

SUMMARY OF KEY RULE CHANGES

Revisions to the Federal Rules of Appellate Procedure and the Federal Circuit Rules that are summarized in this document are effective December 1, 2009.

Federal Rules of Appellate Procedure

Several provisions of the Federal Rules of Appellate Procedure were amended. You should review all of the rule changes to determine if they apply to your case. First, note that Fed. R. App. P. 26(a)(1) was amended to make all deadlines in the rules be determined by calendar days (i.e., weekends and holidays are counted). Most of the other amendments relate to changing deadlines. Among those amendments (emphasis added to amended language):

Fed. R. App. P. 4(a)(4)(A)(vi): a motion for relief under Fed. R. Civ. P. 60 may toll the time for a party to file an appeal if the Rule 60 motion was filed within 28 days of entry of judgment.

Fed. R. App. P. 4(a)(5)(C): an extension of time to appeal may not exceed "30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later."

Fed. R. App. P. 4(a)(6)(B): a district court may reopen the time to file an appeal, but only if, inter alia, the motion to reopen "is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice . . . of the entry [of the judgment or order]."

Fed. R. App. P. 5(b)(2): a party may file an answer in opposition to a petition for permission to appeal, or may file a cross-petition, "within 10 days after the petition is served."

Fed. R. App. P. 5(d)(1): the appellant must pay all required fees and file a cost bond, if required, "[w]ithin 14 days after the entry of the order granting permission to appeal."

Fed. R. App. P. 10: deadlines of 10 days were changed to deadlines of 14 days throughout the rule.

Fed. R. App. P. 12: the attorney who filed the notice of appeal must, "within 14 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal" [see Fed. Cir. R. 26.1 and Fed. Cir. R. 47.4, which require instead that any party represented by counsel must file a certificate of interest within 14 days after the date of docketing of the appeal or petition].

Fed. R. App. P. 12.1: a new rule which requires a movant to notify the clerk of the court of appeals if the district court states that it would grant a motion filed in the

district court or that the motion raises a substantial issue, but the district court lacks authority to grant because an appeal has been filed. The court of appeals may remand for further proceedings if appropriate.

Fed. R. App. P. 15(b)(2): the respondent must serve on the applicant an answer to an application to enforce an agency order "[w]ithin 21 days" after the application is filed.

Fed. R. App. P. 19: after the court files an opinion directing entry of judgment enforcing an agency's order in part, the agency must file a proposed judgment, and a party who disagrees with the agency's proposed judgment "must within 10 days" file its own proposed judgment.

Fed. R. App. P. 25(a)(2)(B)(ii), (c)(1)(C): "3 days" is substituted for "3 calendar days."

Fed. R. App. P. 26(a): explains in detail how deadlines and time periods are to be calculated. The most notable change is that in determining deadlines, all days including weekends and legal holidays are counted, unless the last day of the period falls on a weekend or legal holiday.

Fed. R. App. P. 26(c): "3 days" is substituted for "3 calendar days."

Fed. R. App. P. 27(a)(3)(A), (a)(4): a response to a motion may be filed "within 10 days after service of the motion unless the court shortens or extends the time." A reply may be filed "within 7 days after service of the response."

Fed. R. App. P. 28.1: in a case involving a cross-appeal, the final reply brief must be filed "at least 7 days before argument unless the court, for good cause, allows a later filing."

Fed. R. App. P. 31(a)(1): in a case not involving a cross-appeal, the reply brief must be filed "at least 7 days before argument, unless the court, for good cause, allows a later filing."

Fed. R. App. P. 39(d)(2): objections to a bill of costs must be filed "within 14 days after service of the bill of costs, unless the court extends the time."

Fed. R. App. P. 41(b): "7 days" is substituted for "7 calendar days."

Federal Circuit Rules

In addition, the court approved revisions to its rules and practice notes. The following amendments were made to the Federal Circuit Rules:

Fed. Cir. R. 1(a)(2)(P): added the Bureau of Justice Assistance to the definition of an agency under the rules.

Fed. Cir. R. 8(d): added a requirement for a movant filing a motion seeking a stay or an injunction pending appeal. The rule now requires that "[i]f an initial motion for a stay or injunction pending appeal was made in the district court under Federal Rule of Appellate Procedure 8(a)(1) and remains pending, the movant must include in its motion in this court a statement specifically identifying when it filed the motion in the district court and why it is not practicable to await a ruling by the district court on that motion."

Practice Note following Rule 12: added a sentence indicating that "[i]t is the court's usual practice to include in the caption all parties that participated in the court below, even if they are no longer participating in the case on appeal."

