

# In the United States Court of Federal Claims

## NOTICE OF PROPOSED AMENDMENTS TO RULES

Pursuant to 28 U.S.C. §§ 2071(b) and 2503(b), the United States Court of Federal Claims hereby provides notice that it proposes to amend its rules and invites public comment on the proposed amendments. The proposed amendments affect (i) RCFC 6, 52.2, 80.1, and 83.2 and (ii) Vaccine Rules 2 and 23. All proposed changes are shown by strikethrough and yellow highlighting.

Comments must be received by June 16, 2017, and addressed to:

Lisa Reyes  
Acting Clerk of Court  
United States Court of Federal Claims  
717 Madison Place, NW  
Washington, DC 20439

Absent further notice, these amendments will take effect August 1, 2017.

  
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Lisa Reyes  
Acting Clerk of Court

Issued: May 3, 2017

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# Proposed Amendment to Rule 6

## **Rule 6. Computing and Extending Time; Time for Motion Papers**

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- (d) **Additional Time After Certain Kinds of Service.** When a party may or must act within a specified time after **being served service** and service is made under RCFC 5(b)(2)(C) **(mail)**, (D) **(leaving with the clerk)**, ~~(E)~~, or (F) **(other means consented to)**, 3 days are added after the period would otherwise expire under RCFC 6(a).

(As revised and reissued May 1, 2002; as amended June 20, 2006, Nov. 3, 2008, Jan. 11, 2010, Aug. 1, 2017.)

### **Rules Committee Notes**

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#### **2017 Amendment**

RCFC 6(d) has been amended in accordance with the corresponding change to FRCP 6 that became effective December 1, 2016.

# Proposed Amendment to Rule 52.2

## Rule 52.2. Remanding a Case

- (a) **In General.** In any case within its jurisdiction, the court, on motion or on its own, may order the remand of appropriate matters to an administrative or executive body or official.
- (b) **Remand Order.**
- (1) **Contents.** An order remanding a case must:
- (A) include such direction as the court deems proper and just;
  - (B) establish the duration of the remand period, not to exceed 6 months;
  - (C) specify the extent to which court proceedings will be stayed during the remand period; and
  - (D) designate a party to report to the court, every 90 days or less, on the status of the remand proceedings.
- (2) **Service.** A certified copy of the remand order must be served by the clerk in accordance with RCFC 5 on:
- ~~(A) each party; and~~
  - ~~(B) the administrative or executive body or official to whom the order is directed.~~

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(As revised and reissued May 1, 2002; as renumbered June 20, 2006; as amended Nov. 3, 2008, Aug. 3, 2015, Aug. 1, 2017.)

### Rules Committee Notes

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#### 2017 Amendment

RCFC 52.2(b)(2) has been amended to delete the requirement calling for a certified copy of the remand order to be served on each party.

# Proposed Amendment to Rule 80.1

## Rule 80.1. Court Reporters

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### (c) Transcripts.

(1) **Costs.** A transcript will be prepared at such charges as may be fixed or approved by the court.

(2) **Form; Contents.** A transcript must comply with the form, content, and style requirements established by the court (available on the court's website at [www.uscfc.uscourts.gov](http://www.uscfc.uscourts.gov)).

(3) **Filing.** If a transcript is requested by a party or by the court, the court reporter must file the transcript of the proceeding within the time period specified by the court.

(4) **Motion to Correct.** If a party seeks to correct a transcript, the party must file a motion identifying those portions of the transcript to be corrected.

(5) **Motion to Seal.** Except in a proceeding sealed pursuant to RCFC 26(c), a party must move the court to seal all or portions of a proceeding.

(4)(6) **Electronic Access.** Except in a proceeding sealed pursuant to RCFC 26(c) or RCFC 80.1(c)(5), the court must provide electronic access to a transcript. Prior to being made electronically available, however, the transcript must conform to RCFC 5.2.

(A) **Availability.** Once a transcript is filed with the court, the transcript will be available at the clerk's office, for inspection only, for a period of 90 days (unless extended by the court).

### (B) *Redaction of Personal Identifiers.*

(i) The parties must review the transcript to redact personal information covered by RCFC 5.2. The redactions are subject to

the procedures specified in the court's transcript redaction policy (available on the court's website at [www.uscfc.uscourts.gov](http://www.uscfc.uscourts.gov)).

