

# UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

## RULES OF PRACTICE



PROPOSED AMENDMENTS

APRIL 2020

**PUBLIC REDLINED COPY**

EDITOR'S NOTES

This document contains proposed substantive and non-substantive amendments to the Federal Circuit Rules of Practice.

Rules without any amendments are omitted.

All hyperlinks are for illustrative purposes only and will not work.

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**FEDERAL CIRCUIT RULE 1**

**Scope of Rules; Title**

**(a) Reference to District and Trial Courts and Agencies.**

- (1) The terms “district court” and “trial court” include:
  - (A) the United States district courts;
  - (B) the United States Court of International Trade;
  - (C) the United States Court of Federal Claims; and
  - (D) if applicable, the United States Court of Appeals for Veterans Claims.
  
- (2) The term “agency” includes an administrative agency, board, commission, bureau, or officer of the United States, as well as certain arbitrators, including each of the following:
  - (A) the Patent Trial and Appeal Board;
  - (B) the Director of the United States Patent and Trademark Office;
  - (C) the Trademark Trial and Appeal Board;
  - (D) the United States International Trade Commission;
  - (E) the Secretary of Commerce acting under U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States (relating to importation of instruments or apparatus);
  - (F) the Secretary of Agriculture acting under 7 U.S.C. § 2461;
  - (G) the Merit Systems Protection Board;
  - (H) ~~certain~~ arbitrators whose decisions are reviewable by this court;
  - (I) the Boards of Contract Appeals in federal agencies;
  - (J) the Secretary of Veterans Affairs acting under 38 U.S.C. § 502;

**FEDERAL CIRCUIT RULE 1**

- (K) the Equal Employment Opportunity Commission acting under 3 U.S.C. § 454;
- (L) the Federal Labor Relations Authority acting under part D of subchapter II of chapter 5 of title 3;
- (M) the Secretary of Labor or the Occupational Safety and Health Review Commission, under part C of subchapter II of chapter 5 of title 3;
- (N) the Office of Compliance acting under 2 U.S.C. § 1407(a)(1);
- (O) the Government Accountability Office Personnel Appeals Board; or
- (P) the Bureau of Justice Assistance.

**(b) Rules of the Court of International Trade, Court of Federal Claims, and Court of Appeals for Veterans Claims.**

- (1) Reference in these rules to the Federal Rules of Civil Procedure includes analogous rules of the Court of International Trade and the Court of Federal Claims.
- (2) Reference in these rules to the Federal Rules of Civil Procedure includes rules of the Court of Appeals for Veterans Claims only where applicable, because that court's rules are derived from the Federal Rules of Appellate Procedure.

**(c) Title.**

These rules are to be known as the Federal Circuit Rules.

**FEDERAL CIRCUIT RULE 3**

**Appeal as of Right – How Taken**

**(a) Opinion; Certified Copy of Docket Entries.**

When a notice of appeal is filed, the trial court clerk of court must promptly send to this court’s clerk of court a copy of the opinion, if any, that accompanied the judgment or order being appealed. The trial court clerk of court must certify the copy of the docket entries and send it with the notice of appeal.

**(b) Petition for Certification of Judgment of the High Court of the Trust Territory of the Pacific Islands.**

A petition for certification of a judgment of the High Court of the Trust Territory of the Pacific Islands under the Compact of Free Association: Federated States of Micronesia, Republic of Marshall Islands, Title II, Title One, Article VII, § 174(c), and the Compact of Free Association: Palau, Title II, Title One, Article VII, § 174(c), in 48 U.S.C. § 1901 note and § 1931 note, must be filed with this court’s clerk of court, but otherwise is deemed to be an appeal from the judgment of a district court for purposes of these rules.

**(c) Appeals Under 15 U.S.C. § 3416(c) and Petitions Under 42 U.S.C. § 300aa-12(f). The filing fee for a notice of appeal under 15 U.S.C. § 3416(c) or a petition for review under 42 U.S.C. § 300aa-12(f) must be paid to the circuit clerk of court. Upon docketing of the appeal, the circuit clerk of court will forward instructions to the trial court clerk of court to comply with Federal Rule of Appellate Procedure 3(d) and Federal Circuit Rule 3(a).**



### Practice Notes to Rule 3

#### **FAILURE TO FILE A NOTICE OF APPEAL.**

Only a party that has filed a notice of appeal or cross-appeal may attack all or any part of the trial court judgment. Any other party in the trial court not filing a notice of appeal may participate in the appeal as an appellee but may not seek to overturn or modify the judgment.

#### **FEES.**

The fee schedule is set forth in [Federal Circuit Rule 52](#). See also 28 U.S.C. § 1913, note 1 [Judicial Conference Schedule of Fees].

#### **FILING AND DOCKETING AN APPEAL.**

An appeal is filed when the notice of appeal is received by the trial court. An appeal sent to this court by the trial court clerk of court is docketed when it is listed on the docket and assigned a docket number.

#### **~~FILING AND DOCKETING~~ APPEALS UNDER 15 U.S.C. § 3416(c) AND PETITIONS UNDER 42 U.S.C. § 300aa-12(f).**

Notices of Appeals under 15 U.S.C. § 3416(c) from ~~the~~ district courts concerning the enforcement of presidential subpoenas and orders during a natural gas shortage and petitions for review under 42 U.S.C. § 300aa-12(f) from the Court of Federal Claims vaccine determinations are filed in this court, unlike other appeals from those courts in which the notice of appeal is filed with the ~~C~~ clerks of those courts. ~~However, once these appeals or petitions are filed in this court, they are forwarded to the Clerks of those courts with instructions to comply with Federal Rule of Appellate Procedure 3(d).~~

**FEDERAL CIRCUIT RULE 4**

**Appeal as of Right – Untimely Notice**

**(a) Statutory Deadlines.**

~~The United States~~~~This Court of Appeals for the Federal Circuit~~ cannot waive or extend the untimely statutory deadlines for the filing of a notice of appeal or petition for review.

**(b) Untimely Notice or Petition.**

The clerk of court may return a notice of appeal or petition for review that is untimely on its face.

**Practice Notes to Rule 4**

**TIME TO APPEAL.**

The table below is provided only as a convenience for counsel, who should refer to the statutes and case law before determining the period available for taking an appeal. Counsel should also be aware of the district court’s authority under [Federal Rule of Appellate Procedure 4](#) to extend or reopen the time for appeal.

COURT	STATUTE	TIME
District Courts	28 U.S.C. § 2107	30 days (60 days if U.S. is a party)
	15 U.S.C. § 3416(c)	30 days
Court of International Trade	28 U.S.C. § 2645(c)	60 days
Court of Federal Claims	Appeals 28 U.S.C. § 2522	60 days
	Petitions 42 U.S.C. § 300aa-12(f)	60 days
Court of Appeals for Veterans Claims	38 U.S.C. § 7292	60 days

For petitions for review from agencies, see the Practice Note to Rule 15. Existing case law broadly requires this court to enforce statutory deadlines that limit the time allowed for the filing of a notice of appeal or petition for review, and to dismiss a case if the applicable deadline is not met, even if no party objects to such a filing as untimely and even if the filer asserts equitable grounds for excusing untimeliness. Parties should refer to the statutes and applicable case law to determine whether, in a particular situation, this court may disregard a timeliness defect not identified by a party or excuse non-compliance with a time limit for equitable reasons.

### Practice Notes to Rule 4

#### **DUTY TO NOTIFY THE CLERK OF POSTJUDGMENT MOTIONS PENDING IN THE TRIAL COURT.**

Even though the district court clerk must forward copies of later docket entries under [Federal Rule of Appellate Procedure 3\(d\)](#), the appellant should promptly notify this court's clerk if any party in the case files a motion listed in [Federal Rule of Appellate Procedure 4\(a\)\(4\)](#). Any other party may also notify the clerk in such a case. ~~Upon receiving the appropriate docket entries from the district court, the~~This court's clerk of court will deactivate ~~the~~an appeal or petition if a motion listed in Federal Rule of Appellate Procedure 4(a)(4) remains pending.

Deactivation of the appeal suspends all further action in the court of appeals.

Upon reactivation ~~of the appeal~~, the clerk of court will reschedule the next required filings and notify counsel.

#### **EXPEDITED PROCEEDINGS.**

The overall time for an appeal can be accelerated by the expeditious filing of a notice of appeal shortly after entry of final judgment in the trial forum. When a party is considering seeking expedited proceedings on appeal, the party should consider filing its notice of appeal and ~~initial~~principal brief well before the applicable deadlines. For further information on expedition procedures, see the [Practice Note to Rule 27](#).

**FEDERAL CIRCUIT RULE 5**

**Appeal by Permission**

**(a) Petition.**

A petition for permission to appeal must be accompanied by a copy of the docket entries in the trial court.

**(b) Record; Certified Copy of Docket Entries.**

In an allowed appeal, the trial court must retain the record as provided in [Federal Rule of Appellate Procedure 11\(e\)](#) and in [Federal Circuit Rule 11\(a\)](#). The trial court clerk of court must send a certified copy of the docket entries instead of the record.

~~**(c) Filing.**~~

~~For information concerning how to file a petition for permission to appeal, which is a case initiating document, see [Federal Circuit Rule 25](#).~~

~~**Practice Note to Rule 5**~~

~~**CASE INITIATION.**~~

~~The court's case management/electronic case filing system (CM/ECF) provides for submission of case opening materials in cases in which parties are represented by counsel and requires payment of fees using pay.gov. Requirements are included in the court's electronic case filing User Guide ([www.cafe.uscourts.gov](http://www.cafe.uscourts.gov)).~~

**FEDERAL CIRCUIT RULE 8**

**Stay or Injunction Pending Appeal**

**(a) Notice of Appeal; Trial Court’s Judgment or Order.**

A motion for a stay or injunction pending appeal must be accompanied by the following:

- (1) a copy of the filed notice of appeal ~~that has been filed with the trial court clerk of court~~ or other document required to invoke this court’s jurisdiction;
- (2) a copy of the trial court’s judgment or order on the merits;
- (3) a copy of any order on the motion for a stay or injunction pending appeal; and
- (4) a certificate of interest under Federal Circuit Rule 47.4.

~~**(b) Length of Motion, Response, and Reply; Copies; Brief; Filing.**~~

- ~~(1) A motion or a response to a motion for a stay or injunction pending appeal may not exceed 5,200 words if produced using a computer or 20 pages if handwritten or typewritten. A reply may not exceed 2,600 words if produced using a computer or 10 pages if handwritten or typewritten.~~
- ~~(2) No paper copies are required if the motion is filed by counsel through Electronic Case Filing (ECF). If the motion is filed by a pro se party, then one paper copy must be filed.~~
- ~~(3) A separate brief supporting a motion, response, or reply is not permitted.~~
- ~~(4) For information on filing a motion under this rule, when an appeal has been filed by the trial court but not yet docketed in this court, see the information in Federal Circuit Rule 25 and instructions on the court’s website for how to file a case initiating document.~~

**FEDERAL CIRCUIT RULE 8**

**(eb) Notice ~~and Service~~ When Requesting Immediate Action; ~~Fa~~simile ~~or Email~~.**

- (1) — A party moving for a stay or injunction pending appeal ~~who~~ ~~requests~~ and requesting immediate action by the court must—before filing—notify all parties that a motion will be filed ~~and must utilize an expedited method of service~~.
- (2) — ~~If a motion for a stay or injunction pending appeal is sent to the court by faecsimile or email transmission, which is only permitted under Federal Circuit Rule 25 for pro se parties who cannot file electronically through CM/ECF, opposing counsel must be served in the same manner. The filing must state the name, address, and, if applicable, the faecsimile numbers or email addresses of the persons served.~~

**FEDERAL CIRCUIT RULE 8****(~~dc~~) Statement.**

If an initial motion for a stay or injunction pending appeal was not made in the ~~district~~trial court under [Federal Rule of Appellate Procedure 8\(a\)\(1\)](#), ~~the~~ movant must include in its motion in this court a statement explaining why it was not practicable to do so. If an initial motion for a stay or injunction pending appeal was made in the ~~district~~trial 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~~trial court and why it is not practicable to await a ruling by the ~~district~~trial court on that motion.



**Practice Notes to Rule 8**

**FORMAT REQUIREMENTS.**

See [Federal Rule of Appellate Procedure 27\(d\)](#) for format requirements concerning motions.

~~**CERTIFICATE OF INTEREST.**~~

~~The format is found in [Form 9](#).~~

~~**CLERK'S OFFICE EMAIL.**~~

~~Email address ([prose@cafc.uscourts.gov](mailto:prose@cafc.uscourts.gov)) may only be used by pro se filers and only for submission under this Rule or [Federal Rule of Appellate Procedure 8](#).~~

**EMERGENCY RULE 8 FILINGS.**

Parties should notify the Clerk's Office as soon as possible when filing (or in anticipation of filing) a Rule 8 motion. On weekdays from 8:30 a.m. to 4:30 p.m. (Eastern Time), please call the Clerk's Office at 202-275-8055. To notify the Clerk's Office of emergency Rule 8 filings outside of normal operating hours that require action before the next business day, please call 202-275-8049 and email [emergencyfilings@cafc.uscourts.gov](mailto:emergencyfilings@cafc.uscourts.gov). Absent proper notification, the Clerk's Office may not be able to act on an after-hours, emergency filing before the next business day.

**FEDERAL CIRCUIT RULE 10**

**The Record on Appeal**

**(a) Delay in Preparing the Transcript.**

When a trial transcript is not filed in the trial court within sixty (60) days after it was ordered, the ~~clerk of trial~~ court may direct the parties to proceed under Federal Rule of Appellate Procedure 10(c) or ~~(d) of the Federal Rules of Appellate Procedure.~~

**(b) Agreed Statement.**

The filing of an agreed statement by the parties under Federal Rule of Appellate Procedure 10(d) does not relieve them of their obligation to compile and file the complete appendix required by Federal Rule of Appellate Procedure and Federal Circuit Rule 30.

**Practice Notes to Rule 10**

**~~DAILY COPY.~~**

~~Using daily transcript copy in lengthy trial proceedings can reduce or eliminate appellate delay in awaiting transcription after trial.~~

**PROCEDURES TO EXPEDITE DELIVERY OF TRANSCRIPTS.**

District courts and regional circuit councils have procedures to expedite transcripts that may be available to counsel experiencing difficulty with late delivery of transcripts by court reporters.