Practice Note following Rule 15: added the Bureau of Justice Assistance to the agencies listed in the practice note.

Fed. Cir. R. 18(d): added a requirement for a movant filing a motion seeking a stay pending review. The rule now requires that "[i]f an initial motion for a stay or injunction pending appeal was made in the agency under Federal Rule of Appellate Procedure 18(a) and remains pending, the movant must include in its motion in this court a statement specifically identifying when it filed the motion in the agency and why it is not practicable to await a ruling by the agency on that motion."

Fed. Cir. R. 21(a)(2): clarified the requirement that an entry of appearance must accompany a petition for a writ of mandamus.

Fed. Cir. R. 21(c): added a provision to allow the petitioner to file a reply in support of a petition for a writ of mandamus within 7 days of the date of the filing of the response. The court may act on the petition before the receipt of the reply. The reply may not exceed 15 pages.

Fed. Cir. R. 24(a): clarified that if the court does not receive payment of the docketing fee or a completed motion for leave to proceed in forma pauperis or a completed Form 6B within 14 days of the date of docketing of an appeal or petition, the clerk is authorized to dismiss the appeal or petition.

Practice Note following Rule 24: added a practice note stating that if a petitioner is not required to pay the docketing fee because the case involved a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the petitioner is required to submit Form 6B within 14 days of the date of docketing of

the petition and the petitioner may be required to submit further documentation concerning whether the case involved a USERRA claim.

Practice Note following Rule 25: added a practice note suggesting that in some circumstances if mail transmitted by the United States Postal Service may be delayed, parties should consider using other means of delivery to the court for time-sensitive documents.

Fed. Cir. R. 26(b): clarified deadlines for filing motions for extensions of time. A motion to extend the time to file a document must be filed at least 7 days before the date sought to be extended, except that in extraordinary circumstances a motion may be made later than that deadline if the motion is accompanied by an affidavit or unsworn declaration that describes the extraordinary circumstances.

Fed. Cir. R. 26.1: clarified that a certificate of interest must be filed by any party represented by counsel within 14 days of the date of docketing of the appeal or petition.

Fed. Cir. R. 27(d): indicated the court's preference that if a motion contains attachments or exhibits, the attachments or exhibits should be separately tabbed for ease of reference.

Fed. Cir. R. 27(h): delegated more authority for the clerk to sign orders granting or denying many types of motions.

Practice Note following Rule 27: added sentences to the Practice Note indicating how a party may determine the status of a motion.

Practice Note following Rule 28: clarified that if multiple parties are represented by the same counsel or counsel from the same firm, a combined brief must be filed on behalf of all the parties represented by that counsel or firm.

Fed. Cir. R. 29(c): clarified that if an amicus brief is filed on consent of all parties, then no motion for leave is required and the brief should state that all parties have consented to its filing.

Fed. Cir. R. 30(a)(4): "7 days" is substituted for "7 calendar days."

Fed. Cir. R. 31(a)(1)(B): clarified that in an appeal from the Patent and Trademark Office, the appellant's opening brief is due within 60 days after the date of docketing.

Practice Note following Rule 31: clarified the Practice Note to conform with the revised deadline in Fed. R. App. P. 31(a)(1).

Fed. Cir. R. 34(c)(3): any objection to the proposed use of a visual aid at oral argument must be in writing and filed "no later than 7 days before the oral argument."

Fed. Cir. R. 47.3(c)(1): clarified that each attorney who intends to participate in an appeal must file an entry of appearance "within 14 days of docketing" or if retained later then within 14 days after being retained. An entry of appearance must be filed with any motion to intervene or motion to file a brief *amicus curiae*. Added a requirement that if an attorney's entry of appearance is first submitted within 30 days of the scheduled argument, then the attorney must file a motion for leave to file the entry of appearance and the motion will be transmitted to the merits panel.

Fed. Cir. R. 47.3(c)(3): clarified that a certificate of interest must be filed with the first-filed entry of appearance and that both documents are due within 14 days of the date of docketing of the appeal or petition.

Fed. Cir. R. 47.4(a): clarified that a certificate of interest must be filed within 14 days of the date of docketing of an appeal or petition and that a certificate of interest must be filed with any motion to intervene or to file a brief *amicus curiae*.

Fed. Cir. R. 52(d): clarified that if an appellant or petitioner does not pay the docketing fee or submit a completed motion for leave to proceed *in forma pauperis* or Form 6B within 14 days of the date of docketing of the appeal or petition, the clerk is authorized to dismiss the appeal or petition.