

## Department of Veterans Affairs

## Pt. 18b

report to the Chief Medical Director or the Under Secretary for Benefits, whichever is appropriate, the results of investigations, audits, reviews and evaluations or the results of attempts to secure voluntary compliance.

[35 FR 10759, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

### § 18a.5 Delegation to the General Counsel.

The General Counsel is delegated the responsibility, upon receipt of information from the Under Secretary for Benefits, the Chief Medical Director, or the designee of either of them, that compliance cannot be secured by voluntary means, of forwarding to the recipient or other person the notice required by § 18.9(a) of this chapter, and also is delegated the responsibility of representing the agency in all proceedings resulting from such notice.

[35 FR 10759, July 2, 1970]

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AUTHORITY: 5 U.S.C. 301, 38 U.S.C. 501 and 38 CFR 18.9(d) and appendix A, part 18.

SOURCE: 35 FR 10760, July 2, 1970, unless otherwise noted.

### GENERAL RULES

#### § 18b.1 Scope of rules.

The rules of procedure in this part supplement §§18.9 and 18.10 of this chapter and govern the practice for hearings, decisions, and administrative review conducted by the Department of Veterans Affairs pursuant to Title VI of the Civil Rights Act of 1964 (section 602, 78 Stat. 252) and part 18 of this chapter.

#### § 18b.2 Reviewing authority.

The term *reviewing authority* means the Secretary of Veterans Affairs, or any person or persons acting pursuant to authority delegated by the Secretary to carry out responsibility under §18.10 of this chapter. The term includes the Secretary with respect to action under §18b.75.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

#### § 18b.9 Definitions.

The definitions contained in §18.13 of this chapter apply to this part, unless the context otherwise requires.

#### § 18b.10 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights hearing clerk. Inquiries may be made at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420.

#### § 18b.11 Use of number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa.

[51 FR 10386, Mar. 26, 1986]

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#### § 18b.12 Suspension of rules.

Upon notice to all parties, the reviewing authority or the presiding officer, with respect to matters pending before them, may modify or waive any rule upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

### APPEARANCE AND PRACTICE

#### § 18b.13 Appearance.

A party may appear in person or by counsel and participate fully in any proceeding. A State agency or a corporation may appear by any of its officers or by any employee it authorizes to appear on its behalf. Counsel must be members in good standing of the bar of a State, territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

#### § 18b.14 Authority for representation.

Any individual acting in any proceeding may be required to show authority to act in such capacity.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

#### § 18b.15 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

### PARTIES

#### § 18b.16 Parties.

The term party shall include an applicant or recipient or other person to whom a notice of hearing or opportunity for hearing has been mailed naming that person as respondent. The Department shall also be deemed a party to all proceedings and shall be represented by the General Counsel.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986; 54 FR 34984, Aug. 23, 1989]

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### § 18b.17 *Amici curiae*.

(a) Any interested person or organization may file a petition to participate in a proceeding as an *amicus curiae*. Such petition shall be filed prior to the prehearing conference, or if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The presiding officer may grant the petition if the officer finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and may contribute materially to the proper disposition thereof. An *amicus curiae* is not a party and may not introduce evidence at a hearing.

(b) An *amicus curiae* may submit a statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. The *amicus curiae* may submit a brief on each occasion a decision is to be made or a prior decision is subject to review. The brief shall be filed and served on each party within the time limits applicable to the party whose position the *amicus curiae* deems to support; or if the *amicus curiae* does not deem to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings.

(c) When all parties have completed their initial examination of a witness, any *amicus curiae* may request the presiding officer to propound specific questions to the witness. The presiding officer, in the officer's discretion, may grant any such request if the officer believes the proposed additional testimony may assist materially in elucidating factual matters at issue between the parties and will not expand the issues.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

### § 18b.18 *Complainants not parties*.

A person submitting a complaint pursuant to § 18.7(b) of this chapter is not a party to the proceedings governed by this part, but may petition, after proceedings are initiated, to become an *amicus curiae*.

## DOCUMENTS

### § 18b.20 *Form of documents to be filed*.

Documents to be filed shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall show the title, if any, and address of the signatory. Copies need not be signed but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide and 12 inches long.