**TRANSCRIPT COMPLIANCE; TRANSCRIPT PURCHASE ORDER FORM.**

To comply with Federal Rule of Appellate Procedure 10(b)(1)(B), the appellant may file a certificate with this court stating no transcript will be ordered. The court does not have a form for such a certificate, but the certificate will need to meet the standard requirements for any filing under Federal Rule of Appellate Procedure 32 and Federal Circuit Rule 32. Parties are not required to file the certificate if a transcript is being ordered from the reporter. Parties are not required to file the transcript purchase order form (Federal Circuit Form 22) with this court, regardless of whether a transcript will be ordered. Court reporters follow Federal Rule of Appellate Procedure 11(b) for preparing transcripts and notifying the court.

**FEDERAL CIRCUIT RULE 11**

**Forwarding the Record**

- (a) **Retaining the Record; Certified Copy of the Docket Entries; ~~Physical Exhibits~~; Archival Storage.**
- (1) The district court clerk must:
    - (A) retain the assembled record unless this court, on motion or sua sponte, orders otherwise; and
    - (B) send to this court a certified copy of the docket entries instead of the record.
  - (2) **Archival Storage.** The district court clerk of court must not send the record to archival storage until this court issues its mandate.
- (b) **Access of Parties and Counsel to the Original Record.**
- (1) **Material Not Subject to a Protective Order; Inspection and Copying.** When a notice of appeal is filed, the trial court clerk of court must permit a party or counsel for a party to inspect and copy the nonconfidential original papers, transcripts, and exhibits to prepare the appendix. This inspection and copying is subject to reasonable regulation by the trial court.
  - (2) **Material Subject to a Protective Order; Inspection and Copying.** A party or counsel for a party must be permitted to inspect and copy material in the record governed by a protective order of the trial court in accordance with that order. If this court modifies or annuls the protective order, the access of a party or counsel is governed by the order of this court.

**FEDERAL CIRCUIT RULE 11****(c) ~~Status of a Protective Order~~s~~ on Appeal.~~**

~~In general, any portion of the record that was subject to a protective order in the trial court shall remain subject to that order on appeal. Material shall lose its status as subject to a protective order, however, if and when it has been removed from protected status under Federal Circuit Rule 30(h)(1)(B) or has appeared, without being marked confidential, in motion papers under Federal Circuit Rule 27 or a brief under Federal Circuit Rule 28 in this court. Federal Circuit Rules 27(m)(1) and 28(d)(1) tightly limit confidentiality markings in a motion, response, or reply and in a brief. Federal Circuit Rule 25.1(c) applies to the status of trial court protective orders and modification thereof.~~

**(d) ~~Agreement by Parties to Modify a Protective Order; Certificate of Compliance.~~**

~~If any portion of the record in the trial court is subject to a protective order and a notice of appeal has been filed, each party must promptly review the record to determine whether protected portions need to remain protected on appeal. If a party determines that some portions no longer need to be protected, that party must seek an agreement with the other party. Any agreement that is reached must be promptly presented to the trial court, which may issue an appropriate order. Whether or not an agreement is reached, each party must file a certificate of compliance no later than the time for filing the joint appendix stating it complied with this rule. This Federal Circuit Rule 11(d) does not apply in a case arising under 19 U.S.C. § 1516a, or to third party information marked as confidential.~~

**(e) ~~Motion to Modify the Protective Order.~~**

~~A party may move at any time in this court to modify a protective order to remove protection from some material or to include another person within its terms. This court may decide the motion or may remand the case to the trial court. This court, sua sponte, may direct the parties to show cause why a protective order should not be modified.~~

**FEDERAL CIRCUIT RULE 12**

**(a) Notice of Docketing.**

The clerk of court must notify all parties of the date the appeal is docketed, the assigned appeal number, and the short case name.

**(b) Official Caption.**

The clerk of court must provide the parties with the official caption for the case at the time of docketing. Any objection to the official caption must be made promptly.

## Practice Notes to Rule 12

### **FILING AND DOCKETING AN APPEAL.**

An appeal is filed when the notice of appeal is received by the trial court. An appeal sent to this court by the trial court clerk of court is docketed when it is listed on the docket and assigned a docket number.

### ~~DATE OF DOCKETING.~~

~~The date of docketing starts the time running for filing briefs. See [Federal Circuit Rule 31\(a\)](#).~~

### **REPRESENTATION STATEMENT.**

The requirements of [Federal Rule of Appellate Procedure 12\(b\)](#) are met by filing the entry of appearance ~~and certificate of interest~~ required under [Federal Circuit Rules 47.3 and 47.4](#). ~~If the attorney who filed the notice of appeal will not be representing any parties on appeal, the court will not require that attorney to file an entry of appearance or representation statement.~~

### ~~OFFICIAL CAPTION; PARTICIPATION IN THE APPEAL BY APPELLEES; CONSOLIDATION OF PREVIOUSLY CONSOLIDATED CASES AND CROSS APPEAL TRIAL COURT INTERVENORS.~~

~~The clerk will provide the parties with the official caption in the case at the time of docketing. Any objection to the official caption should be made promptly. It 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. Parties included in the trial court title who have an adverse interest to the appellant but who are not cross-appealing will be deemed appellees. Parties permitted to intervene in the trial court as plaintiffs or defendants will usually be identified only as plaintiff or defendant on the official caption to avoid confusion with any third party permitted to intervene in the appeal. ~~An appellee desiring not to file a brief or join in another party's brief must notify the clerk of court who will strike the party's designation as an appellee from the official caption. An appeal in a case that was consolidated in the trial court will be docketed under the title used for the consolidated case. When more than one party appeals from the same trial court case, the appeals or cross-appeals will be consolidated by the clerk of court. Other appeals may be consolidated on motion or by the court sua sponte.~~~~

### Practice Notes to Rule 12

#### **TRANSFERRED APPEAL.**

An appeal transferred from another court will be given a new docket number and will~~may~~ be consolidated by the clerk of court with any previously docketed appeal from the same judgment or order.

#### **PARTICIPATION BY APPELLEES.**

It is the court's usual practice to include in the official caption all parties participating in the court below at the time of entry of judgment, even if they are not participating in the appeal. Parties included in the trial court title that have an adverse interest to the appellant but that are not cross-appealing will be deemed appellees. An appellee desiring not to file a brief or join in another party's brief should promptly notify the clerk of court. The clerk of court will remove the party's designation as an appellee from the official caption.

#### **CONSOLIDATION.**

An appeal in a case that was consolidated in the trial court will be docketed under the title used for the consolidated case. When more than one party appeals from the same trial court case, the appeals or cross-appeals will usually be consolidated by the clerk of court. Other appeals may be consolidated on motion or by the court sua sponte.



**FEDERAL CIRCUIT RULE 15****Review of an Agency Order – How Obtained**

- (a) **Petition for Review or Notice of Appeal; Payment of Fees; ~~Address and Telephone Number~~Contact Information of Counsel or ~~Pro Se~~Unrepresented Petitioner or Appellant; ~~Number of Copies.~~**
- (1) **From the Patent and Trademark Office.** To appeal a decision of the Patent Trial and Appeal Board, the Trademark Trial and Appeal Board, or the Director under 15 U.S.C. § 1071(a), the appellant must file in the Patent and Trademark Office a notice of appeal within the time prescribed by law. ~~Notwithstanding Rule 25(b)(1), t~~The appellant must simultaneously ~~send to file the notice with~~ the clerk of court ~~one paper copy of the notice and pay the fee set forth in~~ Federal Circuit Rule 52. The Director must promptly advise the clerk of court ~~that whether~~ the notice is ~~or is not~~ timely.
- (2) **From Another Agency.**
- (A) Except as provided in Federal Circuit Rule 15(a)(1), to petition or appeal from a decision or order of an agency, the petitioner must file a petition for review or notice of appeal with this court's clerk of court within the time prescribed by law. ~~Within 14 days of filing, the petitioner must pay the clerk of court the fee set forth in Federal Circuit Rule 52.~~
- (B) A petition filed by the Director of the Office of Personnel Management must be filed as prescribed in Federal Circuit Rule 47.9.
- (3) ~~Address and Telephone Number~~Contact Information of Counsel or ~~Pro Se~~Unrepresented Petitioner or Appellant. Each petition for review or notice of appeal must contain the counsel's—or the ~~pro se~~unrepresented petitioner's or appellant's—name, current address, email address, and telephone number.
- (4) ~~Copies~~Filing and Payment. ~~No additional paper copies are required to be filed with the court. A notice of appeal or petition for review submitted under this rule along with the fee set forth in Federal Circuit Rule 52, or a motion for leave to proceed in forma pauperis or other waiver, must be provided to this court in accordance with Federal Circuit Rule 25(b).~~

**FEDERAL CIRCUIT RULE 15**

**(b) Docketing Petition or Appeal; Notice of Docketing.**

- (1) **Docketing Upon Receipt.** In a petition for review or appeal from an administrative agency, the clerk of court will docket a timely appeal or petition upon receipt. ~~Parties represented by counsel must file the petition or appeal and pay any required fees through CM/ECF and pay.gov. Parties not represented by counsel must submit the petition or appeal in paper and pay the required fees by check within 14 days of docketing. Facsimile or email transmission is not permitted. Instructions for electronically filing case initiating documents such as a petition or appeal are posted on the court's website.~~
- (2) **Untimeliness.** ~~The clerk of court may return a petition for review or notice of appeal that is untimely on its face. For an appeal or petition docketed by the court, the agency or any party may advise the clerk of court concerning the untimeliness of an the appeal or petition and the clerk may order the appellant to show cause why the appeal or petition should not be dismissed and refer the appellant's response to the court.~~
- (3) **Notice of Docketing.** The clerk of court must notify all parties ~~through CM/ECF~~ of the date the appeal or petition for review is docketed, the assigned appeal number, and the short case name.
- (4) **Official Caption.** The clerk of court will provide the parties with the official caption for the case at the time of docketing. Any objection to the official caption must be made promptly.

**(c) Statement Concerning Discrimination.**

- (1) **Petitioner's Statement.** Within fourteen (14) days after a petition for review of a decision of the Merit Systems Protection Board or a decision of an arbitrator under 5 U.S.C. § 7121 is docketed, the petitioner must ~~serve on the respondent and file with the clerk of court~~ a statement indicating whether or not a claim of discrimination by reason of race, sex, age, national origin, or handicapped condition has been or will be made in the case. See Form 10A petitioner must file the statement on the form prescribed by the court.

**FEDERAL CIRCUIT RULE 15**

(2) **Response When a Claim of Discrimination is Raised in a Motion or Brief.** If the petitioner in a case described in [Federal Circuit Rule 15\(c\)\(1\)](#) files a motion or brief involving a claim of discrimination as to the case before the court, the respondent must state, in a responsive motion or brief, whether the respondent concurs or disagrees with the petitioner’s statement concerning discrimination and indicate whether or not the respondent believes that the court has jurisdiction over the petition for review, with reasons provided as necessary.

~~(3) **Failure to File.** Failure to file a completed discrimination statement may result in dismissal of the petition for review.~~

~~(d) **Untimely Petition for Review or Notice of Appeal** Arbitrator Contact Information.~~

~~The clerk of court may return a petition for review or notice of appeal that is untimely on its face. Any petition for review from an arbitrator’s decision must include the arbitrator’s current mailing address, email address, and telephone number.~~

(e) **Notice of Election Under 35 U.S.C. § 141 or 15 U.S.C. § 1071(a)(1).**

A party filing a notice of election under 35 U.S.C. § 141 or 15 U.S.C. § 1071(a)(1) with the Director of Patents and Trademarks must file a copy of the notice with the clerk of court, and the clerk of court must dismiss the appeal.

~~(f) **Judicial Review of Department of Veterans Affairs Rules and Regulations** Under 38 U.S.C. § 502.~~

~~(1) **See Federal Circuit Rule 47.12** Time for Filing. A petition for judicial review of an action of the Secretary of the Department of Veterans Affairs under 38 U.S.C. § 502 must be filed with the clerk of court within sixty (60) days after issuance of the action challenged in the petition.~~

~~(2) **Parties.** The Secretary of Veterans Affairs must be named the respondent.~~

**FEDERAL CIRCUIT RULE 15**

(3) **Contents.** The petition for judicial review must describe how the persons seeking review are adversely affected and must specifically identify either of the following:

(A) the specific rules or other actions covered by 5 U.S.C. § 552(a)(1) at issue in the petition; or

(B) the notice-and-comment rulemaking process covered by 5 U.S.C. § 553 at issue in the petition.

(4) **Procedure.** Except as provided in Federal Circuit Rule 15(e), the procedures applicable to a petition for judicial review under 38 U.S.C. § 502 are the same as those for a petition for review under Federal Rule of Appellate Procedure 15 and Federal Circuit Rule 15.

**Practice Notes to Rule 15**

**TIME TO APPEAL OR PETITION.**

The table below is provided only as a convenience to ~~counsel~~parties, who should refer to the statutes, rules, and case law before determining the period available for taking an appeal or filing a petition for review. ~~Counsel should also note that and the event that causes~~starts the period ~~to run~~varies in each case.

AGENCY	STATUTE	TIME
Arbitrator	5 U.S.C. §§ 7121, 7703	60 days
Merit Systems Protection Board	5 U.S.C. § 7703	60 days
Government Accountability Office Personnel Appeals Board	31 U.S.C. § 755	30 days
Patent Trial and Appeal Board; Trademark Trial and Appeal Board; Director of Patents and Trademarks	35 U.S.C. § 142 15 U.S.C. § 1071 37 C.F.R. §§ 90.3(a)(1), 2.145	2 months or 63 days
International Trade Commission	19 U.S.C. § 1337	60 days
Board of Contract Appeals	41 U.S.C. § 7107	120 days

<b><u>Practice Notes to Rule 15</u></b>		
AGENCY	STATUTE	TIME
Secretary of Agriculture	7 U.S.C. § 2461	60 days
Secretary of Veterans Affairs	38 U.S.C. § 502 Fed. Cir. R. <del>47.12(a)</del> 15(f)	60 days
Secretary of Labor; Occupational Safety and Health Review Commission; Federal Labor Relations Authority; certain Merit Systems Protection Board cases and Equal Employment Opportunity Commission cases	28 U.S.C. § 1296	30 days
Board of Directors, Office of Compliance	2 U.S.C. § 1407(c)(3)	90 days
Bureau of Justice Assistance	42 U.S.C. § 3796c-2	90 days

**Practice Notes to Rule 15**

**FILING IN THE PATENT AND TRADEMARK OFFICE.**

A notice of appeal mailed to the Patent and Trademark Office should be addressed:

Office of the Solicitor  
United States Patent and Trademark Office Mail Stop 8  
Post Office Box 1450  
Alexandria, Virginia 22313-1450

The general counsel requests that hand delivery, if any, be made between the hours of 8:30 a.m. and 5:00 p.m. to:

Office of the General Counsel  
Patent and Trademark Office  
Madison East  
10B20 600 Dulany Street  
Alexandria, Virginia 22314

**COPY OF DECISION OR ORDER.**

A party filing a petition for review or notice of appeal is urged to attach a copy of the decision or order of the agency for which review is sought.

