



NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC. (NOVA)

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## **“Veterans’ Dilemma: Navigating the Appeals System for Veterans Claims”**

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### Executive Summary

The National Organization of Veterans’ Advocates, Inc. (NOVA) is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents more than 500 attorneys and agents assisting tens of thousands of our nation's military Veterans, their widows, and their families to obtain benefits from the Department of Veterans Affairs (VA). NOVA members represent Veterans before all levels of the VA’s disability claims process. In 2000, the U.S. Court of Appeals for Veterans Claims recognized NOVA's work on behalf of Veterans with the Hart T. Mankin Distinguished Service Award. NOVA currently operates a full-time office in Washington, D.C.

### Recommendations to Alleviate Systemic Problems in the VA’s Appeals Process

NOVA has three suggestions to Congress concerning the systemic problems which contribute to the backlog in deciding appeals:

- First, NOVA recommends that Congress make a substantive statutory change by amending the provisions of 38 C.F.R. § 7105 by eliminating the redundant requirements of a statement of the case and a substantive appeal.
- Second, even if Congress does not amend § 7105 to eliminate the need for a statement of the case and a substantive appeal, Congress should amend § 7105 to require that VA certify and transfer a claims file in an appeal to the Board of Veterans’ Appeals (the Board) no later than 60 days after the VA’s receipt of a substantive appeal.
- Third, Congress should amend the provisions of 38 U.S.C. § 5109B and the provisions of 38 U.S.C. § 7112 to ensure expeditious treatment of remands from the Board and from the U.S. Court of Appeals for Veterans Claims (the Court).

Statistics from both the Board and the Court confirm that the VA’s failure to “fully and sympathetically develop the veteran’s claim to its optimum before deciding it on the merits” is the consistent reason for remands. The appeals process is not operating efficiently because at the Board, 4 out of every 10 cases are remanded and at the Court, more than 50 percent of the cases result in remands. These statistics clearly show that the VA’s appeal process is significantly delayed because VA does not fully and sympathetically develop the claim in the first instance.

Remands are a result of the VA's failure to "fully and sympathetically develop the claim **before** deciding it on the merits." Congress must reaffirm its commitment to Veterans and their families that Congress expects VA to get it right the first time. Getting VA decisions right the first time is possible **only** when VA fully and sympathetically develops every claim to its optimum **before** deciding every claim on the merits. Eliminating or at least minimizing delays can be accomplished by the Congress's adoption of NOVA recommendations.