### § 18b.21 *Signature of documents*.

The signature of a party, authorized officer, employee, or attorney constitutes a certificate that one of them has read the document, that to the best of that person's knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

### § 18b.22 *Filing and service*.

All notices by a Department of Veterans Affairs official, and all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to a Department of Veterans Affairs official from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall supply the original and two copies of documents submitted for filing. Filings shall be made with the Civil Rights hearing clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 8 a.m. to 4:30 p.m., eastern standard or daylight saving time, whichever is effective in the District of Columbia at the time. Originals only of exhibits and transcripts of testimony need be filed.

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For requirements of service on amici curiae, see §18b.76.

**§ 18b.23 Service; how made.**

Service shall be made by personal delivery of one copy to each person to be served or by mailing by first-class mail, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative, will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed, and should be airmailed if the addressee is more than 300 miles distant.

**§ 18b.24 Date of service.**

The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.

**§ 18b.25 Certificate of service.**

The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by the party's attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

**TIME**

**§ 18b.26 Computation.**

In computing any period of time under the rules in this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sun-

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days, and legal holidays shall be excluded from the computation.

**§ 18b.27 Extension of time or postponement.**

Requests for extension of time should be served on all parties and should set forth the reasons for the application. Applications may be granted upon a showing of good cause by the applicant. From the designation of a presiding officer until the issuance of a decision such requests should be addressed to the presiding officer. Answers to such requests are permitted, if made promptly.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

**§ 18b.28 Reduction of time to file documents.**

For good cause, the reviewing authority or the presiding officer, with respect to matters pending before them, may reduce any time limit prescribed by the rules in this part, except as provided by law or in part 18 of this chapter.

**PROCEEDINGS BEFORE HEARING**

**§ 18b.30 Notice of hearing or opportunity for hearing.**

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient, pursuant to §§18.9 and 18a.5 of this chapter.

**§ 18b.31 Answer to notice.**

The respondent, applicant or recipient may file an answer to the notice within 20 days after service thereof. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the respondent party is without knowledge, in which case the answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of

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all matters of fact recited in the notice.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

### § 18b.32 Amendment of notice or answer.

The General Counsel may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer thereto is served, and each respondent may amend the answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of the original answer. Otherwise a notice or answer may be amended only by leave of the presiding officer. A respondent shall file the answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be the longer, unless the presiding officer otherwise orders.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

### § 18b.33 Request for hearing.

Within 20 days after service of a notice of opportunity for hearing which does not fix a date for hearing the respondent, either in the answer or in a separate document, may request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of the right to a hearing and to constitute consent to the making of a decision on the basis of such information as is available.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

### § 18b.34 Consolidation.

The reviewing authority may provide for proceedings in the Department of Veterans Affairs to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequent to service of the notice of hearing or opportunity for hearing shall be served with notice of such consolidation.

### § 18b.35 Motions.

Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the presiding officer may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the presiding officer, if the case is pending before the officer. A repetitious motion will not be entertained.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

### § 18b.36 Responses to motions and petitions.

Within 8 days after a written motion or petition is served, or such other period as the reviewing authority or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.

### § 18b.37 Disposition of motions and petitions.

The reviewing authority or the presiding officer may not sustain or grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however,* That prehearing conferences, hearings and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the reviewing authority or the presiding officer, respectively, and not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral arguments shall not be held on written motions or petitions unless the presiding officer in the officer's discretion expressly so orders.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

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### RESPONSIBILITIES AND DUTIES OF PRESIDING OFFICER

#### § 18b.40 Who presides.

An administrative law judge assigned under 5 U.S.C. 3105 or 3344 (formerly section 11 of the Administrative Procedure Act) shall preside over the taking of evidence in any hearing to which these rules or procedure apply.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

#### § 18b.41 Designation of an administrative law judge.

The designation of the administrative law judge as presiding officer shall be in writing, and shall specify whether the administrative law judge is to make an initial decision or to certify the entire record including recommended findings and proposed decision to the reviewing authority, and may also fix the time and place of hearing. A copy of such order shall be served on all parties. After service of an order designating an administrative law judge to preside, and until such administrative law judge makes a decision, motions and petitions shall be submitted to the administrative law judge. In the case of the death, illness, disqualification or unavailability of the designated administrative law judge, another administrative law judge may be designated to take that person's place.