**INTERVENTION.**

A party with the right to appeal or to petition for review may not, instead of exercising that right, intervene in another appeal or petition to seek relief in its own cause. Because the United States or an agency of the United States is often the only appellee or respondent in cases under this rule, any other party seeking to intervene on the side of the appellee or respondent must move for leave to intervene within thirty (30) days ~~of~~after the date when the petition for review or notice of appeal is filed. A motion for leave to intervene out of time will be granted only in extraordinary circumstances.

## Practice Notes to Rule 15

### **STATEMENT CONCERNING DISCRIMINATION STATEMENT.**

~~A discrimination statement form~~ Using Federal Circuit Form 10 satisfies the requirements under Federal Circuit Rule 15(c). The clerk of court will be included Form 10 in the docketing package provided to any unrepresented petitioner seeking review of a decision of the Merit Systems Protection Board or an arbitrator. Failure to complete the discrimination statement will result in dismissal of the petition for review. See Form 10.

### **TIMELINESS.**

Except in inter partes appeals from decisions of the Patent Trial and Appeal Board or the Trademark Trial and Appeal Board, parties in agency proceedings do not have the 14-day “cross-appeal” period that [Federal Rule of Appellate Procedure 4\(a\)\(3\)](#) grants to parties appealing from trial courts. The court cannot waive the statutory time requirements for filing a petition for review or notice of appeal.

### **CONSOLIDATION.**

When more than one party ~~files appeals, cross-appeals, or petitions for review or notice of appeal from rulings in the same underlying proceeding, the parties should inform the clerk of court and the petitions or appeals may will usually be consolidated and an adjusted briefing schedule may be issued by the clerk of court.~~ Appeals or petitions for review from decisions involving the same or related patents from the same tribunal will usually be consolidated. Other appeals or petitions may be consolidated on motion or by the court sua sponte.

### **ARBITRATION AWARDS IN THE UNITED STATES POSTAL SERVICE.**

These arbitration awards may not be appealed to this court.

### **PROPER GOVERNMENTAL PARTY IN APPEALS FROM BOARDS OF CONTRACT APPEALS.**

In appeals from the boards of contract appeals, the title of the head of the federal agency is listed in the caption along with the name of the agency he or she heads.



## Practice Notes to Rule 15

### **FILING AND DOCKETING A PETITION FOR REVIEW OR APPEAL.**

A petition for review or appeal is filed when the petition for review or notice of appeal is received by the court or, in the case of an appeal from the Patent and Trademark Office, when the notice of appeal is received by the Director of the United States Patent and Trademark Office. A petition for review or appeal is docketed when it is listed on the electronic docket and assigned a docket number ~~in CM/ECF~~.

### ~~JUDICIAL REVIEW OF DEPARTMENT OF VETERANS AFFAIRS RULES AND REGULATIONS.~~

~~Federal Circuit Rule 47.12 governs actions for judicial review of Department of Veterans Affairs rules and regulations under 38 U.S.C. § 502. The procedures to be followed in such actions are the same as provided in this rule, except as provided in Federal Circuit Rule 47.12.~~

### **CHANGE OF HEAD OF AGENCY.**

In appeals in which the proper governmental party is the head of the agency, counsel for the government should promptly notify the clerk of court of any change that would affect the accuracy of the caption.

### ~~AGENCY.~~

~~The term agency in these rules includes a board, commission, bureau, or arbitrator.~~

### **EXPEDITED PROCEEDINGS.**

The overall time for a review of an agency decision can be accelerated by the expeditious filing of a notice of appeal or petition for review shortly after entry of the reviewable agency order. When the appellant or petitioner is considering seeking expedited proceedings on appeal, the party should consider filing its notice of appeal or petition for review and initial-principal brief well before the deadline for such actions. For further information on expedition procedures, see the [Practice Notes to Rule 27](#).

**Practice Notes to Rule 15**

**PARTICIPATION BY APPELLEES/RESPONDENTS.**

An appellee or respondent desiring not to file a brief or join in another party's brief should promptly notify the clerk of court.

**FEDERAL CIRCUIT RULE 17****Filing the Record****(a) Retaining the Record; Sending the Certified List.**

The agency must retain the record and send to this court a certified list or index unless this court, on motion or sua sponte, orders otherwise. This requirement also applies to arbitrators whose decisions are reviewable by this court.

**(b) Certified List or Index.**

- (1) **From the United States Patent and Trademark Office.** No later than forty (40) days after ~~receiving the notice of appeal~~this court docketed an appeal, the Director must send to the clerk of court the certified list and a copy of the decision or order appealed. This constitutes compliance with the requirement of 35 U.S.C. § 143 and 15 U.S.C. § 1071(a)(3) for sending a certified record to the court.
- (2) **From Another Agency.** No later than forty (40) days after the court serves a petition for review or notice of appeal on an agency, the agency must send to the clerk of court the certified list or index and a copy of the decision or order being appealed.
- (3) **Index of VA Rulemaking Record.** In petitions for review under 38 U.S.C. § 502, if a petitioner has not adequately identified the rulemaking proceeding complained of, so that the Secretary of Veterans Affairs cannot send the certified list or index within the time provided in Federal Circuit Rule 17(b)(2), the Secretary must promptly move to waive or extend the time for filing the certified list or index.

**(c) Service of Certified List or Index by Agency.**

When an agency sends a certified list or index to the clerk of court, it must simultaneously serve a copy on the parties and provide a certificate of service to the clerk of court. ~~Service must be made on counsel for the appellant or petitioner who has served the agency with a copy of an entry of appearance in this court; otherwise, service must be made on counsel who appeared before the agency or, if none, on the party. This service constitutes notice to the parties of the date the record was filed.~~

**FEDERAL CIRCUIT RULE 17****(d) Access of Parties and Counsel to Original Record.**

- (1) **Material Not Subject to a Protective Order; Inspection and Copying.** When a petition for review or notice of appeal is filed, the agency must permit a party or counsel for a party to inspect and copy the nonconfidential original papers, transcripts, and exhibits to prepare the appendix. This inspection and copying is subject to reasonable regulation by the agency.
- (2) **Material Subject to a Protective Order; Inspection and Copying.** A party or counsel for a party must be permitted to inspect and copy material contained in the record governed by a protective order of an agency in accordance with that order. If this court modifies or annuls the protective order, the access of a party or counsel is governed by the order of this court.

**(e) ~~Status of a Protective Order on Appeal.~~**

~~In general, any portion of the record that was subject to a protective order in an agency shall remain subject to that order on appeal. Material shall lose its status as subject to a protective order, however, if and when it has been removed from protected status under Federal Circuit Rule 30(h)(1)(B) or has appeared, without being marked confidential, in motion papers under Federal Circuit Rule 27 or a brief under Federal Circuit Rule 28 in this court. Federal Circuit Rules 27(m)(1) and 28(d)(1) tightly limit confidentiality markings in a motion, response, or reply and in a brief. Federal Circuit Rule 25.1(c) applies to the status of agency protective orders and modification thereof.~~

**FEDERAL CIRCUIT RULE 17****~~(f) Agreement by Parties to Modify Protective Order; Certificate of Compliance.~~**

~~If any portion of the record in an agency is subject to a protective order and a petition for review or notice of appeal has been filed, each party must promptly review the record to determine whether protected portions need to remain protected on appeal. If a party determines that some portions no longer need to be protected, that party must seek an agreement with the other party. Any agreement that is reached must be promptly presented to the agency, which may issue an appropriate order. Whether or not an agreement is reached, each party must file a certificate of compliance no later than the time for filing the joint appendix stating it complied with this rule.~~

**~~(g) Motion to Modify the Protective Order.~~**

~~A party may move at any time in this court to modify a protective order to remove protection from some material or to include another person within its terms. This court may decide the motion or may remand the case to the agency. This court, sua sponte, may direct the parties to show cause why a protective order should not be modified.~~

**Practice Notes to Rule 17**

**TRANSCRIPT OF AGENCY PROCEEDING AT GOVERNMENT EXPENSE.**

These rules do not require an agency to provide a party with a written transcript at the agency's expense. Any party seeking a written transcript of a hearing should direct the request to the agency, not the court.

**~~AGENCY.~~**

~~The term agency in these rules includes a board, commission, bureau, or arbitrator.~~

**FEDERAL CIRCUIT RULE 18****Stay Pending Review****(a) Petition for Review or Notice of Appeal; Agency Order.**

A petition for review or notice of appeal must be filed with this court before it will entertain a motion for a stay or injunction pending review. A motion for stay or injunction pending review must be accompanied by a certificate of interest under Federal Circuit Rule 47.4, a copy of the agency decision on the merits, and a copy of any agency order on the motion for a stay or injunction pending review.

~~**(b) Length of Motion, Response, and Reply; Copies; Brief.**~~

~~(1) A motion or a response to a motion for a stay pending review may not exceed 5,200 words if produced using a computer or 20 pages if handwritten or typewritten. A reply may not exceed 2,600 words if produced using a computer or 10 pages if handwritten or typewritten.~~

~~(2) No paper copies are required if the motion is filed by counsel through CM/ECF. If the motion is filed by a pro se party, then one paper copy must be filed.~~

~~(3) A separate brief supporting a motion, response, or reply is not permitted.~~

~~(4) For information on filing a motion along with a petition or appeal under this rule, see the information in Federal Circuit Rule 25 and instructions in the User's Guide on the court's website ([www.cafe.uscourts.gov](http://www.cafe.uscourts.gov)) for how to file a case initiating document through CM/ECF.~~

~~**(e) Notice and Service When Requesting Immediate Action; Facsimile or Email.**~~

~~(1) A party moving for a stay or injunction pending review **who requests and requesting** immediate action by the court must—before filing—notify all parties that a motion will be filed ~~and must utilize an expedited method of service.~~~~

**FEDERAL CIRCUIT RULE 18**

~~(2) — If a motion for stay pending review is sent to the court by facsimile or email transmission, which is only permitted under Federal Circuit Rule 25 for pro se parties who cannot file electronically through CM/ECF, a certificate of interest must be included and opposing counsel must be served in the same manner. The filing must state the name, address, and, if applicable, the facsimile numbers of the persons served.~~

**(dc) Statement.**

If an initial motion for a stay pending review was not made in the agency under Federal Rule of Appellate Procedure 18(a), the movant must include in its motion in this court a statement explaining why it was not practicable to do so. If an initial motion for a stay pending review 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.



### Practice Notes to Rule 18

#### **FORMAT REQUIREMENTS.**

See [Federal Rule of Appellate Procedure 27\(d\)](#) for format requirements concerning motions.

#### ~~CERTIFICATE OF INTEREST.~~

~~The form for the certificate of interest is found in [Form 9](#).~~

#### ~~AGENCY.~~

~~The term agency in these rules includes a board, commission, bureau, or arbitrator.~~

#### ~~CLERK'S OFFICE EMAIL.~~

~~Email address ([prose@cafc.uscourts.gov](mailto:prose@cafc.uscourts.gov)) may only be used by pro se filers.~~

#### EMERGENCY RULE 18 FILINGS.

Parties should notify the Clerk's Office as soon as possible when filing (or in anticipation of filing) a Rule 18 motion. On weekdays from 8:30 a.m. to 4:30 p.m. (Eastern Time), please call the Clerk's Office at 202-275-8055. To notify the Clerk's Office of emergency Rule 18 filings outside of normal operating hours that require action before the next business day, please call 202-275-8049 and email [emergencyfilings@cafc.uscourts.gov](mailto:emergencyfilings@cafc.uscourts.gov). Absent proper notification, the Clerk's Office may not be able to act on an after-hours, emergency filing before the next business day.

**FEDERAL CIRCUIT RULE 21****Writs of Mandamus and Prohibition, and Other Extraordinary Writs****(a) Title; Fee; ~~Answer~~Response.**

- (1) A petition for writ of mandamus or prohibition directed to a court or an agency must be entitled: “In Re [name of petitioner], Petitioner.”
- (2) The petition must include a certificate of interest under Federal Circuit Rule 47.4. An entry of appearance for principal counsel under Federal Circuit Rule 47.3 must accompany the petition, unless the petitioner is pro se unrepresented.
- (3) The petition must ~~state the name, address, telephone number and, if applicable, facsimile number of each person~~ include proof of service under Federal Rule of Appellate Procedure 25(d) and be served outside the court’s electronic filing system.
- (4) A petition filed under this rule must be filed with this court in accordance with Federal Circuit Rule 25(b). The fee set forth in Federal Circuit Rule 52, or a motion for leave to proceed in forma pauperis or other waiver, must accompany the petition. ~~For counsel who must file the petition through CM/ECF, see the information in Federal Circuit Rule 25 and instructions in the User’s Guide on the court’s website (www.cafe.uscourts.gov) for how to file a case-initiating document through CM/ECF and pay the fees through pay.gov.~~
- (5) No ~~answer~~response may be filed ~~by any respondent~~ unless ordered by the court.

**~~(b) — Copies; Brief.~~**

- ~~(1) — If the petition is filed by a pro se party, then one paper copy is required. No paper copies are required if counsel files the petition through CM/ECF as a case initiating document.~~
- ~~(2) — A separate brief supporting or answering a petition is not permitted.~~

**FEDERAL CIRCUIT RULE 21**

~~(3) No paper copies of a response or reply are required, if the response or reply is submitted through CM/ECF. If the respondent is pro se, then one paper copy of the response is required. If the petitioner is pro se, then one copy of the reply is required.~~

**(eb) Reply.**

If the court directs the filing of a response to a petition, then the petitioner may file a reply. Unless otherwise ordered, the petitioner may file a reply within seven (7) days ~~of~~after the date of the filing of the response. The court may act on the petition before receipt of any reply, and thus the filing of a reply should be expedited if appropriate. The reply may not exceed 3,900 words if produced ~~using a computer~~electronically or fifteen (15) pages ~~if handwritten or typewritten~~otherwise.

**(c) Copies; Brief.**

(1) If the original petition, response, or reply is filed in paper form, then no additional copies are required.

