appeal is frivolous, it may enter such order as it deems appropriate.

RULE 39. ATTORNEY FEES AND EXPENSES

(a) **Time for filing.** An application pursuant to 28 U.S.C. § 2412 for award of attorney fees and other expenses in connection with an appeal must be filed with the Clerk within 30 days after this Court's judgment becomes final. See also 28 U.S.C. § 2412(d)(2)(G) and 38 U.S.C. § 7291(a).

(b) **Content.** The application, in an original and three copies with proof of service on the Secretary, must be captioned with the name and docket number of the proceeding in this Court for which an award is sought. It must include:

- (1) a statement that the applicant is a prevailing party and is eligible to receive an award;

- (2) identification of the specific position or positions of the Secretary that the applicant alleges were not substantially justified; and
- (3) an itemized statement from the applicant's attorney as to each type of service which was rendered, describing:
 - (A) the nature of the service;
 - (B) the actual time expended for which a fee is sought;
 - (C) the rate at which fees are computed; and
 - (D) the amount sought;and an itemized statement of expenses for which reimbursement is sought.

(c) **Response.** Within 30 days after service of the application, the Secretary shall file and serve a response, stating which elements of the application are not contested and explaining the Secretary's position on those elements which are contested.

(d) **Reply.** Within 30 days after service of the Secretary's response, the applicant may file and serve a reply addressing those matters contested by the Secretary.

(e) **Appendices.** The parties shall file as appendices to the application, response, and reply those relevant papers which are not already before the Court.

RULE 40. (RESERVED)

RULE 41. ISSUANCE OF MANDATE; STAY OF MANDATE

(a) **Date of Issuance.** The mandate of this Court will issue 60 days after the date of entry of judgment pursuant to Rule 36 unless the time is shortened or extended by order. A certified copy of the judgment and a copy of the opinion of the Court, if any, will constitute the mandate. If a timely Notice of Appeal to the United States Court of Appeals for the Federal Circuit is filed with the Clerk, the mandate will issue in accordance with 38 U.S.C. § 7291(a).

(b) **Mandate in Consented Dismissal or Remand.** An order on consent dismissing or remanding a case will also constitute the mandate.

RULE 42. VOLUNTARY DISMISSAL

If the parties sign and file with the Clerk an agreement that the proceeding be dismissed, the Clerk shall enter the case dismissed. An appeal may be dismissed on motion of the appellant upon terms requested by the appellant, agreed upon by the parties, or fixed by the Court. An appellant may, at any time before appellant's brief is filed, withdraw an appeal in writing without filing a motion.

RULE 43. SUBSTITUTION OF PARTIES

(a) **Death of a Party.**

- (1) **Before Notice of Appeal.** If a party entitled to appeal dies before filing a Notice of Appeal, the Notice of Appeal may be filed within the time limit in Rule 4 by any person claiming entitlement to accrued benefits under 38 U.S.C. § 5121(a), by the personal representative of the deceased party's estate, by any other

appropriate person, or, if there is no such person, by the party's representative of record before the Board.

- (2) After Notice of Appeal. If a party dies after a Notice of Appeal is filed or while a proceeding is pending in this Court, any person claiming entitlement to accrued benefits under 38 U.S.C. § 5121(a), the personal representative of the deceased party's estate, or any other appropriate person may be substituted as a party on motion by such person or by any party. If no such person exists, any party may suggest the death on the record and proceedings will then be as the Court directs.

(b) **Substitution for Other Causes.** If substitution of a party in this Court is necessary for any reason other than death, the Court may order it on motion of any party or on its own initiative.

(c) **Public Officers; Death or Separation from Office.**

- (1) Naming as Party. The Secretary must be described as the appellee by name and by official title. Any public officer who is a respondent must be described by official title rather than by name; but the Court may require that the name of the public officer be added.
- (2) Death or Separation. When a public officer is a party in an official capacity and during the proceedings dies, resigns, or otherwise ceases to hold office, the proceedings are not stopped, and the public officer's successor is automatically substituted as a party. Proceedings following the substitution must be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties will be disregarded.

RULE 44. JUDICIAL CONFERENCE

(a) **Purpose.** Pursuant to 38 U.S.C. § 7286, there shall be convened, at such time and place as the Chief Judge designates, a conference to consider the business of the Court and to recommend means of improving the administration of justice within the Court's jurisdiction.

(b) **Committee.** The Chief Judge will appoint a Judicial Conference Planning Committee to plan and conduct the conference. The Planning Committee may appoint such subcommittees as may be necessary to assure the efficient operation of the conference.

(c) **Attendance.** The Chief Judge presides at the conference. All persons admitted to practice before the Court, and such other persons as are designated by the Chief Judge, may be members of and participate in the conference.