[51 FR 10386, Mar. 26, 1986]

#### § 18b.42 Authority of presiding officer.

The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. The presiding officer shall have all powers necessary to these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time, and place of hearings, or, upon due notice to the parties, to change the date, time, and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

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(c) Require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(d) Administer oaths and affirmations.

(e) Rule on motions, and other procedural items on matters pending before the presiding officer.

(f) Regulate the course of the hearing and conduct of counsel therein.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude or limit evidence.

(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before the presiding officer.

(j) Issue initial or recommended decisions.

(k) Take any action authorized by the rules in this part, or in conformance with the provisions of 5 U.S.C. 551-559 (the Administrative Procedure Act).

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

### HEARING PROCEDURES

#### § 18b.50 Statements of position and trial briefs.

The presiding officer may require parties and amici curiae to file written statements of position prior to the beginning of a hearing. The presiding officer may also require the parties to submit trial briefs.

#### § 18b.51 Evidentiary purpose.

(a) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what the party intends to prove, may be made at hearings.

(b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of part 18 of

this chapter. In any case where it appears from the respondent's answer to the notice of hearing or opportunity for hearing, from failure timely to answer, or from admissions or stipulations in the record, that there are no matters of material fact in dispute, the reviewing authority or presiding officer may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for filing briefs under §18b.70. Thereafter the proceedings shall go to conclusion in accordance with §§18b.70 through 18b.76. The presiding officer may allow an appeal from such order in accordance with §18b.65.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

#### § 18b.52 Testimony.

Testimony shall be given orally under oath or affirmation by witnesses at the hearing; but the presiding officer, in the officer's discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing, and filed as part of the record thereof. Unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in §§18b.54 and 18b.55, witnesses shall be available at the hearing for cross-examination.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

#### § 18b.53 Exhibits.

Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing if the presiding officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

#### § 18b.54 Affidavits.

An affidavit is not inadmissible as such. Unless the presiding officer fixes other time periods affidavits shall be filed and served on the parties not later than 15 days prior to the hearing; and not less than 7 days prior to hearing a party may file and serve written objection to any affidavit on the ground that it is believed necessary to test the truth of assertions therein at hearing. In such event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the presiding officer determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

#### § 18b.55 Depositions.

Upon such terms as may be just, for the convenience of the parties or of the Department of Veterans Affairs, the presiding officer may authorize or direct the testimony of any witness to be taken by deposition.

#### § 18b.56 Admissions as to facts and documents.

Not later than 15 days prior to the scheduled date of the hearing except for good cause shown or prior to such earlier date as the presiding officer may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted, unless within a period designated in the request (not less than 10 days after service thereof, or within such further time as the presiding officer or the reviewing authority if no presiding officer has yet been designated may allow upon motion and notice) the party to whom the

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request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why the party cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by the party for any other purpose or be used against the party in any other proceeding or action.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

**§ 18b.57 Evidence.**

Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.

**§ 18b.58 Cross-examination.**

A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination.

**§ 18b.59 Unsponsored written material.**

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

**§ 18b.60 Objections.**

Objections to evidence shall be timely and briefly state the ground relied upon.

**§ 18b.61 Exceptions to rulings of presiding officer unnecessary.**

Exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is sought, makes known the action which the party desires the presiding officer to take, or the party's objection to an action

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taken, and the party's grounds therefor.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

**§ 18b.62 Official notice.**

Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded an opportunity to show the contrary.

**§ 18b.63 Public document items.**

Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.

