

## 6101.32

an appearance in the appeal on behalf of the respondent. Upon receipt of a completed and executed Certificate of Finality, unless the respondent files a timely appeal from the decision, the person or persons who entered an appearance in the appeal on behalf of the respondent will promptly transmit the appellant's Certificate of Finality, along with a certified copy of the Board's decision and any other necessary documentation, to the United States Department of the Treasury for payment.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26952, May 12, 2008]

### **6101.32 Appeal from a Board decision [Rule 32].**

(a) *Record on review.* When a party has appealed a Board decision to the United States Court of Appeals for the Federal Circuit, the record on review shall consist of the decision sought to be reviewed, the record before the Board as described in 6101.9(a)(1) through (a)(13) (Rule 9(a)(1) through (a)(13)), and such other material contained in the Board's file as may be required by the Court of Appeals.

(b) *Notice.* At the same time a party seeking review of a Board decision files a notice of appeal, that party shall provide a copy of the notice to the Board.

(c) *Filing of certified list of record materials.* Promptly after service upon the Board of a copy of the notice of appeal of a Board decision, the Office of the Clerk of the Board shall file with the Clerk of the United States Court of Appeals for the Federal Circuit a certified list of all documents, transcripts of testimony, exhibits, and other materials constituting the record, or a list of such parts thereof as the parties may designate, adequately describing each. The Board will retain the record and transmit any part thereof to the Court upon the Court's order during the pendency of the appeal.

(d) *Request by attorney of record to review record.* When a case is on appeal, an attorney of record may request permission from the Board to sign out for a reasonable period of time the record on appeal to review and to copy if the attorney is unable to gain access to the record from another source.

## 48 CFR Ch. 61 (10-1-10 Edition)

### **6101.33 Ex parte contact; sanctions and other proceedings [Rule 33].**

(a) *Standards.* All parties and their representatives, attorneys, and any expert/consultant retained by them or their attorneys, must obey directions and orders prescribed by the Board and adhere to standards of conduct applicable to such parties and persons. As to an attorney, the standards include the rules of professional conduct and ethics of the jurisdictions in which that attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, or its proceedings. The Board will also look to voluntary professional guidelines in evaluating an individual's conduct.

(b) *Ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, without the knowledge and consent of the adverse party, regarding any matter at issue in that appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

(c) *Sanctions.* When a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by the Board (including an order to provide or permit discovery), or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such orders as are just, including the imposition of appropriate sanctions. The sanctions may include:

(1) Taking the facts pertaining to the matter in dispute to be established for the purpose of the case in accordance with the contention of the party submitting the discovery request;

(2) Forbidding challenge of the accuracy of any evidence;

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;

(4) Prohibiting the disobedient party from introducing in evidence designated documents or items of testimony;

(5) Striking pleadings or parts thereof, or staying further proceedings until the order is obeyed;

(6) Dismissing the case or any part thereof;

(7) Enforcing the protective order and disciplining individuals subject to such order for violation thereof, including disqualifying a party's representative, attorney, or expert/consultant from further participation in the case; or

(8) Imposing such other sanctions as the Board deems appropriate.

(d) *Denial of access to protected material for prior violations of protective orders.* The Board may in its discretion deny access to protected material to any person found to have previously violated a protective order, regardless of who issued the order.

(e) *Disciplinary proceedings.* (1) In addition to the procedures in this section 6101.33 (Rule 33), the Board may discipline individual party representatives, attorneys, and experts/consultants for a violation of any Board order or direction or standard of conduct applicable to such individual where the violation seriously affects the integrity of the Board, its process, or its proceedings. Sanctions may be public or private, and may include admonishment, disqualification from a particular matter, referral to an appropriate licensing authority, or such other action as circumstances may warrant.

(2) The Board in its discretion may suspend an individual from appearing before the Board as a party representative, attorney, or expert/consultant if, after affording such individual notice and an opportunity to be heard, a majority of the members of the full Board determines such a sanction is warranted.

#### **6101.34 Seal of the Board [Rule 34].**

The Seal of the Board shall be a circular boss, the outer margin of which shall bear the legend "Civilian Board of Contract Appeals." The Seal shall be the means of authentication of all records, notices, orders, dismissals, opinions, subpoenas, and certificates issued by the Board.

#### **6101.35—6101.50 [Reserved]**

#### **6101.51 Variation from standard proceedings [Rule 51].**

The ultimate purpose of any Board proceeding is to resolve fairly and expeditiously any dispute properly before the Board. When, during the normal course of a Board proceeding, the parties agree that a change in established procedure will promote this purpose, the Board will make that change if it is deemed to be feasible and in the best interest of the parties, the Board, and the resolution of the issue(s) in controversy. Although any party may ask the Board to vary from standard proceedings, individuals and small businesses may find such variations to be especially useful. The following are examples of these changes:

(a) Establishing an expedited schedule of proceedings, such as by limiting the times provided in 6101.1 through 6101.34 (Rules 1 through 34) for various filings, to facilitate a prompt resolution of the case;

(b) Developing a record and rendering a decision on the issue of entitlement prior to reviewing the issue of quantum in a party's claim;

(c) Developing a record and rendering a decision on any legal or factual issue in advance of others when that issue is deemed critical to resolving the case or effecting a settlement of any items in dispute; and

(d) Developing a record regarding relevant facts through an on-the-record round-table discussion with sworn witnesses, counsel, and the presiding judge rather than through formal direct and cross-examination of each of these same witnesses. This discussion shall be controlled by the presiding judge. It may be conducted, for example, through the presentation of narrative statements of witnesses or on an issue by issue basis. The presiding judge may also request that the parties' counsel or representatives present opening and/or closing statements in lieu of written briefs.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26952, May 12, 2008]