

# Guide for Motions Practice

## United States Court of Appeals for the Federal Circuit

The following questions are common concerns of parties and counsel. The answers, prepared by the court's senior staff attorney's office, are general in nature and may not apply to every situation. Thus, if you have a question about a particular motion, you should not rely on the information in this guide; you should consult the court's rules or, if necessary, contact the clerk's office. The Guide will be updated with additional information when appropriate. **You should not cite this guide in any filing in the court.**

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### 1. What happens to my motion after it is filed?

The clerk's office stamps the motion as "received" and reviews the motion for compliance with the court's rules, primarily Fed. R. App. P. 27 and Fed. Cir. R. 27. If it is in substantial compliance, the motion is "filed." If the motion requests relief that may be granted by the clerk, see Fed. Cir. R. 27(h), then the clerk may grant the motion or may refer it to the senior staff attorney's office (SSA).

For motions that are filed before a case is scheduled on a calendar, the SSA prepares orders for signature of the clerk or a judge. Motions that are filed after a case is scheduled for a calendar are transmitted directly to the judges on the merits panel. Internal Operating Procedure (IOP) # 2.

If the motion is transmitted to the SSA, then the SSA prepares an order. Each month, one judge serves as the lead motions judge. Certain motions can be resolved solely by the lead motions judge, and others require disposition by a panel of judges. The order is reviewed, signed, filed, and processed by the court. A copy is mailed to each pro se party or to principal counsel. If immediate action is required as a result of the order, principal attorneys may be called. See Practice Note to Fed. Cir. R. 27. Summaries of orders are also entered on the court's PACER system daily.

### 2. When should I file a motion?

Unless the court is closed, the clerk's office is open from 9 a.m. to 5 p.m. each business day. There is also a night box located in the building garage entrance. See Practice Note to Fed. Cir. R. 25. Motions may also be mailed to the clerk's office.

You should file a motion as soon as you are aware of the need for relief. Given the large number of motions filed each month, the prompt filing of the motion will help ensure a more timely disposition.

Certain motions have express deadlines. For example, absent “extraordinary circumstances,” a motion for an extension of time to file a brief must be filed at least seven calendar days before the due date of the brief. Fed. Cir. R. 26(b)(1). Generally, a motion to dismiss an appeal should be filed before the appellant’s or petitioner’s brief is filed. Fed. Cir. R. 27(f).

A motion for reconsideration of a procedural order must be filed within 14 days of filing of the order. Fed. Cir. R. 27(k). A motion for reconsideration or a petition for rehearing of a dispositive order must also be filed within 14 days of the date of filing of the order, except that if the United States or its officer or agency is a party, the motion must be filed within 45 days. Fed. Cir. R. 27(l); Fed. R. App. P. 40(a).

### **3. What information and material should be included with a motion?**

The required items are set forth in Fed. R. App. P. 27(a) and Fed. Cir. R. 27(a). One requirement that is often overlooked is that all relevant documents should be attached to a motion. For example, if your motion discusses a trial court opinion or trial exhibit, you should attach a copy of that document if relevant. Fed. R. App. P. 27(a)(2)(B). Because the trial court or agency maintains the official record, it is not immediately available to this court. Fed. Cir. R. 11; Fed. Cir. R. 17.

You should adequately explain the reasons for your request for relief in the motion. For example, if you are requesting an extension, you should explain in sufficient detail the reasons why you are unable to timely file your brief. If counsel is requesting a change of a scheduled date of oral argument, counsel must state with particularity the reasons why counsel is not available for the scheduled date. Please be aware that the briefs are generally forwarded to the merits panel approximately six weeks before the scheduled oral argument date, and the judges and their staff expend a great deal of effort preparing the case. Motions to delay proceedings are thus not favored by the court. Because many conflicts can be anticipated, it is preferred that counsel inform the clerk’s office in advance by letter concerning dates that would not be convenient for oral argument. See Practice Note to Fed. Cir. R. 34.

### **4. How can I find out the status of my motion?**

The court’s PACER system is updated daily with new entries. There is a link to PACER on the court’s website. Telephone inquiries to the clerk’s office “are discouraged because they divert the staff from more pressing duties.” Practice Note to Fed. Cir. R. 27. Under no circumstances should anyone call a judge or the senior staff attorney’s office about a motion.

Counsel frequently call the clerk’s office concerning the status of a motion for an extension of time. Generally, you can obtain a more prompt disposition of an extension motion if you first obtain consent of the opposing side. An unopposed motion for an extension of time, up to 60 days for each principal brief and up to 30 days for other deadlines, can be granted promptly by the clerk of court. Fed. Cir. R. 27(h)(4). Otherwise, the motion must usually be decided by a judge.