**§ 18b.64 Offer of proof.**

An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

**§ 18b.65 Appeals from ruling of presiding officer.**

Rulings of the presiding officer may not be appealed to the reviewing authority prior to consideration of the entire proceeding except with the consent of the presiding officer and where the reviewing authority certifies on

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the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any party, or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the reviewing authority within such period as the presiding officer directs. No oral argument will be heard unless the reviewing authority directs otherwise. At any time prior to submission of the proceeding to the reviewing authority for decision, the reviewing authority may direct the presiding officer to certify any question or the entire record to the reviewing authority for decision. Where the entire record is so certified, the presiding officer shall recommend a decision.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

### THE RECORD

#### § 18b.66 Official transcript.

The Department of Veterans Affairs will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department of Veterans Affairs. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department of Veterans Affairs and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

#### § 18b.67 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

### POSTHEARING PROCEDURES; DECISIONS

#### § 18b.70 Posthearing briefs; proposed findings and conclusions.

(a) The presiding officer shall fix the time for filing posthearing briefs,

which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

(b) Briefs should include a summary of the evidence relied upon together with references to exhibit numbers and pages of the transcript, with citations of authorities relied upon.

#### § 18b.71 Decisions following hearing.

When the time for submission of posthearing briefs has expired, the presiding officer shall certify the entire record, including recommended findings and proposed decision, to the reviewing authority; or if so authorized shall make an initial decision. A copy of the recommended findings and proposed decision, or of the initial decision, shall be served upon all parties, and amici, if any.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986]

#### § 18b.72 Exceptions to initial or recommended decisions.

Within 20 days after the mailing of an initial or recommended decision, any party may file exceptions to the decision, stating reasons therefor, with the reviewing authority. Any other party may file a response thereto within 30 days after the mailing of the decision. Upon the filing of such exceptions, the reviewing authority shall review the decision and issue its own decision thereon.

#### § 18b.73 Final decisions.

(a) Where the hearing is conducted by a hearing examiner who makes an initial decision, if no exceptions thereto are filed within the 20-day period specified in § 18b.72, such decision shall become the final decision of the Department of Veterans Affairs, and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of § 18b.75.

(b) Where the hearing is conducted by an administrative law judge who makes a recommended decision or upon the filing of exceptions to an administrative law judge's initial decision, the reviewing authority shall review the recommended or initial decision and shall issue a decision thereon, which

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shall become the final decision of VA, and shall constitute “final agency action” within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedures Act), subject to the provisions of §18b.75.

(c) All final decisions shall be promptly served on all parties, and amici, if any.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986; 54 FR 34984, Aug. 23, 1989]

### § 18b.74 Oral argument to the reviewing authority.

(a) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, the party shall make such request in writing. The reviewing authority may grant or deny such requests in his or her discretion. If granted, the reviewing authority will serve notice of oral argument on all parties. The notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the agency hearing clerk not later than 7 days before the date set for oral argument.

(b) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidations of appearances at oral argument by parties taking the same side will permit the parties’ interests to be presented more effectively in the time allotted.

(c) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Department hearing clerk at least 7 days before the argument.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986; 54 FR 34984, Aug. 23, 1989]

### § 18b.75 Review by the Secretary.

Within 20 days after an initial decision becomes a final decision pursuant

to §18b.73(a), or within 20 days of the mailing of a final decision referred to in §18b.73(b), as the case may be, a party may request the Secretary to review the final decision. The Secretary may grant or deny such request, in whole or in part, or serve notice of intent to review the decision in whole or in part upon motion. If the Secretary grants the requested review, or serves notice of intent to review upon motion, each party to the decision shall have 20 days following notice of the Secretary’s proposed action within which to file exceptions to the decision and supporting briefs and memoranda, or briefs and memoranda in support of the decision. Failure of a party to request review under this section shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10387, Mar. 26, 1986]

### § 18b.76 Service on amici curiae.

All briefs, exceptions, memoranda, requests, and decisions referred to in §§18b.70 through 18b.76 shall be served upon amici curiae at the same times and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under §18b.50 shall be served on amici.

## POSTHEARING DEPARTMENT ACTIONS

### § 18b.77 Final Department action.

(a) The final decision of the administrative law judge or reviewing authority that a school or training establishment is not in compliance will be referred by the reviewing authority to the Secretary for approval as required by §18.10(e) of this chapter. The finding will be accompanied by letters from the Secretary to the House Veterans’ Affairs Committee and the Senate Veterans Affairs Committee containing a full report on the circumstances as required by §18.8(c) of this chapter, the reasons for the proposed action and a statement that the proposed action will become the final Department action 30 days after the date of the letter.

