

## ADMINISTRATIVE FALSE CLAIMS ACT REFERRALS

### Rule 701. Scope.

These rules establish procedures for any matter referred to a member of the Board under the Administrative False Claims Act (AFCA), 31 U.S.C. 3803(d).

### Rule 702. Authority.

The Board is authorized to issue these rules under section 5203(g)(3) of the National Defense Authorization Act for Fiscal Year 2025 (P.L. 118-159), 31 U.S.C. 3801 note, and the Contract Disputes Act (CDA), 41 U.S.C. 7105(e)(1)(E).

### Rule 703. Rules for AFCA Referrals.

The rules of procedure for referrals under the AFCA are the same as the rules of procedure for CDA cases, including the definitions, with the following exceptions:

#### (a) Rule 1.

(1) Rule 1(a) does not apply.

(2) The definitions in Rule 1(b) of “appeal; appellant,” “appeal file,” “application; applicant,” “Board judge; judge,” “case,” “party,” “petition; petitioner,” and “respondent” do not apply.

(3) The following definitions apply:

**Case.** “Case” means a matter involving one or more alleged false claims or statements by a “person” as defined in the AFCA that is referred to a member of the Board under the AFCA.

**Complainant.** “Complainant” means an agency or agency component whose authorized official refers a case to a Board member under the AFCA.

**Evidence file.** “Evidence file” means the submissions to the Board under Rule 703(c).

**Party.** “Party” means a complainant or a respondent.

**Respondent.** “Respondent” means a person or entity alleged by a complainant to have made one or more false claims or statements.

(4) In place of Rule 1(d), substitute the following. One Board member will preside in each referred case. The presiding Board member will set a schedule, oversee any discovery, conduct conferences, hearings, and other proceedings, and decide the merits. References to “the Board” in the rules of procedure for CDA cases shall, as appropriate in context, mean the presiding Board member, whose rulings are not precedential.

(b) **Rule 2.** In place of Rule 2, substitute the following. A complainant may as authorized by law refer a case by transmitting to the Board Chair, through the Clerk:

(1) the complaint;

(2) a copy of the notice of referral that was mailed or delivered to the respondent pursuant to the AFCA; and

(3) the answer, if any. If there is no answer, a referral may include a motion for a default decision. The Clerk will promptly notify the parties of the Board Chair's acceptance or non-acceptance of a referred case.

**(c) Rule 4.** In place of Rule 4, substitute the following. As directed by the presiding Board member, the parties shall submit an electronic evidence file organized substantially like an electronic appeal file under Rule 4(b) for CDA cases. The evidence file shall include without limitation any exculpatory information under 31 U.S.C. 3803(e)(2). Evidence file exhibits are part of the record of a case under Rule 9(a) unless a party objects to an exhibit within the time set by the presiding Board member and the presiding Board member sustains the objection.

**(d) Rule 5.** In place of Rule 5(a), substitute the following. A complainant may appear in a case through an attorney. A respondent may appear through an attorney or, if an individual, may appear for himself or herself. A corporation, trust, or association may appear by one of its officers. A limited liability corporation, partnership, or joint venture may appear by one of its members. Each individual appearing on behalf of a party must have legal authority to appear. An attorney appearing in a case shall file a notice of appearance complying with Rule 5(b).

**(e) Rule 6.** In place of Rule 6, substitute the following. The complaint and the answer (if the complainant received one) shall accompany a referral. The presiding Board member may accept amended or supplemental pleadings as is consistent with due process.

**(f) Rule 9.** In Rule 9(a)(1)(i), replace "Rule 4 appeal file" with "Rule 703(c) evidence file." Rule 9(a)(2)(i) does not apply.

**(g) Rule 10.** In place of Rule 10, substitute the following. The presiding Board member may in his or her discretion receive any evidence to which no party objects and will apply the Federal Rules of Evidence to resolve objections to the admissibility of evidence bearing on proof of fraud or falsity.

**(h) Rule 12.** In place of Rule 12, substitute the following. The presiding Board member may dismiss a case without reaching the merits:

(1) For lack of jurisdiction, or

(2) At the request of the complainant and with the approval of the Board Chair. The presiding Board member may stay a case as is consistent with due process.

**(i) Rule 17.** In Rule 17(a), replace "appeal file" with "evidence file."

**(j) Rule 18.** In Rule 18, replace "judge" with "Board member."

**(k) Rule 21.** In Rule 21(a), replace "judge" with "Board member."

**(l) Rule 25.** In Rule 25(a), replace the second sentence with the following. The Board will send a copy of a decision to each party, requesting confirmation of receipt (see Rule 1), and will post on its website a decision that resolves all or part of a case on the merits.

**(m) Rules 28, 31, 51-53.** Rules 28, 31, and 51 through 53 do not apply.