(2) The filer of a petition, response, or reply must not submit a separate brief in support of its filing.

**(d) Service of Order Denying Petition.**

If the petition is denied, the petitioner must serve a copy of the order denying the petition on all persons served with the petition unless such a person has entered an appearance in the proceeding or has been sent a copy of the order by the clerk of court.

**FEDERAL CIRCUIT RULE 21****(e) Amicus Curiae Brief.**

An amicus curiae brief supporting a petition must be accompanied by a motion for leave to file and be filed no later than four (4) days after the petition is docketed. An amicus curiae brief in opposition to a petition must be accompanied by a motion for leave and be filed no later than the date the court directs for parties to respond to the petition. The court may act on the petition before leave is sought, and thus the filing of a brief and a motion for leave should be expedited if appropriate. Federal Rules of Appellate Procedure 29(a)(3) and 29(a)(4) apply to the motion and brief, except that the brief may not exceed 3,900 words if prepared electronically or fifteen (15) pages otherwise.

**(f) Petition for Panel Rehearing or Rehearing En Banc.**

Federal Rule of Appellate Procedure 40 and Federal Circuit Rule 40 apply to any petition for panel rehearing. Federal Rule of Appellate Procedure 35 and Federal Circuit Rule 35 apply to any petition for rehearing en banc or a combined petition for panel rehearing and rehearing en banc.

**FEDERAL CIRCUIT RULE 24****Proceeding in Forma Pauperis****(a) Form.**

~~If an appeal or petition for review is docketed without payment of the docketing fee, the clerk of court in providing notice of docketing will forward to the appellant or petitioner the form prescribed by this court for the motion to proceed on appeal in forma pauperis. (See Form 6.) Except as provided in Federal Rule of Appellate Procedure 24(a), if the clerk of court does not receive a completed motion, the docketing fee, or a completed Form 6B within fourteen (14) days of the date of docketing of the appeal or petition, the clerk of court is authorized to dismiss the appeal or petition. See also Federal Circuit Rule 52(d).~~

~~The motion and affidavit may be made on parties seeking to proceed in forma pauperis must submit a motion and affidavit using this court's form or the form provided in the Federal Rules of Appellate Procedure, but the court may request additional information from the movant. The clerk of court will provide unrepresented parties with a copy of this court's form upon request.~~

**(b) Supplemental Form.**

~~If the movant is incarcerated, in addition to Form 6 the motion and affidavit, the movant must file a supplemental form for prisoners, Form 6A.~~

### Practice Notes to Rule 24

#### **DOCKETING FEE; TRANSCRIPT REQUEST.**

A party permitted to proceed in forma pauperis on appeal is not required to pay the docketing fee. Any request for a transcript of an agency proceeding at government expense is governed by agency regulations and must be directed to the agency.

#### **PROCEEDING ON ORIGINAL RECORD.**

A request under [Federal Rule of Appellate Procedure 24\(c\)](#) that an appeal be heard on the original record is rarely granted because the available informal brief procedure permits an appendix consisting only of a copy of the decision or order sought to be reviewed. See [Federal Circuit Rules 2830\(gh\); 30\(i\); 31\(e\); and 32\(e\)](#). See [Federal Circuit Forms 11-16](#).

#### **EFFECT OF PRISON LITIGATION REFORM ACT.**

Under the Prison Litigation Reform Act of 1995, a prisoner granted pauper status before the district court is not automatically entitled to pauper status on appeal. See 28 U.S.C. § 1915. A prisoner seeking to proceed in forma pauperis is directed to the [Guide for ~~Pro Se~~Unrepresented Petitioners and Appellants](#) for further information.

#### **~~USERRA CASES.~~**

~~In a petition for review of a Merit Systems Protection Board decision, a petitioner is not required to pay the docketing fee or costs if the case involved a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). 38 U.S.C. § 4323, 4324. A petitioner claiming exemption from the fee pursuant to USERRA should submit Form 6B within 14 days of the date of docketing of the petition and may be required to submit documentation that his or her case before the Board involved a USERRA claim.~~

#### **FORMS.**

~~Using Federal Circuit Form 6 satisfies the requirements for a motion and affidavit for leave to proceed in forma pauperis under Federal Circuit Rule 24(a). Using Federal Circuit Form 6A satisfies the requirement for incarcerated movants to file a supplemental form for prisoners under Federal Circuit Rule 24(b).~~

**FEDERAL CIRCUIT RULE 25**

**Filing and Service**

**(a) ~~Filing in General; Payment of Fees; Registration; Admission to Bar~~Filing Requirements.**

(1) ~~Filing in General; Payment of Fees~~**Methods.** Where these rules discuss electronic filing, it exclusively refers to use of the court's electronic filing system. Unless authorized in advance by the court or the clerk of court, facsimile and email transmission of documents will not be accepted.

(A) **Represented Parties.** Except as noted below, parties represented by counsel must submit all documents, including appeals and petitions when applicable, through Case Management/Electronic Case Filing (CM/ECF) in Portable Document Format (PDF) using the court's electronic filing system and following the instructions and requirements in the court's Electronic Filing Procedures.

**FEDERAL CIRCUIT RULE 25**

- (B) **Unrepresented Parties.** ~~Pro se~~ Following public notice, the clerk of court may provide for unrepresented parties ~~must to~~ file electronically and may establish necessary procedures and requirements consistent with these rules. Once electronic filing is available, an unrepresented party must inform the court within fourteen (14) days after that party's case is docketed whether the filer elects to submit any documents in paper form, providing one copy to the court or register for electronic filing and submit documents in PDF through the court's electronic filing system; following this election, the party may not change methods in that case without leave of the court or the clerk of court for good cause shown. Payment of any required fees must be made by counsel through pay.gov. Instructions are available on the court's website concerning use of pay.gov. Payment of any required fees must be made by pro se parties through check or money order. See also Federal Circuit Rule 52. A User's Guide for CM/ECF and instructions for the use of pay.gov are posted on the court's website. An unrepresented party may use either method to submit case-initiating documents and may elect to file using different methods in each separate case. If an unrepresented party elects to file electronically, Federal Circuit Rule 25(c)(1) applies.
- (2) **Electronic Filer Registration; Admission to Bar.** Attorneys who appear before this court and unrepresented parties choosing to file electronically must register for the court's CM/ECF electronic filing system. Registration requirements are ~~posted on~~ located in the court's website Electronic Filing Procedures. Registration for CM/ECF electronic filing is not a substitute for ~~counsel's application for~~ admission to the bar or ~~entry of~~ appearance in a case. ~~Applications for admission to the bar must be filed using the CM/ECF system by following the instructions posted on the court's website~~ Unrepresented paper filers may register for electronic filing at any point, and they may elect to file electronically after registration is approved by the court.



**FEDERAL CIRCUIT RULE 25**

- (3) **Restrictions on Electronic Filers.** Registration for the court's electronic filing system constitutes an agreement by the filer to abide by all the procedures and requirements set forth in the court's Electronic Filing Procedures. Following notice and an opportunity to respond, the clerk of court may restrict or revoke electronic filing privileges for users who have either (A) repeatedly failed to comply with these procedures and requirements, or (B) failed to maintain appropriate security of account credentials.
- (4) **Electronic Filing Procedures.** The clerk of court is authorized to adopt Electronic Filing Procedures governing the administrative and technical requirements and procedures for using the court's electronic filing system. However, nothing in the Electronic Filing Procedures may contradict the Federal Rules of Appellate Procedure, the Federal Circuit Rules, or any applicable federal law.
- (5) **Change of Name or Contact Information.** Filers must immediately submit an amended appearance under Federal Circuit Rule 47.3 to notify the clerk of court of a change of name or contact information, including an email address for electronic service. Electronic filers must also update their information in the court's electronic filing system. Failure to maintain current contact information with the clerk of court may result in the suspension of electronic filing privileges or missed notifications.

**(b) Case-Initiating Documents.**

Documents such as appeals filed directly with this court, petitions for review, petitions for writs of mandamus, petitions for permission to appeal, and motions for stays or injunctions under Federal Rule of Appellate Procedure 8 or 18, are considered case-initiating documents if the appeal or petition has not ~~otherwise~~ been ~~opened~~docketed.

**FEDERAL CIRCUIT RULE 25**

- (1) **Electronic Submissions by Counsel.** ~~Case initiating documents must be filed in Portable Document Format (PDF) by parties represented by counsel through CM/ECF and pay.gov. See the instructions on the court's website for how to file a case initiating document through CM/ECF and pay the fees through pay.gov. A case-initiating document is considered filed at the time and date registered by CM/ECF~~ the court's electronic filing system. No paper copy is required. Parties represented by a member of the bar of this court must submit case-initiating documents electronically.
- (2) **Non-Electronic Submissions by Pro Se Parties.** ~~Case initiating documents submitted by pro se~~ Unrepresented parties must be provided or parties represented at the lower tribunal by counsel who are not members of the bar of this court may choose to the court submit case-initiating documents in paper. Only one paper copy is required of any case-initiating document submitted in paper. The paper document must be served on opposing counsel at the same time it is mailed or delivered to the court Once the notice of docketing is issued, an unrepresented party must follow Federal Circuit Rule 25(a)(1).

**(c) All Other Documents.**

- (1) **Submissions by Counsel** ~~Electronic Filers.~~ Electronic Filers. ~~All other documents must be submitted in PDF through the court's electronic filing system. A document filed~~ submitted ~~electronically is deemed filed on the date and time stated on the Notice of Docket Activity generated from the court's electronic filing system. Unless a time for filing is specified by the court, filing must be completed before midnight Eastern Time to be considered timely filed on that day.~~

~~For documents covered by this subsection (c)(1), counsel must not submit p~~ Paper copies must not be provided to the court except as to the extent required by Federal Circuit Rule 25(c)(3) or as ordered by the court ~~order or by the following provisions.~~

**FEDERAL CIRCUIT RULE 25**

- (A) ~~**Briefs**~~**Motion for Exemption.** ~~In cases to be heard by a three judge panel, six paper copies are required to be provided to the court within five business days of the court's issuance of a notice requesting paper copies~~A motion for exemption from electronic filing requirements may be submitted in paper form. Upon a showing of good cause, the court may exempt a filer from electronic filing requirements and authorize filing by other means.
- (B) ~~**Appendices.**~~ **Appendices.** ~~In cases to be heard by a three judge panel, six paper copies are required to be provided to the court within five business days of the court's issuance of a notice requesting paper copies.~~
- ~~(C) **Petitions for Panel Rehearing.** Three paper copies are required to be provided to the court within two business days of filing the petition through CM/ECF, unless otherwise ordered.~~
- ~~(D) **Petitions for En Banc Hearing or Rehearing.** Eighteen paper copies are required to be provided to the court within two business days of the filing of the petition through CM/ECF, unless otherwise ordered.~~
- ~~(E) **Combined Petition for Panel Rehearing and Rehearing En Banc.** Unless otherwise ordered, 18 paper copies are required to be provided to the court within two business days of the filing of the petition through CM/ECF.~~
- ~~(F) **Briefs in En Banc Cases.** If the court grants a petition for hearing en banc, unless otherwise ordered, 28 paper copies of all briefs and appendices shall be filed within five business days of the court's acceptance of the electronic brief. If the court grants a petition for rehearing en banc, unless otherwise ordered, 28 paper copies of the original briefs and appendices (in cases where briefs were filed in CM/ECF prior to the court's order granting an en banc rehearing) shall be filed within seven business days of the court's order granting en banc rehearing. Additionally, if the court grants a petition for rehearing en banc, 28 paper copies of any ordered supplemental briefs, appendices, and amicus briefs must be filed within five business days of the court's acceptance of the~~

**FEDERAL CIRCUIT RULE 25**

~~electronic brief or appendices. If a brief is accompanied by a motion for leave, paper copies of the motion shall also be submitted in the quantity required of the brief by this subsection.~~

~~(G) **Confidential Versions.** If confidential and nonconfidential versions of the briefs, appendices, or petitions were filed through CM/ECF, paper copies of only the confidential version(s) are required to be submitted to the court. One paper copy of the confidential version of any document submitted to the court through CM/ECF must be served on any party, whether that party is or is not represented by counsel, except if that party or its counsel has not been authorized access to the confidential information under a governing protective order. Electronic access to confidential versions of documents is restricted to the court only.~~

~~(H) **Other Documents**Items that Cannot be Filed Electronically. Exhibits, attachments, or appendices that are not in a format that readily permits electronic filing—such as those which are illegible when scanned or which, because of their odd shape, are unable to be scanned—may be filed in paper~~physical~~ form without leave of court. ~~Counsel~~The party must ~~then~~ file electronically a Notice of Paper~~Physical~~ Filing and submit the original exhibit, attachment, or appendix in physical form to the clerk of court within five (5) business days after filing the notice. The party must serve documents filed pursuant to this subsection by providing two paper copies to all other parties. If such documents are submitted with an item is part of a brief or, appendix, or petition, then an original and six additional copies must be filed within five business days of electronic submission of the Notice of Paper Filing. For all other filings of documents that may not be scanned, an original and three copies must be filed provided in the same number and within the same timeframe as the paper copies of the brief, appendix, or petition. For electronic appendix material that is unable to be reproduced in paper, Federal Circuit Rule 30(i) applies, and a separate Notice of Physical Filing is not required.~~

**FEDERAL CIRCUIT RULE 25**

- ~~(I) **Motion for Exemption.** A motion for exemption from the court's CM/ECF requirements may be submitted in paper form. Only one paper copy is required. Upon a showing of good cause, the court may exempt a party from CM/ECF requirements and authorize filing by means other than use of CM/ECF.~~
- ~~(JC) **Technical or System Failures.** An CM/ECF electronic filer whose filing is ~~made~~ untimely as the result of a technical or system failure may ~~seek appropriate relief from the court, and must file a motion for leave to file out of time that includes in that submission~~ (1) a declaration or affidavit attesting to the filer's failed attempts to file electronically and (2) the document that could not be filed due to the technical or system failure.~~
- ~~(K) **Corrected Versions.** If a party has not yet filed paper copies of a document and that party has electronically filed a corrected version of that document, only paper copies of the corrected version must be provided to the court.~~
- ~~(L) **Sanctions for Failure to Comply.** Failure to comply with the court's rules may result in dismissal of the appeal or other action as deemed appropriate by the court. For example, failure to timely provide the required paper copies of a brief or appendix may result in dismissal of the appeal or in the case proceeding solely on the appellant's opening brief.~~
- (2) **Submissions by ~~Pro Se Parties~~ Non-Electronic Filers.** All documents ~~from pro se parties must be provided to the court~~ submitted in paper form is deemed filed on the date and time it is received by the court. Additional paper copies must not be provided to ~~The court will scan the documents provided by the pro se parties and place them on the electronic docket. The court will discard other paper documents once they have been scanned and made a part of the official record unless the electronic file thereby produced is incomplete or of questionable quality in accordance with judiciary records management policies~~ except to the extent required by Federal Circuit Rule 25(c)(3) or as ordered by the court.

