

United States Court of Appeals for Veterans Claims

INTERNAL OPERATING PROCEDURES

These procedures are changed, effective May 25, 2004, as follows:

V. FULL-COURT-PANEL PROCESS

(a) Standard. Decisions by a full-Court panel are not favored except where necessary to secure or maintain a uniformity of the Court's decisions or to resolve a question of exceptional importance; in such circumstances, a panel composed of all eligible judges on the full Court is formed as provided in (b) below.

(b) Procedure.

(1) *Eligibility to participate in full-Court panel.*

(A) *Eligible judge defined.* An eligible judge is a judge in regular active service who has not disqualified himself or herself. A judge is in regular active service from the time that that judge takes the oath of office until retirement, resignation, or removal. A retired judge recalled to service is not eligible to participate in a full-Court decision.

(B) *Vote for full-Court decision.* If a judge begins regular active service during a voting period described in (4) or (5) below, the judge is eligible (but not obligated) to participate in the decision on whether a case is to be heard by the full Court. CLS (which manages this process for the Clerk) provides a vote sheet to the new judge as soon as practicable after the judge begins regular active service.

(C) *Vote on the merits.* If a judge begins regular active service after a vote described in (4) or (5) below but before the full Court hears oral argument or meets in conference on the case, whichever is earlier, that judge is eligible (but not obligated) to participate in the decision on the merits of the case. The Clerk provides to the new judge as soon as practicable all case materials provided to the other judges.

(2) *Vote required.* The full Court considers an appeal or a petition for an extraordinary writ, reviews a panel decision, and holds oral argument only when at least one-half of the participating eligible judges agree to do so within the time periods set forth in (4) or (5) below.

(3) *Voting Period and Voting.* The period for conducting a vote of the full Court under (4) or (5) below begins on the working day after the day on which CLS circulates to all eligible judges a vote sheet or notice. The voting period ends at 5:00 p.m. (A) on the last working day of the voting period established in the vote sheet or notice, or (B) if a judge begins regular active service during a voting period, on the last day of the voting period for the judge who most recently entered regular active service. If,

during that voting period, such a new judge elects not to participate in the case, the judge so states in the vote sheet and submits it within that voting period. When a judge submits a vote sheet to CLS, the judge sends a copy to each judge participating in the matter.

(4) *On motion of a party.*

(A) If a party moves for a full-Court decision, CLS circulates to all eligible judges the motion and a notice (i) advising that the motion will be denied unless, during a voting period of five working days, at least two judges request that the Court seek a response from the other party and (ii) specifying the last day of the voting period. If at least two judges do not so request during the five-day voting period, the motion is denied and CLS prepares a denial order noting that the judges did not request that a vote be taken.

(B) If at least two judges do so request during the five-day voting period, the Clerk issues an order seeking a response. CLS then circulates to all participating eligible judges the motion, the response (or a notice that none was filed), and a vote sheet providing for a voting period of 10 working days and specifying the last day of the voting period. If, upon the expiration of the 10-day voting period, at least one-half of the participating eligible judges do not vote to grant the motion, the motion is denied and CLS prepares an order of denial for issuance by the full Court.

(5) *At the request of judges.*

(A) A judge requesting a full-Court decision submits to CLS a memorandum in support of the request and CLS circulates to all eligible judges a notice of the request and the accompanying memorandum. The notice (i) advises that the request will be denied unless, during a voting period of five working days, another judge joins in the request, (ii) advises that the case will not proceed to any pending disposition until the expiration of that voting period, and (iii) specifies the last day of the voting period. If no judge joins in the request during the five-day voting period, the case proceeds to disposition and no order or statement is issued and no docket notation is made regarding the request.

(B) If another judge joins in the request during the five-day voting period, CLS circulates to all eligible judges the request, the accompanying memorandum, and a vote sheet identifying the other judge(s) who joined in the request, providing for a voting period of 10 working days, and specifying the last day of the voting period. If, upon the expiration of the 10-day voting period, at least one-half of the participating eligible judges do not vote for the request, the request is denied, and CLS prepares an order of denial for issuance by the full Court.

- (6) *Full-court decision denied.* If under (4) or (5) above the request or motion is denied, CLS so notifies the Chief Judge. If an order will be issued, CLS prepares the order, which accounts for the extent of participation by each judge who was in regular active service at any time from the date of the motion or request to the date of the order. A judge who intends to write a separate statement promptly circulates to the other participating eligible judges a notice of intent to write separately and circulates the statement as soon as practicable. If, by 5:00 p.m. on the fifth working day after the expiration of the voting period, no judge has circulated a notice of intent to write separately, an order denying a full-Court decision is issued. No separate statement will be published unless the writing judge has circulated such notice to the other participating eligible judges during the five-day period and unless the statement is circulated to them and is submitted for publication with the full-Court order by 5:00 p.m. on the 15th calendar day after the expiration of the five-day notice period. If any judge has circulated and submitted such a statement within the 15-day period, a separate statement submitted by another judge is published if that judge circulates the statement to the other participating eligible judges and submits it, by 5:00 p.m. on the 10th working day after the expiration of the 15-day period, for publication with the order. At the request of any participating eligible judge for good cause, the Chief Judge may extend, for not more than an additional 30 calendar days for that judge, the time to submit a separate statement for publication with the full-Court order.
- (7) *Full-Court decision ordered.* If sufficient votes for a full-Court decision are received, CLS notifies the Chief Judge and the Clerk. The Clerk issues an order assigning the case to the full-Court panel and noting any judge who has disqualified himself or herself or elected not to participate as of that date. The Chief Judge convenes a conference or, as provided for in (2) above, directs the Clerk to schedule oral argument to be followed by a conference. If in the majority, the Chief Judge, assigns authorship responsibility for the opinion or order of the full Court. If the Chief Judge is in the minority, the senior judge in the majority assigns authorship responsibility. If the Chief Judge announces that the vote of participating judges is evenly divided on all issues, the Court issues an order directing appropriate further action on the case.
- (8) *Issuance of full-Court opinion or order.* The proposed full-Court opinion or order is circulated to all participating eligible judges for comment, concurrence, or dissent, and to the Editor for format and style review. The opinion or order accounts for the extent of participation by each judge who was in regular active service at any time from the date of the order assigning the case to the full Court to the date of the opinion or order. By 5:00 p.m. on the fifth working day after the proposed opinion or order is circulated, any editorial comments are sent to the author judge and any substantive comments are sent to all participating eligible judges. A judge who intends to write a separate opinion or statement circulates to the other participating eligible judges, by 5:00 p.m. on the 10th working day after the day on which the proposed full-Court order or opinion is circulated, a notice of intent to write

separately, and circulates the opinion or statement as soon as practicable. No separate opinion or statement will be published unless the writing judge has circulated such notice to all participating eligible judges during the 10-day period and unless the separate opinion or statement is circulated to all participating eligible judges and is submitted for publication with the full-Court opinion or order by 5:00 p.m. on the 30th calendar day after the date on which a proposed full-Court order or opinion is circulated. At the request of any participating eligible judge for good cause, the Chief Judge may extend, for not more than an additional 30 calendar days for that judge, the time to submit a separate opinion or statement for publication with the full-Court opinion or order. The judge who is the author of the full-Court opinion or order forwards to the editor a reproducible hard copy and a disk copy of the final opinion or order, with any separate opinion or statement, as soon as practicable after (a) the expiration of the comment period; (b) the expiration of any period for the circulation of any separate opinion or statement if notice of intent to write separately has been timely circulated; and (c) any comments have been considered. All full-Court opinions or orders are published.