(d) **Registration Fee.** Each member of the conference shall pay a registration fee in an amount fixed by the Court to defray expenses of the conference. The Chief Judge may excuse the payment of the fee in individual cases. These fees shall be maintained in a bank account which shall be known as the "CVA Judicial Conference Fund." Money from this account shall be disbursed by the Clerk at the direction of the Chief Judge to defray conference expenses. Any excess shall be used to pay future conference-related expenses.

(e) **Responsibility of the Clerk.** The Clerk shall be responsible for receipt and disbursement of conference funds, for all conference records and accounts, and for conference staff support, and shall perform such other duties pertaining to the conference as may be directed by the Chief Judge.

(f) **Delegation.** The Chief Judge may delegate any or all of his responsibilities to another judge of the Court.

RULE 45. DUTIES OF CLERK

(a) **General Provisions.** The Clerk shall take the oath required by law. Neither the Clerk nor any deputy clerk may practice as an attorney or counselor in any court while continuing in office. The Court will be deemed always open for the purpose of filing any proper paper, of issuing and returning process, and of making motions and orders. The office of the Clerk, with the Clerk or a deputy clerk in attendance, will be open during business hours on all days except Saturdays, Sundays, and legal holidays (as defined in Rule 26(a)) from 9:00 a.m. to 4:00 p.m. A night box will be available at the entrance to the Public Office from 4:00 p.m. to 6:00 p.m. on such business days.

(b) **The Docket; Calendar; Other Records Required.** The Clerk shall:

- (1) maintain a docket containing a record of all papers filed with the Clerk, and all process, orders, and judgments;
- (2) maintain an index of cases contained in the docket;
- (3) prepare, under the direction of the Court, a calendar of cases submitted or awaiting argument; and
- (4) keep such other books and records as may be required by the Court.

(c) **Notice of Orders.** Immediately upon the entry of an order, the Clerk shall serve a copy on each party to the proceeding, together with a copy of any opinion respecting the order, and shall note the date of service in the docket.

(d) **Custody of Records and Papers.** The Clerk shall have custody of the records and papers of the Court. The Clerk shall not permit any original record or paper to be taken from the Clerk's custody except as authorized by the United States Supreme Court, the United States Court of Appeals for the Federal Circuit, or this Court. Original papers transmitted as the record on appeal will be returned upon disposition of the case. The Clerk shall preserve copies of briefs and appendices and other printed papers filed.

(e) **Court Seal.** The Clerk shall be the custodian of the seal of the Court. The seal will appear as ordered by the Court. The seal will be the means of authentication of all records and certificates and process issued from this Court.

(f) **Schedule of Fees.** The Clerk shall maintain in the Public Office a schedule of fees approved by the Court.

(g) **Motions.** The Clerk may act on motions, if consented to or unopposed, that seek to:

- (1) dismiss an appeal or an application for extraordinary relief with or without prejudice to reinstate it;
- (2) remand a case;
- (3) reinstate a case that was dismissed for failure to comply with the rules;
- (4) extend the time for taking any action required or permitted by the rules or an order of the Court, unless the motion is made after the time limit has elapsed;
- (5) consolidate appeals;
- (6) withdraw or substitute an appearance; or

(7) correct a brief or other paper.

(h) **Construction of Rules in Self-Representation Cases.** The Clerk shall liberally construe the rules as they apply to appellants representing themselves.

RULE 46. REPRESENTATION

(a) **Admission of Attorneys to Practice.**

(1) General. A person of good moral character and repute who has been admitted to practice in the Supreme Court of the United States, or the highest court of any state, the District of Columbia, or a territory, possession, or commonwealth of the United States, and is in good standing therein, may be admitted to the bar of this Court upon application.

(2) Application. An attorney at law may be admitted to the bar of the Court upon filing with the Clerk a completed application accompanied by the prescribed fee (payable by check or money order) and a current certificate from the clerk of the appropriate court showing that the applicant is a member in good standing of the bar of one of the courts named in subparagraph (1). A current court certificate is one executed within three months preceding the date of the filing of the application.

(b) **Admission of Non-attorney Practitioners to Practice.** A non-attorney of good moral character and repute

(1) under the direct supervision of an attorney admitted to the bar of the Court, or

(2) employed by an organization which is chartered by Congress, is recognized by the Secretary of Veterans Affairs for claims representation, and provides a statement signed by the organization's chief executive officer certifying to the employee's:

(A) understanding of the procedures and jurisdiction of the Court and of the nature, scope, and standards of its judicial review; and

(B) proficiency to represent appellants before the Court

may be admitted to practice before the Court upon filing with the Clerk a completed application accompanied by the prescribed fee (payable by check or money order). In making the certification in subparagraph (2), the chief executive officer should be aware that knowledge of and competence in veterans law and the administrative claims process does not in and of itself connote competence in appellate practice and procedure.