**FEDERAL CIRCUIT RULE 25**

- (A) ~~**Faersimile and Email Transmission**~~**Originals.** ~~A motion, response to a motion, reply to a response, or letter may be filed by email or faersimile transmission if submitted by a pro se party. The certificate of service must state whether a copy has been served on all parties by email or faersimile transmission. No other document, including for example an appeal or petition, may be filed or served by email or faersimile. A petition or appeal submitted by a pro se party **must** be filed with the court by mail or delivery, and the court must **receive** the document by the due date~~Non-electronic filers, including counsel exempted from electronic filing requirements, must file one original of each document. If a party chooses to file required paper copies at the same time as the original submission, then the original will count toward the number of paper copies.
- (B) ~~**Copies**~~**Paper Records.** ~~Unless otherwise ordered in a particular case, three paper copies of any briefs, appendices, or petition for rehearing must be submitted to the court by a pro se party on or before the due dates provided in these rules. For all other documents, including for example motions or letters, only one paper copy is required~~The clerk of court will scan originals provided in paper and make the scanned documents part of the court's official record through its electronic filing system. After the scanned documents are entered into the court's electronic filing system, the paper documents will be discarded in accordance with judiciary records management policies.

**FEDERAL CIRCUIT RULE 25**

- (3) **Entries by the Court Paper Copies.** ~~Unless otherwise provided, all orders, opinions, judgments, and other court issued documents in cases maintained in the CM/ECF system will be issued electronically. Such issuance constitutes entry on the docket kept by the clerk of court. Electronic transmission of the Notice of Docket Activity constitutes any notice and service required by the court's rules. Any document released electronically by the court without the original signature of a judge, clerk of court, or authorized court representative shall have the same force and effect as if signed. The clerk of court shall give notice in paper form to a person who is not an electronic filer.~~ Except as provided in this subsection or as ordered by the court, electronic filers must not provide paper copies to the court. When paper copies are required, the clerk of court will note receipt of those copies on the electronic docket.
- (A) **Briefs and Appendices During Initial Consideration.** During initial consideration of a case on the merits, six (6) paper copies—or three (3) for cases briefed informally—of each brief and appendix must be provided to the court within five (5) business days after the court's issuance of a notice requesting paper copies.
- (B) **Petitions for Panel Rehearing.** Three (3) paper copies of any petition for panel rehearing, related response, or related brief amicus curiae must be provided to the court within two (2) business days after the filing of the petition, response, or brief.
- (C) **En Banc or Combined Petitions.** Eighteen (18) paper copies—or three (3) for unrepresented parties—of any petition for en banc hearing, petition for en banc rehearing, combined petition for panel and en banc rehearing, related response, or related brief amicus curiae must be provided to the court within two (2) business days after the filing of the petition, response, or brief.

**FEDERAL CIRCUIT RULE 25**

(D) **Briefs and Appendices in En Banc Cases.** If the court orders en banc hearing or rehearing, twenty-eight (28) paper copies of each brief and appendix filed in the case prior to the date of the court's order must be provided to the court within five (5) business days after that order. Twenty-eight (28) paper copies of each brief and appendix filed during en banc consideration must be provided to the court within five (5) business days after the filing of the document.

(E) **Confidential Versions.** If a confidential document is filed in two versions pursuant to Federal Circuit Rule 25.1, then only paper copies of the confidential version must be provided to the court.

~~(A)~~(F) **Corrected Versions.** If a party has not yet filed paper copies of a document and that party has electronically filed a corrected version of that document, then only paper copies of the corrected version must be provided to the court.

(4) **Review and Correction by the Clerk of Court.** The clerk of court may require the filing of a corrected copy of any submission that fails to comply with the court's rules or the [Electronic Filing Procedures](#). If a party fails to file a timely corrected copy in response to a notice requiring correction from the clerk of court, the clerk of court may strike the non-compliant document from the docket. The clerk of court may also edit docket entries to correct or to add text or attachments, and any such revision will be identified on the docket.

**(d) Format of Documents; ~~Signatures.~~**

Documents filed electronically and in paper must comply with the format requirements set forth in the Federal Rules of Appellate Procedure, the Federal Circuit Rules, and ~~any other requirements established by the court's or by the CM/ECF User Manual~~[Electronic Filing Procedures](#). ~~Where the court's rules require a signature on a document, the name of the filer whose log in and password is used to submit a document may be preceded by "/s/" and typed in the space where the signature would otherwise appear.~~



**FEDERAL CIRCUIT RULE 25**

**(e) Service.**

- (1) ~~Documents Submitted by Counsel~~**Electronic Filings.** ~~Registration as a CM/ECF filer constitutes consent to electronic service of all documents. If a document is filed by counsel through CM/ECF, the Notice of Docketing Activity generated by that filing constitutes service on opposing counsel. A certificate filing does not require proof of service should indicate that the document was if it is served on all parties through CM/ECF the court's electronic filing system. Service of a filing to an invalid user's email address registered with the court's electronic filing system at the time of the filing constitutes valid service, even if the individual has failed to timely provide an eurrent updated valid email address and the served email address is invalid. If one of the other parties is proceeding pro se, then counsel must serve a paper copy of any document as provided in Federal Rules of Appellate Procedure 25(e), (d), and a certificate of service must be included to explain how service was achieved on Any non-electronic filers in the pro se party. If a document is filed and case must be served electronically on a non-business day, timeliness in paper and calculation of any responsive deadlines will begin on the next business day. Three additional days are NOT added to the time to file a responsive document because the court considers filing must include proof of service by email through CM/ECF to be delivered when transmitted.~~
- (2) ~~Documents Submitted by Pro Se Parties~~**Paper or Physical Filings.** ~~A copy of any document original filing submitted to the court by a pro se party in paper must be mailed, delivered or transmitted by the pro se party to served on all other parties as provided in Federal Rules of Appellate Procedure 25(e), (d) in paper. A certificate The original must include proof of service is required to be included with the document to explain how the document was provided to the other parties in the case. See Form 30. If a Notice of Physical Filing is filed pursuant to Federal Circuit Rule 25(c)(1)(B), then a copy of the physical filing must be served on all other parties and the notice must include proof of service of the physical filing.~~

**FEDERAL CIRCUIT RULE 25**

- (3) **Confidential Material.** Filers cannot serve confidential information through the court’s electronic filing system. When a document is filed in two versions pursuant to Federal Circuit Rule 25.1, the filer must serve all other authorized parties in paper, unless the parties agree on a separate service arrangement according to Federal Circuit Rule 25(e)(4).
- (4) **Consent to Electronic or Alternate Service.** Except for the service of confidential material under Federal Circuit Rule 25(e)(3), registration as an electronic filer constitutes consent to electronic service of all documents by the court’s electronic filing system. Parties required to be served in paper may consent to service via an alternate method, and any required proof of service must reflect the alternative method of service.
- (5) **Service of Papers Before Appearance.** Service of a filing on a party for which counsel has not yet entered an appearance must be made on counsel of record for the party in the proceeding below at that counsel’s last known address, or, if unrepresented, on that party directly.

**(f) Private, Confidential, or Sealed Information.**

Unless ordered otherwise, all parties (including pro se parties) must refrain from including or must redact the following personal data identifiers from documents filed with the court: Social Security numbers; financial account numbers; names of minors (use instead the minor’s initials); dates of birth (use the year only); home addresses (use the city and state only). If a party refers to materials in appendices that a party determines for good reason and in compliance with court rules should not be made available to the public on the Internet through PACER, then two versions of the appendices must be filed: a nonconfidential public version with the sensitive materials redacted, and an unredacted confidential version of the full document. The responsibility for redacting restricted or sensitive materials from documents and assuring that all materials contained in the public version of documents rests solely with the parties and counsel. The clerk of court will not review documents filed for compliance with this requirement. Requirements for filing private, confidential, and sealed material with the court are detailed in Federal Circuit Rule 25.1.

**FEDERAL CIRCUIT RULE 25****(g) Signatures.****(1) Electronic Signature.**

(A) An electronic signature consists of either (1) the printed name of the individual preceded by the mark “/s/” entered on the signature line or (2) an electronic signature from a commercial provider that complies with the Electronic Signatures in Global and National Commerce Act (ESIGN) (15 U.S.C. § 7001). The electronic signature must appear where the signature would otherwise appear.

(B) The clerk of court will only accept a document with an electronic signature when (1) the name of the electronic signer matches the name on the account used to file the document in the court’s electronic filing system or (2) multiple signatures are present pursuant to Federal Circuit Rule 32(g).

**(2) Form of Signature.**

Where the rules require a signature on a document filed electronically, an electronic signature may be used. For documents filed in paper form, an original, handwritten signature must be used. An original signature is not required on paper copies required by Federal Circuit Rule 25(c)(3). Applications for admission to this court’s bar must always bear either (A) handwritten signatures or (B) an ESIGN compliant electronic signature by the applicant and any sponsor. However, the oath of admission must bear a handwritten signature.

**(3) Retention of Documents.**

Documents that are electronically filed and require original signatures other than that of the ~~CM/ECF~~ filer (such as an affidavit signed by a person other than the ~~CM/ECF~~ filer) must be maintained in ~~paper original~~ form by the ~~CM/ECF~~ filer until the ~~case is terminated with finality and issuance of the mandate~~ with no right of appeal or until such later date as the court prescribes. On request of the court, the ~~CM/ECF~~ filer must provide original documents for review.

**FEDERAL CIRCUIT RULE 25**

**(h) Sanctions for Failure to Comply.**

Failure to comply with the court’s rules may result in dismissal of the appeal or other action as deemed appropriate by the court.

**(i) Corrections to Filings.**

(1) **General.** A document may not be corrected merely by filing or appending an errata sheet. A party wishing to make non-substantive corrections to any document currently on file with the clerk of court must file a Notice of Correction. Substantive corrections may only be made with leave of the court.

(2) **Format.** A corrected document must indicate “corrected” in the title or on the cover. A new proof of service must be attached to any corrected filing that is not being served through the court’s electronic filing system.

(3) **Notice of Correction.** A Notice of Correction must be filed contemporaneously with the corrected document and must specifically delineate each correction. A Notice of Correction is not required for changes to a document when those changes have been ordered by the court or the clerk of court.

(4) **Required Copies.** If paper copies have already been submitted, an adequate number of corrected paper copies must be filed.

**Practice Notes to Rule 25**

**LOCATION OF CLERK'S OFFICE; HOURS OF OPERATION; NIGHT BOX.**

The clerk's office is in Room 401 of the National Courts Building, 717 Madison Place, NW, Washington, DC 20439, and is open from 8:30 a.m. to 4:30 p.m. on workdays. After the office closes on workdays, papers may be deposited until midnight in a night box at the garage entrance on H Street NW, between 15th Street and Madison Place.

**CLERK'S MAILING ADDRESS.**

Address mail as follows:

Clerk of Court  
United States Court of Appeals for the Federal Circuit  
717 Madison Place NW  
Washington, DC 20439

The clerk of court will not pay postage due.

**~~CLERK'S FACSIMILE NUMBER.~~**

~~Documents which Federal Circuit Rule 25 permits to be sent by facsimile to the clerk of court by pro se parties should be sent to: 202 275 9678. Note that appeals and petitions for review may NOT be filed by facsimile.~~

**~~CLERK'S OFFICE EMAIL.~~**

~~Email address (prose@cafe.uscourts.gov) may only be used by pro se filers.~~

**~~PROOF OF SERVICE.~~**

~~Each brief, petition, motion, response, or reply must contain proof of service. If filed by counsel through CM/ECF, the certificate of service may state that the brief or other document was filed through CM/ECF and thereby served electronically. If filed by or to a pro se party, the certificate must state how the document was mailed or delivered. The original filed pro se with the court must be signed.~~

### Practice Notes to Rule 25

#### **RETURN COPY MARKED RECEIVED.**

When a brief or other paper is presented for filing and the filer provides a copy to be marked “received,” the clerk of court will mark it received and return it. If the filing is by mail or if the night box is used, a self-addressed, postage-paid (first class) return envelope must accompany the request.

#### ~~**FILING REVIEW AND CORRECTION BY THE CLERK.**~~

~~The clerk of court may review material submitted for filing and require correction to conform with the Federal Rules of Appellate Procedure and the Federal Circuit Rules. The clerk of court will issue a notice advising of the nature of the nonconformity and guidelines for resubmission. Opposing counsel will be notified of the required correction. The timeliness of a response is computed from date of service of the original material. Because of occasional delays with some mail transmitted by the United States Postal Service, due to screening or other issues, if a document such as a notice of appeal, petition for review, motion, or other document must be received by the court on a particular date, then the pro se filer might consider using an alternative method of delivering the document to the court, such as a commercial carrier or hand delivery. The court cannot waive the deadlines for filing a notice of appeal or petition for review, even if the document was deposited in the mail in a timely fashion. Federal Rule of Appellate Procedure 26(b).~~

#### ~~**PRO SE PARTIES UNREPRESENTED PARTY WHO ARE ATTORNEYS IS A MEMBER OF THE BAR.**~~

~~If an pro se unrepresented party is also an attorney member of the court’s bar, that individual may use CM/ECF only if the attorney is registered as a member of the court’s bar and if the attorney enters an appearance. If the pro se party who also happens to be an attorney is not registered as a member of the bar, that pro se party must proceed by following under the rules applicable to pro se for either represented or unrepresented parties, and thus may not use CM/ECF but not both in a single case.~~

### Practice Notes to Rule 25

#### **PAPER COPIES OF BRIEFS AND APPENDICES.**

Counsel should not submit paper copies of any briefs or appendices required under [Federal Circuit Rule 25\(c\)\(13\)\(A\)-\(B\)](#) until after the court issues a notice indicating that the copies are due and the deadline for filing these copies. In typical, non-expedited cases, the clerk of court issues this notice shortly after briefing concludes. Paper copies for petitions and briefs related to panel rehearing, en banc hearing, or en banc rehearing are due after the filing of the electronic version as required by [Federal Circuit Rule 25\(c\)\(13\)\(C\)-\(F\)](#).

