

# “Help Us Help You” Filing Tips and Procedural Innovations at OSM

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U.S. COURT OF FEDERAL CLAIMS 2016 JUDICIAL CONFERENCE

MAY 3, 2016



# The Petition

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- As of August 1, 2015, attorneys should file petitions electronically (paper filing for *pro se* petitioners remains).
- Content of the petition.
  - Basic requirements are set forth in 42 U.S.C. § 300aa-11(c).
  - Desired level of detail will vary by special master.
  - Potential SPU cases may not be directed to SPU if the petition is silent on key points (as determined by the Chief Special Master).
- Preferred practice is to file medical records with the petition (42 U.S.C. § 300aa-11(c) requires that “supporting documentation” be filed with the petition).
  - Attorneys may use medical records to assess the reasonable basis of their claim prior to filing.
  - In some cases, the statute of limitations will loom and the case must be filed immediately without records. This should be relatively rare.

# Medical Records and Other Exhibits

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- Petitioners should use exhibit numbers, not letters. Respondent should use exhibit letters, not numbers.
- Exhibit numbers/letters should be consecutive.
  - Maintain continuity of exhibit numbering/lettering as you go.
- Each exhibit should be named separately and paginated.
- File an exhibit list with the petition – and file an updated list each time exhibits are added.
- If it is evidence, it is an exhibit.

# Main Document vs. Supporting Items

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- Notices, Status Reports, Motions, Responses, Replies, or Misc. Pleadings = Main Document.
  - Properly caption the main document AND include a proper signature block for the attorney of record.
- Each attachment to the main document is its own exhibit.
  - Include a description (i.e. “Birth Certificate”).
  - Each exhibit should be separately named and separately paginated.
- File an exhibit list with the petition – and file an updated list each time exhibits are added.

# Scanning Tips

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- Be sure to check the image quality of scanned medical records.
  - Scan using black and white (not grayscale or color).
  - Documents with handwriting should have higher DPI (dots per inch) resolution.
  - Documents that are pure text (e.g. medical articles) can use a lower DPI (300).
  - Modify size of image if necessary.
  - Be sure to scan to PDF and not to TIFF or something else.
  
- OCR (Optical Character Recognition) exhibits and stipulations before adding Bates-pagination.

# File Size Issues

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- Each pdf filing can be NO LARGER than 12 MB in size (NOT related to page limits).
- No more than 11 total separately filed pdf items (including main document) for a total of 132 MB.
- Use a CD if exhibits are too voluminous, BUT NOTE:
  - Package and mail properly to avoid damage to the CD.
  - Include two copies of the CD plus a printed copy of the CD Filing Notice.
  - Submit CD within five days of filing the Notice.
  - Use pdfs only.
  - Pdfs must correspond to rules applicable to electronically filed pdfs.
  - Call the clerk's office or chambers about other kinds of filings before filing.
- Electronic filing is encouraged.

# Statement of Completion

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- A statement by petitioner(s)'s counsel that, after a good faith effort, all medical records have been filed.
  - Even better if the parties file jointly (so don't rush).
- Respondent may still request additional records.
- The Statement of Completion is a key marker in CM/ECF for case tracking and processing times.
- Use the proper docketing event (not "status report") – this helps the court keep data on the time between the filing of the petition and the filing of the Statement of Completion.

# General Filing Concepts

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- **USE THE PROPER VACCINE DOCKETING EVENT.**
  - Even events that seem unimportant (e.g., 15-week Orders/Stipulations, Status Reports) are for court data gathering and setting deadlines.
- Refer to the handy filing docket event cheat sheet.
- Pro Se means paper – for everyone.
  - Substitution of counsel for a Pro Se must be filed in paper.
- The docket list is your friend – respect it.
  - Summarizes case status/tells the special masters important facts.

# Other Miscellaneous Filing Issues

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- Rule 24 Motions for Review are filed in the Court of Federal Claims; Rule 32 Petitions for Review, after action on a motion for review, are filed in the Court of Appeals for the Federal Circuit
- Make motions (not war, and not status reports) if you want something done.
- Fix things promptly when asked.

# Final Attorneys' Fees and Costs

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- New Docketing Events:
  - Response to Motion for Attorneys' Fees.
  - Unopposed Motions for Attorneys' Fees.
- For withdrawing counsel, motion for attorneys' fees and costs should be filed before motion to withdraw as counsel. Otherwise, if counsel withdraws from the case and petitioner proceeds pro se, any motion for attorneys' fees must be filed in paper and served on petitioner and respondent.

# New Ideas from the Special Masters

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## Expert Reports

- Special Master Moran's Pilot Program: expert report as direct testimony
  - Sample Order
    - Changed from "shall" to "may." Preserves flexibility. Burden to produce a complete report still exists.
  - Origins and Purpose
    - Helps efficiently cover all topics, potential to avoid supplemental hearings.
- Status of pilot program.

# New Ideas (continued)

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## Expert Reports (continued)

- Content
  - Expert biographical information/credentials.
  - Topics: diagnosis, theory, timing, logical sequence.
  - Additional topics as relevant, e.g., six months of sequelae or other potential causes.
- Medical Literature
  - Preferred: fewer good articles that are well-explained.
  - Highlight portions relied upon.
  - Provide explanation (in notice) for why article/literature is important.

# New Ideas (continued)

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- Special Master Corcoran: status conferences on nascent fee disputes.
  - Parties will notify chambers when disagreement arises or is pending.
  - Special master will give preliminary thoughts.
  - Issues:
    - Rate disputes
    - Interim versus final?
    - Helpful or not?
    - Half-baked mediation or needed guidance?
  - Opposed versus unopposed.

# New Ideas (continued)

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- Interim attorneys' fees.
  - Petitioners are submitting fewer interim fee requests than expected.
  - Cases involving withdrawal of counsel may raise questions about reasonable basis.
  - Paying for experts' costs promptly after hearing - good approach/rule of thumb?
  - Consult special master's Initial Order for guidelines.

# Helping the Special Masters

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- Respect deadlines.
- Keep communication lines open.
- Proactive proposals are always welcome.
- Use the proper docketing event.

# Questions?

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- When in doubt – call the clerk’s office.
  - Filing/Docketing questions: (202) 357-6366.
- General Number: (202) 357-6406.
- OR check <http://www.uscfc.uscourts.gov>.
  - Sample filings and Vaccine Guidelines.