(c) **Appearance in a Particular Case.** On motion and upon a showing of good cause, the Court may permit any attorney or a non-attorney representative to appear before the Court for the purposes of a particular case.

(d) **Appearance, Withdrawal, and Change of Address.**

(1) Appearance. No attorney or non-attorney practitioner may participate in any proceedings in any case unless that individual has entered an appearance. The signing of a pleading or motion, or the physical appearance at oral argument, by an attorney or non-attorney practitioner constitutes an appearance by that individual as the representative in the case. The appearance must be accompanied by filing and service on all parties of a written statement that the representative is representing a designated

client or clients, giving the name, address, and telephone number of the representative, and signed by him or her. See sample Notice of Appearance at Form 3 in the Appendix of Forms. In the case of a non-attorney practitioner, the name, address, and signature of the responsible supervising attorney (subparagraph (b)(1) of this rule) or the identification of the employing organization (subparagraph (b)(2) of this rule) must appear on each paper filed with the Court. Appearances may not be made in the name of a law firm or other organization. If a party is represented by more than one individual, one shall be designated as the representative of record for the purpose of receipt of papers sent by the Court and served by other parties.

(2) **Withdrawal.** A representative may not withdraw, leaving the client unrepresented, without the Court's permission upon motion and written notice to the client and all other parties who have appeared. The motion must describe the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. The authority and duty of the representative will continue until he or she is relieved by order of the Court. Permission to withdraw may be granted subject to such conditions as the Court considers appropriate. This paragraph will not apply when a representative, without taking any other action, files a Notice of Appeal on behalf of an appellant under Rule 3(f).

(3) **Change of address.** Each representative and each party appearing on his or her own behalf has a continuing duty to notify the Clerk and all other parties of any change of address or telephone number. Absent such notice, service of documents at the most recently provided address of that representative or party will be fully effective.

(e) **Fee Agreement.** A representative who enters an appearance (other than a limited appearance) must file a copy of a fee agreement or a statement indicating that the appellant is being represented without charge to the appellant. If the fee agreement provides for direct payment out of past due benefits under 38 U.S.C. § 5904, a copy must be served on the Secretary.

(f) **Appearance by Law Students.**

(1) An eligible law student, with the written consent of the appellant and the attorney of record, who must be a member of the bar of the Court, may appear in this Court.

(2) An eligible law student may participate in the preparation of briefs and other documents to be filed in this Court, but such briefs or documents must be signed by the attorney of record. The student may also participate in oral argument with leave of the Court, but only in the presence of the attorney of record. The attorney of record shall assume personal professional responsibility for the law student's work and for supervising the quality of his or her work. The attorney should be familiar with the case and prepared to supplement or correct any written or oral statement made by the student.

(3) In order to make an appearance pursuant to this rule, the student must:

(A) be duly enrolled in a law school approved by the American Bar Association;

(B) have completed legal studies amounting to at least four

semesters, or the equivalent if studies are scheduled on other than a semester basis;

(C) be certified by the dean of the law school as being of good character and competent legal ability. This certification must be filed with the Clerk and may be withdrawn at any time by the dean, upon written notice to the Clerk, or by the Court, without notice of hearing and without any showing of cause;

(D) be introduced by the attorney of record in the case;

(E) neither ask for nor receive any compensation or remuneration of any kind for his or her services from the person on whose behalf such services are rendered, but this will not prevent an attorney, legal aid bureau, law school, a state, or the United States from paying compensation to the eligible law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require;

(F) certify in writing that he or she has read and is familiar with the code of professional responsibility or rules of professional conduct in effect in the state or jurisdiction in which the student's law school is located.

(g) **Self-representation.** Any appellant may appear and present his or her own case before the Court.

RULE 47. EXPEDITED CONSIDERATION

(a) **Order for Brief.** On motion of a party for good cause shown, by written agreement of the parties, or on its own initiative, the Court may order expedited briefing of a case. Such motion or agreement must be filed not later than 10 days before the last day for filing the record on appeal.

(b) **Filing and Service of Briefs.** If expedited consideration is ordered, the appellant's principal brief must be served and filed within 25 days after the date on which the record on appeal is filed. The Secretary's brief must be served and filed within 15 days after service of the appellant's brief. Any reply brief must be served and filed within 10 days after service of the Secretary's brief.

(c) **Table of Contents; Length of Briefs.** Briefs filed under this rule must comply with Rule 28 (Briefs), except that principal briefs must be limited to 10 pages, reply briefs must be limited to five pages, and a table of cases is not required.

(d) **Supplementation of the Transmitted Record.** If expedited consideration is ordered, any notice of additional relevant parts of the record on appeal to be transmitted must be served within 25 days after the date on which the Clerk notifies the parties that the record on appeal has been filed. See also Rule 11(b). Such supplementation shall not extend the time for filing any brief.