~~Unrepresented parties must provide paper copies at the time for filing of the original brief.~~

#### **CONFIDENTIAL FILINGS.**

~~For purposes of these rules, documents filed as “confidential” are treated the same as documents filed “under seal.”~~

#### **UNREPRESENTED PARTY FILING ELECTION**

~~Using Federal Circuit Form 8B satisfies the requirement for an unrepresented party to notify the court of the elected filing method under Federal Circuit Rule 25(a)(1)(B).~~

#### **CERTIFICATE OF SERVICE.**

~~Using Federal Circuit Form 30 satisfies the requirements for proof of service under Federal Rule of Appellate Procedure 25(d) and Federal Circuit Rule 25(e).~~

**FEDERAL CIRCUIT RULE 25.1****Privacy and Confidentiality****(a) Scope.**

- (1) Availability to the Public.** Unredacted material included in nonconfidential or unsealed filings is presumed to be public. After five (5) years following the end of all proceedings in this court, the court may direct the parties to show cause why confidential filings (except those protected by statute) should not be unsealed and made available to the public.
- (2) Restricted Access.** At the time of filing, access to confidential or sealed documents will be restricted to authorized court personnel only. If a party or its counsel has not been authorized access to confidential or sealed material under a governing protective order, any filing containing such material must include the pertinent protective order with a cover letter indicating which parties or counsel are not authorized access. The court may provide access to confidential or sealed material to all parties and counsel in a case who are not identified on such a cover letter. Any confidential or sealed document filed without a cover letter is assumed to be accessible by all parties and counsel in the case.
- (3) Responsibility for Review.** The parties and their counsel are solely responsible for redacting restricted or sensitive materials from documents, identifying any counsel or parties to the case not permitted to access confidential or sealed material, and properly filing confidential or sealed material. The clerk of court is not required to review documents to ensure material has been appropriately redacted.
- (4) Redactions.** No material may appear redacted in a filing with this court except as provided in Federal Rule of Appellate Procedure 25(a)(5) or Federal Circuit Rules 25.1(b), 25.1(d), or 30(c)(2), or if that material was only filed in redacted form at the trial court or agency.



**FEDERAL CIRCUIT RULE 25.1****(b) Personally Identifiable Information.**

All parties must refrain from including or must redact personally identifiable information (PII) from documents filed with the court. Documents that contain only redacted PII and no other confidential markings are not required to adhere to Federal Circuit Rule 25.1(e). The requirement to redact PII may be waived by the inclusion of a statement of consent. Examples of PII include the following:

- (1) Social security numbers;
- (2) Financial account numbers;
- (3) Names of minors (use instead the minor's initials);
- (4) Dates of birth (use the year only); and
- (5) Home addresses (use the city and state only).

**(c) Protective Orders.**

- (1) Status of a Protective Order on Appeal. In general, any portion of the record that was subject to a protective order in the trial court or agency must remain subject to that order on appeal or review. Material will lose its status as subject to a protective order, however, if and when it has been removed from protected status under subsection (2) below or has appeared in a filing without being marked confidential. This court, sua sponte, may direct the parties to show cause why a protective order should not be modified.
- (2) Agreement by Parties to Modify a Protective Order. If any portion of the record in the trial court or agency is subject to a protective order and a notice of appeal or petition for review has been filed, each party must promptly review the record to determine whether protected portions need to remain protected on appeal. If a party determines that some portion no longer needs to be protected, that party must seek an agreement with the other parties. Any agreement that is reached must be promptly presented to the trial court or agency, which may issue an appropriate order.

**FEDERAL CIRCUIT RULE 25.1**

**(A) Certificate of Compliance.** In appeals of proceedings subject to a protective order in the trial court or agency, each party must file a certificate of compliance no later than the time for filing the appendix stating it complied with this rule.

**(B) Exclusion.** This requirement does not apply to cases arising under 19 U.S.C. § 1516a or to third-party information marked confidential.

**(d) Confidential Marking Limitations; Motions to Exceed Limitations.**

**(1) Motions, Petitions, Responses, Replies, and Briefs.** Material in a motion, petition, response, reply, or brief may only be marked confidential to the extent noted in subsections (A)-(C) below, and only if the information (1) is treated as confidential pursuant to a judicial or administrative protective order and (2) such marking is authorized by statute, administrative regulation, or court rule (such as Federal Rule of Civil Procedure 26(c)(1)). Otherwise, no material may be marked confidential, including references to information previously treated as confidential pursuant to a protective order.

**(A) General Limitation.** Each motion, petition, response, reply, or brief may mark as confidential up to fifteen (15) unique words (including numbers).

**(B) Limitation for Cases Under 19 U.S.C. § 1516a or 28 U.S.C. § 1491(b).** In cases arising under 19 U.S.C. § 1516a or 28 U.S.C. § 1491(b), each motion, petition, response, reply, or brief may mark confidential up to fifty (50) unique words (including numbers).

**(C) Exclusions.** When a phrase is marked confidential in a filing, the words in the phrase count against the unique word allotment for that filing; but repeating the same confidential material in the same filing does not use up any more of the unique word allotment. If a responsive filing uses material previously marked confidential in the filing(s) to which it responds, that material does not count against the unique word allotment for the responsive filing.

**FEDERAL CIRCUIT RULE 25.1**

- (D) **Applicability.** The limitations of Federal Circuit Rule 25.1(d)(1) do not apply to appendices; attachments; exhibits; and addenda to motions, petitions, responses, replies, or briefs.
- (2) **Other Documents.** Material that is covered by a protective order or that has confidentiality imposed on it by a statute, rule, or regulation may be marked confidential in any filing other than those subject to Federal Circuit Rule 25.1(d)(1) without any limitation on the number of markings. Material that has lost its protective coverage under Federal Circuit Rule 25.1(c) may not be marked confidential.
- (3) **Motion to Waive Requirements.** A party seeking to mark more words confidential than permitted must file a motion with this court. Access to a filing accompanied by a motion to waive confidentiality requirements will be restricted in accordance with Federal Circuit Rule 25.1(a) and will remain restricted should the motion be denied, unless ordered otherwise.
- (A) **Contents.** The motion must identify the total number of unique words sought to be marked confidential and establish why the additional markings are appropriate and necessary pursuant to a statute, administrative regulation, or court rule. For example, a party may establish that an argument cannot be properly developed without additional disclosure of confidential information, and public disclosure will risk causing competitive injury. All motions should explain in detail the propriety of confidentiality and provide reasons and/or legal citations for each source of information sought to be marked as confidential.
- (B) **Time for Filing.** The motion must be filed contemporaneously with the document for which waiver of confidentiality requirements is sought.
- (C) **Court Action.** If the motion is denied in whole or in part, an amended filing that complies with the confidentiality limitations must be filed within ten (10) days after the action on the motion. Any amended filing that still does not meet the confidentiality limitations must be submitted with a new motion.

**FEDERAL CIRCUIT RULE 25.1****(e) Contents and Format for Confidential Filings.**

- (1) Two Versions.** A document containing material subject to confidentiality as permitted by Federal Circuit Rule 25.1(d) must be filed with the court in two versions: a confidential version that notes the material marked confidential, and a nonconfidential version containing appropriate redactions.
- (A) Confidential Versions.** The cover or front page of the confidential version must be labeled “confidential,” either centered at the top or contained in the title. If confidentiality will end on a certain date or upon the happening of an event, this must be stated on the cover or front page (e.g., “CONFIDENTIAL UNTIL [DATE],” or “CONFIDENTIAL DURING JUDICIAL REVIEW”). Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting. The confidential version of an appendix must include at the beginning (i.e., in front of the judgment or order appealed from) pertinent excerpts of any statutes imposing confidentiality or the entirety of any judicial or administrative protective order.
- (B) Nonconfidential Version.** The cover or front page of the nonconfidential version must be labeled “nonconfidential,” either centered at the top or contained in the title. Each page from which material subject to a protective order has been deleted or redacted must bear a legend so stating, and an adequate, general descriptor of the material must appear over the deletion or redaction. The table of contents must include a paragraph describing the general nature of the confidential material that has been deleted and applicable page numbers. If the document does not contain a table of contents, this paragraph must be the first paragraph of the document.
- (2) Certificate of Confidential Material.** A motion, petition, response, reply, or brief that includes material marked confidential under Federal Circuit Rule 25.1(d)(1) must be accompanied by a certificate that indicates the exact number of unique words (including numbers) sought to be marked confidential. It is the responsibility of the filing party to ensure that the certificate of confidential material is accurate.

### Practice Notes to Rule 25.1

#### DESCRIBING THE GENERAL NATURE OF CONFIDENTIAL MATERIAL DELETED FROM THE NONCONFIDENTIAL VERSION.

The following example is acceptable:

##### CONFIDENTIAL MATERIAL OMITTED

The material omitted on page 42 describes the circumstances of an alleged lost sale; the material omitted in the first line of page 43 indicates the dollar amount of an alleged revenue loss; the material omitted on page 44 indicates the quantity of the party's inventory and its market share; the material omitted in the text on page 45 describes the distributor's experiences concerning the inventories and order lead times; and the material omitted in the footnote on page 45 describes non-price factors affecting customers' preferences between competing methods.

#### JUSTIFICATION FOR CLAIM OF CONFIDENTIALITY.

Unnecessarily designating material in the briefs and appendix as confidential abrogates the right of public access and may hinder the court's preparation and issuance of opinions. Counsel must be prepared to justify at oral argument any claim of confidentiality.

#### NOTING REDACTIONS IN THE NONCONFIDENTIAL VERSION.

When a page redacts confidential information, the legend noting the redaction should appear in the margin of the page. When redacting information from the nonconfidential version, a general descriptor of the redacted information must appear in the place of the redacted information, e.g., "dollar amount," "number of items," "chemical name." If an entire page is redacted, a slip sheet may be included, and the legend may appear in the center of the sheet. If a consecutive range of entire pages is redacted, the filer may include one slip sheet with a legend representing the redaction of that range of pages. Any slip sheet must include an adequate, general descriptor of all deleted or redacted material pursuant to Federal Circuit Rule 25.1(e)(1)(B).

## Practice Notes to Rule 25.1

### NOTING CONFIDENTIAL MATERIAL IN THE CONFIDENTIAL VERSION.

The court requires that confidential information be clearly identifiable in the confidential version, and the filer should ensure that highlighting will not obscure text or be confused with other identifiers elsewhere in the document. Brackets should be sized appropriately to ensure they are readily recognizable. If an entire page is to be marked confidential, the filer may include large brackets on the left and right margin of the page or highlight the entire page. The highlight may be in the form of a box over the entire page or a clearly highlighted border surrounding the page.

### RECORD MATERIAL THAT EXISTS IN TWO VERSIONS.

When material that is part of the record had a sealed and a public version of that document, such as an underlying opinion or order, then the confidential appendix should include the sealed version and the nonconfidential appendix should include the public version. The two versions must be appropriately highlighted or bracketed. If one version is longer than the other, the shorter version should include slip sheets to cover the additional missing pages in its corresponding version.

### CONFIDENTIAL FILINGS.

For purposes of these rules, documents filed as “confidential” are treated the same as documents filed “under seal.”

### CERTIFICATE OF CONFIDENTIAL MATERIAL.

Using Federal Circuit Form 31 satisfies the certificate requirements of Federal Circuit Rule 25.1(e)(2).

**FEDERAL CIRCUIT RULE 26****Computing and Extending Time****(a) Computation of Time; Closing the Clerk's Office.**

- (1) **Legal Holiday.** “Legal holiday” also means a day on which the clerk’s office is closed by order of the court or the chief judge. Such an order will be posted publicly.
- (2) **Calculating Deadlines.** Unless otherwise ordered, the timeliness of any responsive document is computed from the date of service of the original submission, regardless of any corrections made by the party. Should leave of the court be required to file a document, the deadline for any responsive document will be triggered by the court’s order on the motion for leave, unless otherwise ordered. If a document is served on a Saturday, Sunday, or legal holiday, timeliness for any responsive document will be calculated from the next business day. Unless a time for filing is ordered by the court, filing must be completed before midnight Eastern Time on the due date to be considered timely.
- (3) **Unscheduled Court Closure.** In the event of a publicly noticed unscheduled closure of the clerk’s office, all deadlines for electronic submissions remain in effect, unless otherwise stated. Deadlines for paper submissions that fall on the date of the unscheduled court closure will be extended to the next business day.
- (4) **Inaccessibility of Electronic Filing.** In the event of a scheduled system outage or unscheduled technical failure of the court’s electronic filing system, the clerk of court may provide notice that the clerk’s office is inaccessible and extend deadlines for electronic filings pursuant to Federal Rule of Appellate Procedure 26(a)(3). Such a notice will be posted publicly.
- (5) **Court Order.** Federal Rule of Appellate Procedure 26(c) does not apply to deadlines set by court order.

**FEDERAL CIRCUIT RULE 26**

**(b) Motion to Extend Time.**

- (1) A motion to extend the time prescribed by the Federal Rules of Appellate Procedure, the Federal Circuit Rules, or an order of this court must be made at least seven (7) days before the date sought to be extended, except that in extraordinary circumstances a motion may be made later than that deadline if accompanied by an affidavit or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746 that describes the extraordinary circumstances.
- ~~(2) Before filing the motion, the movant must inform all other parties that it will seek an extension.~~
- ~~(3) The movant must state in the motion whether any other parties object and, if so, whether a response in opposition will be filed.~~
- ~~(4) In addition to ~~showing good cause~~ the requirements under Federal Rule of Appellate Procedure 27 and Federal Circuit Rule 27, the motion must state the following:~~
  - (A) the date to be extended;
  - (B) the revised date sought;
  - (C) the number of days of extension sought; and
  - (D) the total number of days of extension previously granted to the movant.
- ~~(5)~~ A request for an extension of more than fourteen (14) days must be accompanied by an affidavit or unsworn declaration of counsel or a ~~pro se~~ unrepresented party under penalty of perjury under 28 U.S.C. §1746 showing good cause for the extension.
- ~~(4) Upon certification by the filer that additional time is needed to resolve confidentiality issues, the court will grant a one-time per document extension of five (5) days to file the document. Any additional requests for extension to resolve confidentiality issues are by leave of court.~~



**FEDERAL CIRCUIT RULE 26**

(c) **Electronic Service of Documents ~~by Counsel Through CM/ECF.~~**

Three (3) additional days are ~~NOT~~not added to the time to file a responsive document, when the original document was ~~filed~~served through ~~CM/ECF,~~ ~~because~~ the court's electronic filing system. ~~The~~ court considers service ~~by email~~ through ~~CM/ECF~~ the court's electronic filing system to be ~~delivered~~ ~~when transmitted~~ completed on the date and time reflected on the Notice of Docket Activity.