(ii) Pursuant to the court's transcript redaction policy, a Notice of Intent to Request Redaction and a Transcript Redaction Request must be filed (see Appendix of Forms, Forms 3D and 3E).

(C) **Additional Redactions.** In addition to the redaction of personal information, a party may move the court for additional redactions before a transcript is made electronically available.

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(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, Nov. 3, 2008, Aug. 30, 2013, Aug. 1, 2016, Aug. 1, 2017.)

## Rules Committee Notes

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### 2017 Amendment

RCFC 80.1(c) has been amended to distinguish between a request to correct a transcript, a request to seal all or portions of a transcript, and a request to redact personal identifiers or additional information from a transcript before it is made electronically available.

## Proposed Amendment to Rule 83.2

### Rule 83.2. Attorney Discipline

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#### (e) Attorney's Duty to Notify the Court of a Conviction or Discipline Imposed by Another Court.

(1) *In General.* An attorney admitted to practice before this court must notify the clerk in writing within 14 days of issuance of an order establishing the attorney's:

- (A) conviction by another court of a serious crime;
- (B) disbarment or suspension by another court; or
- (C) disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending.

\* \* \*

#### (g) ~~Initiating Referrals, Investigations, and Disciplinary Proceedings.~~

(1) *Docketing.* Consistent with RCFC 83.2(l), the clerk will maintain an attorney disciplinary docket and will assign a number to each matter at the time of referral to the standing panel.

(2) *Referring Matters to the Standing Panel.* The clerk must refer to the standing panel:

- (A) any information received from another court concerning a member of this court's bar involving disbarment, suspension, disbarment on consent, or resignation from the bar of another court while an investigation into an allegation of misconduct is pending; and
- (B) any complaint regarding attorney misconduct received from:
  - (i) a judge or special master of the court; or
  - (ii) a member of the public.

(3) *Review by the Standing Panel.*

(A) Upon receiving information from another court or a member of the public pursuant to RCFC 83.2(g)(2), the standing panel will review the allegation and determine whether the matter merits further investigation.

If the standing panel concludes that the allegation on its face is insufficient to warrant the imposition of any discipline, the standing panel will ~~may~~ dismiss the matter without further proceedings by issuing a final order if the panel concludes that the allegation on its face is insufficient to warrant the imposition of any discipline.

(B) Upon receiving information from a judge or special master of the court pursuant to RCFC 83.2(g)(2), the standing panel will immediately ~~open~~ initiate an investigation.

(4) *Notifying the Attorney.* When the standing panel determines an investigation is warranted pursuant to RCFC 83.2(g)(3), the clerk must provide written notice of the complaint.

(5) *Appointing Investigatory Counsel.*

(A) *In General.* The standing panel may appoint the court's staff attorney or other appropriate court personnel to investigate allegations of misconduct.

(B) *Role of Investigatory Counsel.* In conducting a disciplinary investigation, the investigatory counsel may:

- (i) review the complaint and any relevant documents available at the court or provided by the complainant;
- (ii) interview witnesses, including the complainant and the attorney subject to the

- proceeding;
- (iii) provide to the standing panel, at the panel's request, a report detailing the investigatory counsel's findings; and
  - (iv) take any additional steps that are reasonably necessary to effectuate the investigation.
- (C) **Outside Counsel.** In addition to, or as an alternative to, the procedure described in subparagraphs (A) and (B), at any stage of a proceeding the standing panel may, in its discretion, appoint outside counsel to investigate and/or prosecute allegations of misconduct under this rule.
- (6) **Dismissal; Issuing and Serving a Show Cause Order.** To initiate a disciplinary proceeding, the standing panel must:
- (A) **Dismissal.** If the standing panel concludes that the findings of the investigation are insufficient to warrant further disciplinary proceedings, the panel will dismiss the matter by issuing a final order.
  - (B) **Issuing and Serving a Show Cause Order.** To initiate further disciplinary proceedings, the standing panel must:
    - (i) issue a show cause order describing the attorney's alleged misconduct and directing the attorney to show cause why a specific discipline should not be imposed or why a discipline to be determined at a later date should not be imposed; and
    - (ii) ~~(B)~~ serve the order on the attorney in accordance with RCFC 83.2(m).
- (7) **Presumed Discipline.** Unless the standing panel concludes that a different discipline may be appropriate, the following discipline is presumed to apply and should be identified in the show cause

order:

- (A) **For Conviction by Another Court of a Serious Crime.** Disbarment is the presumed discipline for the conviction by another court of a serious crime.
  - (B) **For Disbarment or Suspension by Another Court.** Reciprocal disbarment or suspension is the presumed discipline for an act or omission that results in an attorney's disbarment or suspension by another court.
  - (C) **For Disbarment on Consent or Resignation From the Bar of Another Court.** Reciprocal disbarment is the presumed discipline for an attorney's disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending.
  - (D) **For Conduct Unbecoming a Member of the Bar of this Court.** There is no presumed discipline for conduct that is unbecoming a member of the bar of this court; the standing panel will determine the appropriate discipline.
- (8) **Responding to a Show Cause Order.** Unless otherwise ordered, an attorney must file any response to a show cause order within 30 days after service of the order. Any request for a hearing must be included in the response.
- (h) **Proceedings Before the Standing Panel.**
- (1) **Representation by Counsel.** An attorney may be represented by counsel in any disciplinary proceeding before the standing panel.
  - (2) **Suspending an Attorney.** The standing panel will immediately suspend an attorney from practicing before the court upon notice that an attorney:
    - (A) has been convicted by another court of a serious crime; or
    - (B) has been disbarred, suspended,

disbarred on consent, or resigned from the bar of another court while an investigation into an allegation of misconduct is pending,

**(3) Record of the Proceeding.**

**(A) Content.** The record will consist of the show cause order, the response to the order, all evidentiary materials, and all briefs submitted to or considered by the standing panel or the court.

**(B) Withholding Information.** Information will be withheld from an attorney only in extraordinary circumstances, e.g., for national security or criminal investigation purposes.

**(C) Copying and Responding to Documents.** If the record includes documents in addition to the show cause order and the response, an attorney must be given the opportunity to inspect and copy the additional documents at his or her expense and, if the attorney contests the charge but has not requested a hearing, must be given the opportunity to file a supplemental response.

**(4) Issuing a Final Order in an Uncontested Matter.** If an attorney does not respond to a show cause order issued pursuant to RCFC 83.2(g)(6)(4) or does not object to the imposition of discipline, the standing panel may issue a final order imposing such discipline.

**(5) Presumptions.**

**(A) For Conviction by Another Court of a Serious Crime.** When an attorney has been convicted by another court of a serious crime, the standing panel:

**(i)** will treat the conviction as conclusive evidence of the commission of that crime, whether the conviction resulted from a plea of guilty or nolo

contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal; and

**(ii)** will limit further proceedings to a determination of the final discipline to be imposed.

**(B) For Disbarment, Suspension, Disbarment on Consent, or Resignation From the Bar of Another Court.** The standing panel will treat an attorney's disbarment, suspension, disbarment on consent, or resignation from the bar of another court while an investigation into an allegation of misconduct is pending as conclusive evidence that the misconduct in fact occurred and that the discipline was appropriate unless the standing panel concludes that:

**(i)** the procedure was so lacking in notice or an opportunity to be heard that it constituted a deprivation of due process;

**(ii)** there was such an infirmity of proof establishing the misconduct that this court could not, consistent with its duty, accept as final the conclusion on the matter;

**(iii)** the imposition of the same discipline by this court would result in grave injustice; or

**(iv)** the misconduct established is deemed to warrant substantially different discipline.

**(6) Conducting a Hearing in a Contested Matter.**

**(A) In General.** If an attorney requests a hearing in his or her response to a show cause order or in a supplemental response filed pursuant to RCFC 83.2(h)(3)(C), the standing panel will schedule a hearing and will determine whether the submission of evidence, including

the calling of witnesses, is appropriate.