RULE 48. DISCLOSURE OF CERTAIN PROTECTED RECORDS

(a) If, during the time periods set out in Rule 10 or at any other time during a proceeding before the Court, the parties identify records protected by 38 U.S.C. § 7332 and at least one of the parties believes that disclosure of such records is required in such proceeding and, further, the parties cannot agree with respect to the disclosure of such records, the party requesting disclosure shall make immediate application therefor, pursuant to 38 U.S.C. § 7332(b)(2)(D),

caption the case "In re: Sealed Case No. [insert Court of Veterans Appeals case number]" (not disclosing the identity of any individual), and serve on the protected patient or subject or successor in interest a copy of the application. Such application must include a statement specifying those steps taken by the parties to reach agreement before application was made to the Court. Upon receipt of such application, the Clerk, unless otherwise ordered by the Court, shall enter the case as "withdrawn" on the docket, assign a new case number and recaption the case using an encoded identifier, and seal the record on appeal and the file of the Court. Thereafter, any party or representative of a party, unless otherwise ordered by the Court, shall refer any subsequent filing only to the new case number and caption assigned by the Clerk.

(b) The procedures described in this rule may, in the Court's discretion, be applied to cases that the Court orders sealed but which do not contain records protected by 38 U.S.C. § 7332.

UNITED STATES COURT OF VETERANS APPEALS
Notice of Appeal

_____, Appellant,))
)
v.) VA File No. _____)
)
JESSE BROWN,)
Secretary of Veterans Affairs,)
Appellee.)

Notice is hereby given that _____,
Appellant, appeals to the U.S. Court of Veterans Appeals from the
decision of the Board of Veterans' Appeals (BVA).

Information about the BVA decision being appealed:

- a. Date of filing of Notice of Disagreement which led to BVA
decision being appealed: _____
- b. Location of VA Regional Office or other VA activity where
Notice of Disagreement was filed:

- c. Date of BVA decision: _____

NOTICE OF APPEAL FILED BY: Appellant's attorney
 Appellant Appellant's representative
 This is a limited appearance, for
the filing of this notice ONLY.

Signature of Appellant

Signature of attorney or representative (if applicable)

Printed name

Printed name

Address

Address

Telephone

Telephone

Bar # and Jurisdiction (if applicable)

(SEE OTHER SIDE)

CERTIFICATE OF SERVICE

On _____, a copy of this Notice of Appeal was (check one)

(Date)

- mailed postage prepaid to
- served personally on

General Counsel (027)
 Department of Veterans Affairs
 810 Vermont Avenue, NW
 Washington, DC 20420

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

_____ Date

_____ Signature (Appellant, Appellant's attorney, or representative)

INSTRUCTIONS

Send your completed Notice of Appeal (original only) so it will be received by the Clerk, US Court of Veterans Appeals, 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004, within 120 days after the mailing date of the BVA decision that you wish to appeal.

Send the filing fee (\$50.00, by check or money order, payable to "US Court of Veterans Appeals") with this Notice of Appeal. DO NOT MAIL CASH. If you are requesting waiver of the filing fee, attach a completed Form 4 to the Notice of Appeal.

You may file your Notice of Appeal by facsimile transmission to (202) 501-5848, but it must be received within the 120-day time limit. If you do, the Clerk must receive the \$50.00 filing fee or a completed Form 4 within 14 days after you filed the facsimile Notice of Appeal.

[S-A-M-P-L-E]

APPELLANT'S BRIEF

UNITED STATES COURT OF VETERANS APPEALS

91-000

JOHN Q. VETERAN,

Appellant,

v.

JESSE BROWN,
SECRETARY OF VETERANS AFFAIRS,

Appellee.

Oliver W. Counsel
Lawyr & Lawyr
1111 J Street, NW
Washington, DC 20000
(202) 555-1212

Attorney for Appellant

3. Do you have any cash or checking or savings accounts? _____
If the answer is "yes", state the total amount of cash and the
average monthly balance in any account.

4. Do you own any real estate, stocks, bonds, notes,
automobiles, or other valuable property (excluding ordinary
household furnishings and clothing)? _____ If the answer is
"yes", describe the property and state its approximate value.

5. List the persons whom you actually support and state your
relationship to those persons.

6. Have you ever filed a motion in another case in this Court to
appeal without payment of costs? _____ If the answer is
"yes", state the name and docket number of that case.

7. State any other circumstances that you want the Court to
consider about your ability to pay costs: _____

**I state under penalty of perjury under the laws of the United
States of America that the foregoing is true and correct.**

Date Signature of Appellant

Address

Telephone

INSTRUCTIONS

If you believe you are qualified to appeal without paying the
filing fee, answer all of the questions on this form and send it
(original only) to the Clerk with your Notice of Appeal. If you
filed your Notice of Appeal by facsimile transmission, send this
form to reach the Clerk within 14 days after you sent the facsimile
Notice of Appeal.