**Practice Notes to Rule 26**

**OPPOSITION TO EXTENSION.**

If a party opposes a motion for extension of time, that party should file its response promptly. The court will not necessarily wait for an opposition before ruling on a motion.

**BENEFIT OF TIMELY EXTENSION REQUEST.**

Unless the court has previously ordered that there will be no further extensions, an appeal will not be dismissed for failure to file appellant’s brief if appellant’s motion to extend the time for filing was filed and served at least seven days before the due date for the brief, but the motion has not been acted on by the due date.

**EXTENSION DURING SETTLEMENT NEGOTIATIONS.**

Parties jointly stipulating that they are actively pursuing settlement of the case will be granted a reasonable extension of time to accomplish settlement.

**~~COURT ORDER.~~**

~~Federal Rule of Appellate Procedure 26(e) does not apply when a court order requires action within a specified time; the due date is as specified in the order.~~

**~~EXTENSION TO RESOLVE CONFIDENTIALITY ISSUES.~~**

~~The Court will grant a 5-day extension of time to file any brief, motion, response, or reply upon certification by counsel for the filer that additional time is needed to resolve confidentiality issues.~~

**Practice Notes to Rule 26**

**DEADLINES FOR DOCUMENTS SUBMITTED BY MAIL.**

Because of occasional delays with some mail transmitted by the United States Postal Service due to screening or other issues, if a document must be received by the court on a particular date, then a paper filer might consider using an alternative method of delivering the document to the court, such as a commercial carrier or hand-delivery. The court cannot waive the deadlines for filing a notice of appeal or petition for review, even if the document was deposited in the mail in a timely fashion.

**FEDERAL CIRCUIT RULE 26.1****~~Corporate~~ Disclosure Statement**

~~The corporate disclosure statement must be included in the filing of a certificate of interest prescribed in required by [Federal Circuit Rule 47.4](#) satisfies the requirements of Federal Rule of Appellate Procedure 26.1. 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. See [Federal Circuit Rule 47.4](#) for additional requirements. Each brief, petition or motion filed by counsel must also include a certificate of interest. A party represented by counsel must file an amended certificate of interest promptly when any of the information required by the certificate changes.~~

**Practice Notes to Rule 26.1****~~CERTIFICATE OF INTEREST.~~**

~~The requirements of [Federal Rule of Appellate Procedure 26.1](#) are satisfied by filing a certificate of interest under [Federal Circuit Rule 47.4](#). See [Form 9](#).~~

**TIMELY UPDATES.**

The court uses the ~~C~~ertificate of ~~I~~nterest to determine when recusal of a judge may be appropriate. Thus, timely correction and updating of the certificate is required to identify potential conflicts.

**FEDERAL CIRCUIT RULE 27**

**Motions**

**(a) Contents and Format of a Motion.**

~~The preferred content~~In addition to the requirements under Federal Rule of Appellate Procedure 27(a)(2) and organization of(d), a motion are must include the following:

- ~~(1) — the name of this court;~~
- ~~(21)~~    the caption ~~(. If the motion is for a procedural order on consent, the short caption may be used.; F for any other motion, the official caption must be used);~~
- ~~(3) — the title of the motion;~~
- ~~(4) — the grounds for the motion, the relief sought, and the legal argument to support the motion;~~
- ~~(52)~~    ~~the movant’s~~a statement of consent or opposition ~~to the motion. The movant must state in the motion~~representing that the movant has discussed the motion with the other parties, and stating whether any party will object, ~~and whether any party will~~or file a response;
- ~~(6) — counsel’s or pro se party’s signature;~~
- ~~(73)~~    ~~the~~a certificate of interest. ~~The certificate of interest (see under Federal Circuit Rule 47.4) must be included in each motion; and~~
- ~~(84)~~    ~~supporting an~~an affidavit, ~~or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746. If the facts relied on in the motion are subject to dispute, an affidavit or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746 must be attached to the motion;~~
- ~~(9) — the proof of service (see Federal Rule of Appellate Procedure 25(d)).~~

**FEDERAL CIRCUIT RULE 27****(b) Response; ~~When Filed; Content~~Reply.**

~~If a motion states that it is consented to or unopposed, a response is not required. If a motion does not state whether or incorrectly states that it is consented to or unopposed, a response should be filed as soon as the omission or error becomes known. The preferred organization of a response is comparable to the organization of a motion provided in (a) of this rule and uses the preferred content of short caption, any response or reply may also use the short caption. In addition to the requirements under Federal Rule of Appellate Procedure 27(a)(3) and (d), a response is~~must include the following:

- ~~(1) as provided the items in Federal Circuit Rule 27(a)(1), (2), (6), (7), (8), and (9) of this rule; and~~
- (2) the grounds for denying the motion, limiting the relief granted, or modifying the order sought; and the legal argument to support the response; or the responding party's statement of consent or lack of opposition.

**(c) ~~Content of Reply~~Motion to Expedite.**

~~The preferred organization of a reply is comparable to the organization of In addition to the requirements for a motion as provided in under Federal Circuit Rule 27(a), of this rule and the preferred content of the reply is a motion to expedite proceedings must include the following:~~

- ~~(1) as provided in (a)(1), (2), (6), (7), (8), and (9) of this rule the label "Motion to Expedite" on the cover or front page of the motion, either centered at the top or contained in the title; and~~
- ~~(2) the reply to the response and the legal argument to support it a proposed expedited briefing schedule on the motion; and~~
- ~~(3) a proposed expedited merits briefing schedule or proposed argument date, if applicable.~~

**FEDERAL CIRCUIT RULE 27****(d) ~~Length of Motion, Response, or Reply; Cover and Backing; Attachments or Exhibits.~~**

~~Items listed in Federal Circuit Rule 27(a)(7) (9) do not count toward the word limitation in Federal Rule of Appellate Procedure 27(d)(2). Cover and backing for a motion, response, or reply are not required. If a motion includes several a~~Attachments or exhibits to a motion, the court prefers that the attachmentsresponse, or exhibitsreply must be preceded by a table of contents and must be paginated or separately tabbed for ease of reference. The pagination need not match the requirements for an appendix under Federal Circuit Rule 30.

**(e) Motion to Strike; Response.**

A motion to strike all or part of a brief, except to strike scandalous matter, is prohibited as long as the party seeking to strike has the right to file a responsive brief in which the objection could be made. A response, if any, in opposition to a motion to strike must be included in the responsive brief if one is authorized, or may be filed if leave is sought and obtained, or may be made at oral argument.

**(f) Motion to Dismiss, Transfer, or ~~to~~ Remand; Response.**

A motion to dismiss for lack of jurisdiction, to transfer, or to remand should be made as soon ~~after docketing~~ as the grounds for the motion are known. After the appellant or petitioner has filed ~~the~~its principal brief, the argument supporting dismissal, ~~for lack of jurisdiction~~transfer, or remand should be made in the response brief of the appellee or respondent. Any response ~~in opposition, if any, should~~to such an argument made in the response brief must be included in the ~~responsivereply~~ brief. Joint or unopposed motions or stipulations to dismiss, transfer, or ~~to~~ remand may be made at any time.

**FEDERAL CIRCUIT RULE 27****(g) Motion Incorporated in a Brief.**

Except as provided in [Federal Circuit Rule 27\(e\)](#) and [\(f\)](#), a motion must not be incorporated in a brief.

**(h) Delegation of Authority to the Clerk of Court.**

The clerk of court is authorized to act on any procedural motion or unopposed nonprocedural motion, but may not act on an opposed nonprocedural motion or any motion that requires action by a judge or panel of judges. The clerk of court may also direct an expedited response to a motion or petition and may direct the parties to show cause why an appeal or petition should not be dismissed ~~or transferred~~. Even if the clerk of court is authorized to act on a particular motion, the clerk of court may nonetheless refer the matter to a judge or panel, or may defer the matter to the merits panel, when appropriate.

**(i) Ex Parte Application.**

Neither the court nor any judge of the court will conduct an ex parte hearing on an application for relief.

~~**(j) — Copies.**~~~~No paper copies are required to be provided to the court for any motion, response, or reply that is submitted by counsel through CM/ECF. If a motion, response or reply is filed by a pro se party, then one paper copy must be provided by the court.~~



**FEDERAL CIRCUIT RULE 27**

**(kj) ~~Application for Consideration~~ Reconsideration, Vaeation ~~Vacatur,~~  
or Modification of ~~Prøeeduralan~~ Order or Action.**

A party ~~adversely affected by a procedural order entered on a motion without awaiting the response time or by seeking to reconsider, vacate, or modify an~~ dispositive order of the clerk of court may issued by a panel must move for relief within the time prescribed by Federal Circuit Rule 40(d). For all other orders or actions by the court, including by a single judge, a panel of judges, or the clerk of court, a party must move for relief within fourteen (14) days ~~of~~ after the order or action. ~~The application must be made by motion.~~

**(l) ~~Review or Reconsideration of the Order of a Single Judge or Panel of Judges.~~**

~~Except for a dispositive order issued by a panel, which time will be governed by~~ Federal Rule of Appellate Procedure 40(a)(1), a party seeking review by the court of the action of a single judge or reconsideration of the action of a panel of judges must file a motion for reconsideration within 14 days of the entry of the order.

**FEDERAL CIRCUIT RULE 27****(mk) Motions Containing Confidential or Sealed Material ~~Subject to a Protective Order~~.**~~(1) Confidentiality.~~

~~(A) Except as provided herein, no material in a motion, response, or reply shall be marked confidential, including references to information previously treated as confidential pursuant to a protective order. The exceptions are as follows: In cases other than those arising under 19 U.S.C. § 1516a or 28 U.S.C. § 1491(b), each motion, response, or reply may mark confidential up to fifteen (15) words (including numbers) if the information (1) was treated in the matter under review as confidential pursuant to a judicial or administrative protective order and (2) such marking is authorized by statute, administrative regulation, or court rule (such as Federal Rule of Civil Procedure 26(c)(1)). When words are marked confidential in a motion, response, or reply, repeating the marked words in the same motion, response, or reply shall not add to the count toward the fifteen word allotment. A response need not count toward its allotment any words that were already marked confidential in the motion to which it responds; a reply need not count words that were marked confidential in the response but not in the motion. A party seeking to mark confidential more than fifteen words must file a motion with this court establishing that the additional confidentiality markings are appropriate and necessary pursuant to a statute, administrative regulation, or court rule. For example, a party may establish that an argument cannot be properly developed without additional disclosure of confidential information in the motion, response, or reply, and public disclosure will risk causing competitive injury. Such a motion shall be made contemporaneously with the filing of the underlying motion, response, or reply, and the marked material shall be treated as confidential until the court acts on the motion. If the motion to mark additional material confidential is denied in whole or in part, an amended motion, response or reply shall be filed within ten (10) days of the action on the motion. In cases arising under 19 U.S.C. § 1516a or 28 U.S.C. § 1491(b), each motion, response, or reply may mark confidential up to fifty (50) words (including numbers).~~

**FEDERAL CIRCUIT RULE 27**

- ~~(B) Attachments and exhibits to a motion, response, or reply may be marked confidential to the extent permitted for appendix material under Federal Circuit Rule 30(h).~~
- ~~(2) **Two Versions of the Motions Documents.** If a party refers in a motion to material subject to confidentiality as permitted by Federal Circuit Rule 27(m)(1) two versions of motions documents must be filed.~~
- ~~(A) **Confidential Version;** One version of motion documents must be labeled “confidential” and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., “CONFIDENTIAL UNTIL [DATE],” or “CONFIDENTIAL DURING JUDICIAL REVIEW.” Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.~~
- ~~(B) **Nonconfidential Version;** The second version of motion documents from which confidential matter has been deleted, must be labeled “nonconfidential” and filed with the court. Each page from which material subject to a protective order has been deleted must bear a legend so stating. The introductory paragraph of the nonconfidential motion or response must describe the general nature of the confidential material that has been deleted.~~
- ~~(3) **Service.** Each party to the appeal must be served two copies of the confidential motion documents if otherwise permitted by the applicable protective order.~~
- ~~(4) **Availability to the Public.** The confidential motion documents will be made available only to authorized court personnel and must not be made available to the public. After five years following the end of all proceedings in the court, the parties may be directed to show cause why confidential motion papers (except those protected by statute) should not be made available to the public~~

Federal Circuit Rule 25.1 applies to confidential or sealed material in motions, responses, and replies.

## Practice Notes to Rule 27

### ~~CONTENT OF A MOTION, RESPONSE, OR REPLY.~~

~~Using Federal Circuit Rule 27's preferred content and organization for a motion, response, or reply will help avoid delays caused by the need for additional information. Although motions, responses, and replies need not have the formality of briefs, a motion, response, or reply may be rejected if it is not substantially complete.~~

### **MOOT RESPONSE.**

A response to a motion for a procedural order that is received after the motion has been acted on is considered moot.

### **AUTHORITY TO ACT ON MOTIONS; MOTIONS REFERRED TO PANEL.**

Neither the clerk of court nor the court is required to grant relief just because the parties agree it should be granted. The clerk of court's authority to act on procedural or unopposed nonprocedural motions includes the authority to grant or deny the requested relief in whole or in part or to refer the motion to a judge or a panel.

Examples of procedural motions include motions for extensions of time, motions to reform the caption, motions ~~for leave to file various documents~~withdraw counsel, and motions for leave to proceed in forma pauperis, ~~etc.~~

Examples of nonprocedural motions include motions to dismiss, motions to remand, motions to transfer, motions to summarily affirm ~~judgments~~, motions for stays of injunctions, motions for injunctions, motions to strike ~~portions of briefs or appendices~~, motions for leave to intervene, motions for leave to file briefs as amici curiae, etc. Motions to exceed the permitted word or page limitation for a brief will be decided by a judge. If the clerk of court grants a motion to extend the time to file a principal brief by sixty (60) days, no further extensions should be anticipated. Once a case is assigned to a merits panel, the clerk of court refers all motions to the merits panel.