## Department of Veterans Affairs

## § 18b.95

(b) A copy of the letters to the congressional committees will be sent to all parties to the proceedings.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10387, Mar. 26, 1986; 54 FR 34984, Aug. 23, 1989]

### JUDICIAL STANDARDS OF PRACTICE

#### § 18b.90 Conduct.

Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party whether or not a lawyer shall observe the traditional responsibilities of lawyers as officers of the court and use best efforts to restrain the principal represented from improprieties in connection with a proceeding.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10387, Mar. 26, 1986]

#### § 18b.91 Improper conduct.

With respect to any proceeding it is improper for any interested person to attempt to sway the judgment of the reviewing authority by undertaking to bring pressure or influence to bear upon the reviewing authority or any officer having a responsibility for a decision in the proceeding, or decisional staff. It is improper that such interested persons or any members of the Department of Veterans Affairs's staff or the presiding officer give statements to communications media, by paid advertisement or otherwise, designed to influence the judgment of any officer having a responsibility for a decision in the proceeding, or decisional staff. It is improper for any person to solicit communications to any such officer, or decisional staff, other than proper communications by parties or amici curiae.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10387, Mar. 26, 1986]

#### § 18b.92 Ex parte communications.

Only persons employed by or assigned to work with the reviewing authority who perform no investigative or prosecuting function in connection

with a proceeding shall communicate ex parte with the reviewing authority or the presiding officer, or any employee or person involved in the decisional process in such proceedings with respect to the merits of that or a factually related proceeding. The reviewing authority, the presiding officer, or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.

#### § 18b.93 Expeditious treatment.

Requests for expeditious treatment of matters pending before the reviewing authority or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

#### § 18b.94 Matters not prohibited.

A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the civil rights hearing clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by § 18b.92. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the responsible agency official or the Secretary with respect to securing such respondent's voluntary compliance with any requirement of part 18 of this chapter are not prohibited.

#### § 18b.95 Filing of ex parte communications.

A prohibited communication in writing received by the Secretary, the reviewing authority, or by the presiding officer, shall be made public by placing it in the correspondence file of the

docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally, a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if the memorandum is considered to be incorrect.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10387, Mar. 26, 1986]

## **PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS**

### **Subpart A—Operation of the Board of Veterans' Appeals**

Sec.

- 19.1 Establishment of the Board.
- 19.2 Composition of the Board; Titles.
- 19.3 Assignment of proceedings.
- 19.4 Principal functions of the Board.
- 19.5 Criteria governing disposition of appeals.
- 19.6 [Reserved]
- 19.7 The decision.
- 19.8 Content of Board decision, remand, or order in simultaneously contested claims.
- 19.9 Remand or referral for further action.
- 19.10 [Reserved]
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### **Subpart B—Appeals Processing by Agency of Original Jurisdiction**

- 19.25 Notification by agency of original jurisdiction of right to appeal.
- 19.26 Action by agency of original jurisdiction on Notice of Disagreement.
- 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.
- 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.
- 19.29 Statement of the Case.
- 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.
- 19.31 Supplemental statement of the case.
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- 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.
- 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.
- 19.35 Certification of appeals.
- 19.36 Notification of certification of appeal and transfer of appellate record.
- 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.
- 19.38 Action by agency of original jurisdiction when remand received.
- 19.39-19.49 [Reserved]

### **Subpart C—Administrative Appeals**

- 19.50 Nature and form of administrative appeal.
- 19.51 Officials authorized to file administrative appeals and time limits for filing.
- 19.52 Notification to claimant of filing of administrative appeal.
- 19.53 Restriction as to change in payments pending determination of administrative appeals.
- 19.54-19.74 [Reserved]

### **Subpart D—Hearings Before the Board of Veterans' Appeals at Department of Veterans Affairs Field Facilities**

- 19.75 Hearing docket.
- 19.76 Notice of time and place of hearing before the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.
- 19.77-19.99 [Reserved]

### **Subpart E—Simultaneously Contested Claims**

- 19.100 Notification of right to appeal in simultaneously contested claims.
- 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.
- 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

#### **APPENDIX A TO PART 19—CROSS-REFERENCES**

AUTHORITY: 38 U.S.C. 501(a), unless otherwise noted.

SOURCE: 57 FR 4104, Feb. 3, 1992, unless otherwise noted.