

MEMORANDUM OF UNDERSTANDING (FY21)

1. The performance standards are meant to be applied on a prorated basis to determine the success or deficiency concerning each element.
2. Effective October 1, 2020, the performance plan for decision-writing attorneys will include the following Productivity critical element.

Productivity (critical element)

The attorney will produce the following number of signed decisions or adjudicated issues, prorated for the amount of approved leave. An attorney will receive one issue credit for each issue decided upon the merits or remanded in a given case. Additionally, the attorney will also receive one total issue credit for any issues dismissed, vacated or withdrawn in the case at hand. Any vacated issues will also be counted as one total issue credit.

Fully Successful: The attorney produces either 156 signed decisions or 491 issues in the attorney's signed decisions. The attorney's performance is Fully Successful upon reaching either milestone.

Exceptional: The attorney produces either 185 signed decisions or 620 issues in the attorney's signed decisions. The attorney's performance is Exceptional upon reaching either milestone.

When an attorney's individualized, prorated goal results in a decimal of 0.01 to 0.49, the goal will be rounded down to the nearest integer. A decimal of 0.50 or above will be rounded up to the next integer.

3. The Board will continue to track the number of signed decisions an attorney produces during the performance year. In addition, the Board will also track the number of issues an attorney produces within each signed decision. In accordance with the productivity standard above, here are some examples of how issue credits will be calculated:

Example 1: In a five-issue case in which all five issues are adjudicated on the merits or remanded, the attorney will receive five issue credits.

Example 2: In a five-issue case in which two issues are adjudicated on the merits or remanded, and three issues are dismissed, the attorney will receive three issue credits (two issue credits for the adjudicated or remanded issues, and one issue credit for the three dismissed issues).

Example 3: In a five-issue case in which all issues are vacated, the attorney will receive one issue credit.

Example 4: In a five-issue case in which all issues are withdrawn, the attorney will receive one issue credit.

4. The official number of adjudicated issues in a particular case will be determined by the signing Veterans Law Judge, but attorneys may track their case and issue progress via a voluntary Decision Output Calculator (DOC) or some other tracking tool.

5. An attorney's productivity goal will be adjusted in the DOC (or some other tracking tool) and maintained by the attorney's supervisor for approved leave including—but not limited to—holiday leave, annual leave, sick leave, leave without pay (LWOP), leave for jury duty, Weather and Safety leave, Family and Medical Leave Act (FMLA), union official time subject to governing authority, and administrative leave.
6. An attorney's productivity goal will be prorated for time lost due to all Information Technology (IT) problems resulting in a total work stoppage and, as defined by Board management, a near work stoppage. The attorney is responsible for mitigating all IT outages by working in other systems as appropriate and/or completing other tasks in their job description, for example completing necessary trainings. The attorney must notify their supervisor within two (2) hours of onset of the IT issue and open an IT ticket during that timeframe.

The attorney must provide their supervisor with all relevant IT ticket numbers and information, to include details on the nature of the issue, when submitting a request for proration. However, where Board management has notified attorneys of a total work stoppage due to a system-wide IT issue, an affected attorney is not required to submit an IT ticket to their supervisor with their request for proration related to the system-wide IT issue. The affected attorney must still notify their supervisor of any IT-related proration request in a timely fashion.

7. An attorney will receive proration for attending mandatory Board-wide trainings and events. Proration may be provided for attending optional Board-wide trainings and events at management's discretion. Generally, VA Talent Management System (TMS) training will not be prorated.
8. The Board may provide up to four (4) hours of administrative leave for actual class time for continuing legal education (CLE) credits, if the credits are required to maintain the attorney's bar license. If the attorney is a member of a bar that does not require CLE credits, the attorney is not eligible for administrative leave to attend CLE classes. Whenever possible, an attorney must obtain CLE credits via the Board's training program. For administrative leave for CLE classes, an attorney must obtain advance approval from his or her supervisor, and the course should be related to the Board's mission in some capacity.
9. Under compelling circumstances, time spent on administrative actions may be prorated on a case-by-case basis, particularly if the case will not be returned to the attorney. Management will determine when a compelling reason has been offered or when a compelling circumstance exists.
10. Consistent with performance management, the Board may conduct frequent progress checks to ensure each attorney is on pace to meet their annual production requirement. The attorney will receive credit when the decision is signed by a VLJ. Based on a showing of good cause, cases/issues submitted and pending signature may be considered in assessing an attorney's performance, particularly when the unsigned cases/issues will impact the attorney's performance under the Productivity critical element. Management will determine whether good cause has been shown.

11. Attorney's productivity goal will be adjusted for official travel which occurs during duty time. Such official travel must be approved in advance.
12. An attorney may request up to four (4) hours of proration for time spent renewing or replacing a Personal Identity Verification (PIV) card. Additionally, time spent beyond four (4) hours may be requested and approved by the attorney's supervisor on a case-by-case basis.
13. An attorney's production goal may be prorated for any other good cause as determined by management.
14. As determined by management, the attorney will not be penalized for any delays caused by or due to pending administrative action that was timely requested, or for situations outside of the attorney's control. Additionally, if the attorney is taking leave, it is their responsibility to work with their judge and supervisor to prevent any unnecessary delay to a Veteran or appellant's appeal. This paragraph pertains to the critical element of Case Management.

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FOR AGENCY

September 28, 2020 Date
Date

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