

OFFICE OF SPECIAL MASTERS

GENERAL ORDER #10

This Order addresses the use as precedent of **unpublished** Vaccine Act opinions and orders in filings before the Special Masters of this court. It is common practice for courts to prohibit the reliance on unpublished products as precedent. For example, unpublished opinions and orders of the **Judges** of the United States Court of Federal Claims are not precedential and may not be cited in filings before those Judges. See RCFC 52.1. The Vaccine Rules, however, do not address the use of unpublished opinions and orders before the Special Masters. Although published opinions and orders are readily available to the parties, unpublished are not. Thus, the use of unpublished opinions and orders has been questioned as unfair. The Special Masters agree that only published opinions and orders should be relied upon as precedent.

Each Special Master is obliged to designate and make available for public consumption opinions and orders that the master believes have precedential value, i.e., that add to the body of law or provide general knowledge assisting practitioners in prosecuting their claims. The Special Masters' published opinions and orders can be researched on the electronic media through Westlaw and Lexis. Even when a Special Master does not publish an opinion or order, either party may move for publication. The standard for publication is not high - a minimal showing of precedential value will support the motion. With the efforts of the Special Masters and the Bar, opinions and orders of interest and precedential value will be published and thus made available for widespread use. By doing so, the need to rely on unpublished works should not exist.

Effective with the issuance of this Order, the following policy governs the use of unpublished opinions:

- Unpublished opinions and orders are binding only upon the parties to that particular case, and have no precedential effect. **Unpublished opinions and orders, of both Special Masters and Judges of this court, shall not be cited as authority in filings before the Special Masters**, with two minor exceptions. First, such materials may be cited as “law of the case” in the same case. Second, unpublished opinions and orders may be cited with respect to an attorney's hourly rate in a fee application, but only if the unpublished opinion or order involved the same attorney making the fee application. In those two instances where an unpublished opinion or order is relied upon, the moving party shall attach a copy of the opinion or order to his or her filing.
- Any counsel believing an unpublished opinion or order to be of precedential value may file with the authoring Special Master a Motion to Publish. While

no time limit is placed on such a motion, to meet the above-stated goal of assisting other practitioners, Motions to Publish **should** be filed within 45 days after issuance of the opinion or order.

While the above policy will correct any future problems regarding unpublished works, the Special Masters are aware that there are a number of unpublished opinions and orders that are regularly relied upon by the parties as precedent. The fact that the parties rely upon those opinions and orders supports the need for publication of those materials. **Accordingly, any counsel aware of a Special Master's opinion or order that should be published is hereby asked to so notify the Office of the Chief Special Master within 60 days after the issuance of this General Order.**

After the close of the 60-day period, unpublished opinions and orders shall not be employed as authority by the Special Masters of this court, and **may not be cited by counsel as precedent**, except in the two narrow instances set forth above.*

The court suggests the following citation form for all cited decisions and orders.

Published opinions and orders:

Doe v. Secretary of HHS, No. 95-123V, 1997 WL 123456 (Fed. Cl. Spec. Mstr. May 29, 1997) **or** Doe v. Secretary of HHS, No. 95-123V, 1997 U.S. Claims LEXIS 1234 (Fed. Cl. Spec. Mstr. May 29, 1997).

When citing a specific page of a published opinion or order, cite to the Westlaw or Lexis star page:

Doe v. Secretary of HHS, No. 95-123V, 1997 WL 123456, at *3 (Fed. Cl. Spec. Mstr. May 29, 1997) **or** Doe v. Secretary of HHS, No. 95-123V, 1997 U.S. Claims LEXIS, at *3 (Fed. Cl. Spec. Mstr. May 29, 1997).

Unpublished opinions:

Doe v. Secretary of HHS, No. 95-678V (Fed. Cl. Spec. Mstr. May 29, 1997) (unpublished).

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

*The parties remain free to move the authoring Special Master (or the Chief Special Master if the authoring Special Master is no longer with the court) for publication of an unpublished opinion or order after the close of this 60-day time period. However, use as precedent is prohibited until the opinion or order is published.