- (B) **Notice of Hearing.** An attorney must be given at least 30 days' notice of the time, date, and place of the hearing.
- (C) **Subpoena.** The standing panel may compel by subpoena:
  - (i) the attendance of witnesses, including the attorney subject to the proceeding; and
  - (ii) the production of documents.
- (D) **Cross-Examining Witnesses.** The attorney subject to the proceeding must be afforded an opportunity to cross-examine any witnesses called before the standing panel and to introduce evidence in defense or mitigation.
- (E) **Recording.** A hearing will be digitally recorded unless an attorney arranges to have a reporting service present at his or her own expense.
- (F) **Post-Hearing Brief.** The standing panel may order the filing of a post-hearing brief, which may include, at the panel's direction, either a statement of facts or proposed findings of fact. Post-hearing briefing is not a matter of right.
- (G) **Issuing a Final Order.** Following the conclusion of the disciplinary proceeding, the standing panel will issue a final order.
- (7) **Reporting a Final Order.** The standing panel may:
  - (A) direct the attorney or the clerk to send a copy of the final order to all other courts before which the attorney is admitted; and
  - (B) direct the clerk to notify the National Disciplinary Data Bank of the discipline imposed.

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(As revised and reissued May 1, 2002; as amended

Nov. 6, 2008, July 13, 2009, July 15, 2011, Aug. 3, 2015, Aug. 1, 2017.)

### Rules Committee Notes

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#### 2017 Amendment

RCFC 83.2(e)(1) has been amended to clarify that the 14-day deadline for notifying the court of an attorney's conviction, disbarment, or suspension runs from the date of the court order imposing discipline.

The title of RCFC 83.2(g) has been amended to include the three distinct steps involved in an attorney discipline matter: a referral to the standing panel, an investigation by the standing panel, and further disciplinary proceedings conducted by the standing panel.

In addition, RCFC 83.2(g)(3)(A) and (B) have been amended to distinguish between disciplinary matters initiated in other courts or by members of the public and matters initiated by a judge or special master of the court.

Finally, RCFC 83.2(g)(6)(A) and (B) have been amended to establish that the standing panel has two options at the close of an investigation conducted pursuant to RCFC 83.2(g)(5): dismiss the matter or issue an order to show cause to initiate further proceedings before the standing panel.

## Proposed Amendment to Vaccine Rule 2

### TITLE I. SCOPE OF RULES; COMMENCING AN ACTION

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#### Rule 2. Commencing an Action

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##### (e) Service.

- (1) The petition must include a statement that ~~petitioner must serve~~ one copy of the petition and accompanying documents ~~has been served~~ on the Secretary of Health and Human Services by first class or certified mail to:

Secretary, Health and Human  
Services  
Director, Division of Injury  
Compensation Programs  
Health Resources and Services  
Administration  
National Vaccine Injury  
Compensation Program (VICP)  
5600 Fishers Lane, 08N146B  
Rockville, MD 20857.

- (2) The clerk must serve one copy of the petition and accompanying documents on the Attorney General.

(As revised and reissued May 1, 2002; as amended Sept. 15, 2003, Aug. 2, 2005, July 13, 2009, July 15, 2011, Aug. 3, 2015, Aug. 1, 2016, Aug. 1, 2017)

#### Rules Committee Notes

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##### 2017 Amendment

**Rule 2.** Paragraph (e)(1) has been amended to require proof of service of the petition and accompanying documents on the Secretary of Health and Human Services.

# Proposed Amendment to Vaccine Rule 23

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## TITLE V. REVIEW OF A DECISION OF THE SPECIAL MASTER

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### Rule 23. Motion for Review

- (a) **In General.** To obtain review of the special master's decision, a party must file a motion for review with the clerk within 30 days after the date the decision is filed. The filing of a motion for reconsideration will not toll this 30-day period. See Vaccine Rule 10(e)(3)(B).
- (b) **Time Extensions.** No extensions of time will be permitted under this rule and the failure of a party to file a motion for review in a timely manner will constitute a waiver of the right to obtain review.

(As revised and reissued May 1, 2002; as amended July 13, 2009, Aug. 1, 2017.)

### Rules Committee Notes

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#### 2017 Amendment

**Rule 23.** Subdivision (a) has been amended to clarify that a motion for reconsideration does not toll the 30-day period for filing a motion for review as provided in Vaccine Rule 10(e)(3)(B).