### Practice Notes to Rule 27

#### **TELEPHONE INQUIRIES ABOUT PENDING MOTIONS; ACCESS TO ORDERS ON WEBSITE.**

Telephone inquiries about pending motions are discouraged, ~~because they divert the clerk's office staff from more pressing duties and contacting the court will not expedite action on any motion.~~ Most orders are considered routine and counsel ~~may await~~ will receive notification by ~~mail or~~ Notice of Docket Activity (NDA) ~~as soon as the motion is decided.~~ Counsel or the parties may ~~often~~ determine the status of a ~~pending~~ motion and obtain copies of court orders through ~~CM/ECF or PACER~~ the court's electronic filing system. Many pertinent orders, ~~including en banc orders,~~ are promptly posted on the court's ~~opinions and orders page~~ website. Under no circumstances should ~~anyone~~ parties or counsel telephone a judge, ~~a judge's chambers,~~ or the office of the ~~general counsel~~ senior staff attorney about a motion. ~~In~~ However, when filing an emergency ~~matter or a motion for expedited consideration,~~ ~~you may~~ parties or counsel should call the clerk's office.

#### **MOTION TO EXPEDITE PROCEEDINGS.**

While motions to expedite proceedings are not routinely granted, they may be filed in ~~an~~ appropriate cases. A motion for expedited proceedings is the procedural vehicle to request ~~the court to~~ accelerated consideration of an appeal or petition for review, and ~~it~~ should be filed immediately ~~upon filing of an appeal or petition for review~~ after docketing. Such a motion is appropriate where the normal briefing and disposition schedule may adversely affect one of the parties, ~~such as~~ ~~in~~ appeals involving preliminary or permanent injunctions, or government contract bid protests. ~~A motion for expedited proceedings should be styled as an "Emergency Motion." Unopposed emergency motions should still include a brief review of the grounds for the motion, the specific relief sought by way of a proposed briefing schedule, and the legal argument to support the motion, per Federal Circuit Rule 27(a)(4). A motion for expedited proceedings should also include as part of the relief sought a request for an expedited briefing schedule for the motion.~~

**Practice Notes to Rule 27**

**~~CERTIFICATE OF COMPLIANCE WITH CONFIDENTIALITY REQUIREMENTS.~~**

~~Federal Circuit Rule 27(m) limits the amount of material that can be marked confidential in motions, responses and replies. A motion, response or reply including confidential material must be accompanied by a certificate that the motion, response or reply complies with the word limitation. Federal Circuit Form 31 is a suggested form of a certificate of compliance with this rule. It is the responsibility of the filing party to ensure that its certificate of compliance is accurate.~~

**FEDERAL CIRCUIT RULE 28****Briefs****(a) Contents of Principal Briefs; ~~Organization of Contents~~; Addendum; **Binding**.**

~~Principal B~~riefs must ~~be bound as prescribed in Rule 32 of the Federal Rules of Appellate Procedure and must~~ contain the following in the order listed:

- (1) the certificate of interest (~~see under~~ [Federal Circuit Rule 47.4](#));
- (2) the table of contents;
- (3) the table of authorities;
- (4) the statement of related cases (~~see under~~ [Federal Circuit Rule 47.5](#));
- (5) the jurisdictional statement including ~~a representation~~ information demonstrating that the judgment or order appealed from is final or, if not final, ~~the~~ appealable on another basis ~~for appealability~~ (e.g., preliminary injunction, ~~Federal Rule of Civil Procedure~~ 54(b) certification of final judgment as to fewer than all of the claims or parties, etc.);
- (6) the statement of the issues;
- (7) the statement of the case ~~setting out the facts relevant to the issues~~, including the citation of any published decision of the trial tribunal in the proceedings;
- (8) the summary of the argument;
- (9) the argument, including the statement of the standard of review;
- (10) the conclusion and statement of relief sought;

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- (11) ~~an addendum containing~~ the judgments, orders, agency actions, or other decisions in question, and any opinions, ~~memorandums~~memoranda, or findings and conclusions supporting it, ~~as an addendum placed last within the initial brief of the appellant or petitioner~~them (~~This~~this requirement applies only to the principal brief of an appellant, petitioner, or cross-party) and is met when the appendix is bound with the brief. (See Federal Circuit Rule 30(c)(1) and (d) for a duplicative requirement of the appendix.) ~~Additionally, in an appeal involving a patent, the patent in suit may be included within the addendum of the initial brief and, if included, must be reproduced in its entirety. (See also Federal Circuit Rule 30(a)(2)(A)(iii) and Federal Circuit Rule 30(a)(3) for a requirement that the patent in suit be included in its entirety in the appendix). Addendum material must be paginated with the corresponding appendix page numbers following the numbering format specified in Federal Circuit Rule 30(b)(4)(E), e.g. “Appx134,” “Appx3 17,” or “SAppx1185”;~~
- (12) ~~additional content in an appeal or petition involving a patent—(A) all patents in suit reproduced in their entirety as an addendum to the~~principal brief of service (~~see a~~ petitioner or appellant and (B) the language of a patent claim at issue appearing on the inside of the front cover of each principal brief (or immediately following the front cover if the language requires more space), with this duplicative language not counting for Federal Rule of Appellate Procedure 2532(dg)(1) purposes provided the same language is included in the brief; and
- (13) the certificate of compliance, if required by Federal Circuit Rule of Appellate Procedure 32(gb)(13).

**(b) Exclusion of Contents from Appellee’s Jurisdictional Statement and Statements of the Issues, the Case, the Facts, and the Standard of Review**Brief.

~~The~~An appellee’s ~~jurisdictional statement and~~ statements of jurisdiction, the issues, the case, ~~the~~and facts, and the standard of review must be limited to specific areas of disagreement with those of the appellant. Absent disagreement, ~~the~~an appellee must not include any of those statements. ~~The statement of the case must include the citation of any~~



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~~published decision of the trial tribunal in the proceedings that is not included in the appellant's statement of the case.~~

**~~(e) Motion to File Extended Brief~~**

~~The court looks with disfavor on a motion to file an extended brief and grants it only for extraordinary reasons. Unless the order granting a motion to file an extended brief provides otherwise, when additional pages or words are allowed in the principal brief of an appellant or cross-appellant, a responsive brief permitted by the rules may contain the same number of additional pages or words~~

**(c) Addendum Pagination.**

Addendum material that is also designated for inclusion in the appendix must be paginated with the corresponding page numbers assigned to that material under Federal Circuit Rule 30(b)(2)(C). Other addendum material must be paginated in such a way as to avoid confusion.

**~~(d) Brief Containing Material Subject to a Protective Order.~~****~~(1) Confidentiality.~~**

~~(A) Except as provided herein, no material in briefs shall be marked confidential, including references to information previously treated as confidential pursuant to a protective order. The exceptions are as follows: In cases other than those arising under 19 U.S.C. § 1516a or 28 U.S.C. § 1491(b), each brief may mark confidential up to fifteen (15) words (including numbers) if the information (1) was treated in the matter under review as confidential pursuant to a judicial or administrative protective order and (2) such marking is authorized by statute, administrative regulation, or court rule (such as Federal Rule of Civil Procedure 26(e)(1)). When words are marked confidential in a brief, repeating the marked words in the same brief shall not add to the count toward the fifteen word allotment. A brief need not count toward its allotment words that were marked confidential for the first time in the briefing cycle in an immediately preceding brief to which it is responding. A party seeking to mark confidential more than fifteen words in any brief must file a motion with~~

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~~this court establishing that the additional confidentiality markings are appropriate and necessary pursuant to a statute, administrative regulation, or court rule. For example, a party may establish that an argument cannot be properly developed without additional disclosure of confidential information in the brief, and public disclosure will risk causing competitive injury. Such a motion shall be made contemporaneously with the filing of the brief, and the marked material shall be treated as confidential until the court acts on the motion. If the motion is denied in whole or in part, an amended brief shall be filed within ten (10) days of the action on the motion. In cases arising under 19 U.S.C. § 1516a or 28 U.S.C. § 1491(b), each brief may mark confidential up to fifty (50) words (including numbers).~~

~~(B) Addendum material may be marked confidential to the extent permitted for appendix material. See Federal Circuit Rule 30(h).~~

~~(C) For purposes of this subsection (d), petitions for en banc or panel rehearing and responses thereto shall be considered to be briefs.~~

~~(2) **Two Versions of Briefs.** If a party refers in a brief to material subject to confidentiality as permitted by Federal Circuit Rule 28(d), then two versions of the briefs must be filed.~~

~~(A) **Confidential Version; Labeling; Number of Copies.** Counsel should file one version of paper briefs, consisting of six copies, which must be labeled “confidential.” If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., “CONFIDENTIAL UNTIL [DATE],” or “CONFIDENTIAL DURING JUDICIAL REVIEW.” Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.~~

~~(B) **Nonconfidential Brief; Labeling; Number of Copies.** Counsel should file the nonconfidential brief through CM/ECF. No paper copies are required if the nonconfidential brief was filed through CM/ECF and paper copies of the confidential brief were filed, unless otherwise ordered. The~~

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~~nonconfidential brief, from which confidential matter has been deleted, must be labeled “nonconfidential” and each page from which confidential material has been deleted must bear a legend so stating. The table of contents of a nonconfidential brief must describe the general nature of the confidential material that has been deleted.~~

~~(3) — **Service.** A nonconfidential brief filed by counsel through CM/ECF is served on each party through a Notice of Docket Activity (NDA). Each party to the appeal must be served two paper copies of any confidential brief when permitted by the applicable protective order.~~

~~(4) — **Availability to the Public.** The confidential briefs will be made available only to authorized court personnel and must not be made available to the public. After 5 years following the end of all proceedings in the court, the parties may be directed to show cause why confidential briefs (except those protected by statute) should not be made available to the public.~~

~~(5) — **Agreement to Remove Confidentiality Markings.** Before the filing of any motion to mark material as confidential and thereafter if a motion is filed, the parties shall attempt to reach agreement that material should not be marked confidential in briefs or motions pursuant to Federal Circuit Rules 11(d) or 17(f)~~

**(d) Brief Containing Confidential or Sealed Material.**

Federal Circuit Rule 25.1 applies to confidential or sealed material in briefs.

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**(e) Citations.**

Opinions of this court and its predecessors should be cited as found in the Federal Reporter. Parallel citations to any other reporters are discouraged. Examples of acceptable citations are:

*Guotos v. United States*, 552 F.2d 992 (Ct. Cl. 1976).

*In re Spoppable*, 405 F.2d 578 (CCPA 1969).

*South Corporation v. United States*, 690 F.2d 1368 (Fed. Cir. 1982) (en banc).

*Doe v. Roe*, No. 12-345, slip op. (Fed. Cir. Oct. 1, 1982).

**(f) ~~Reference to~~ Referring to the Record and Appendix.**

Any Reference in thea brief to pages of the joint underlying record or to material authorized to be included in an appendix and, if permitted, of a supplemental appendix must be to the corresponding appendix page number(s) assigned to the material under Federal Circuit Rule 30(b)(2)(C). References must be as short as possible consistent with clarity and must follow the numbering format specified required by the clerk of court in Federal Circuit Rule 30(b)(4)(E), e.g., “Appx134,” “Appx3 17” or “SAppx1185the court’s Electronic Filing Procedures.” Indiscriminate references in briefs to blocks of record pages are prohibited.

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**(g) ~~Pro Se~~ Unrepresented Party Briefs; Response.**

An unrepresented party may file a formal brief or an informal brief, but not both.

- (1) **Informal Brief; Appellee’s Brief.** ~~A pro se party may file a formal brief or an informal brief, but not both. A pro se party may file a~~ an informal brief ~~on~~ must contain the information required by the form prescribed by the court. When the appellant or petitioner files an informal brief, the appellee or respondent may elect to file an informal brief. An informal brief filed by an appellee or respondent must contain a statement of the case but otherwise follow the format prescribed for the pro se party. Three paper copies of an informal brief are required to be filed. See Federal Circuit Rule 25(e)(2)(B) ~~No other contents are required.~~
- (2) **Formal Brief.** ~~If a pro se party chooses to file a formal brief, then an informal brief may not be filed. If a~~ formal brief is filed, it must comply with ~~the various r~~ Rules of this court 28 and 32 regarding format and contents, ~~and six paper copies must be filed.~~
- (3) **Counseled Party Response Brief.** When the appellant or petitioner files an informal brief, the appellee or respondent may elect to file an informal brief. An informal response brief must contain a statement of the case, but the brief may otherwise follow the format prescribed for the unrepresented party. In an responsive informal or formal response brief, the ~~respondent~~ party must state whether or not ~~respondent~~ it believes the court has jurisdiction over the ~~petition for review~~ case, with reasons provided.

**(h) Briefs in a Transferred Case.**

When an appeal is transferred to this court by another court of appeals after briefs have been filed, the parties may stipulate to proceed on those briefs instead of filing briefs prescribed by these rules. The stipulation and each brief must be filed with this court within fourteen (14) days ~~of~~ after docketing, ~~and the briefs must be filed by counsel through CM/ECF~~, with the required number of paper copies to ~~follow. See~~ be provided in accordance with [Federal Circuit Rule 25\(c\)](#). The court may also order supplemental briefs as needed.

**FEDERAL CIRCUIT RULE 28**

**(i) ~~Citation of Supplemental Authorities~~ Multiple Parties.**

~~Any citation of supplemental authorities must be submitted through CM/ECF by counsel. If filed by a pro se party, then 3 copies must be filed~~

~~(1) **Single Brief.** Each party is permitted to file a single brief of each type authorized for that party by these rules. Private parties with identical or similar interests are strongly encouraged to join in a single brief.~~

~~(2) **Combined Brief Required.** When there are multiple parties 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.~~

**(j) Briefs in Related Cases**

~~Parties may not file entirely duplicative briefs in related cases. If a portion of a brief is duplicative of a portion of a brief in a related case, the filing party must so advise the court at the beginning of the brief section containing the duplicative content.~~

## Practice Notes to Rule 28

### **INFORMAL BRIEF.**

~~The informal brief procedure is explained in the Guide for Pro Se Petitioners and Appellants Using the court's Form 11, 12, 13, 14, 15, or 16, whichever corresponds to the type of case, satisfies the requirements of an informal brief for an unrepresented petitioner or appellant under Federal Circuit Rule 28(g). Using the court's Form 11A satisfies the requirements of an informal response brief for an unrepresented respondent or appellee under Federal Circuit Rule 28(g).~~

### **MULTIPLE PARTIES.**

~~When there are multiple parties 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.~~

### **DESCRIBING THE GENERAL NATURE OF CONFIDENTIAL MATERIAL DELETED FROM THE NONCONFIDENTIAL BRIEF.**

The following example is acceptable:

#### ~~CONFIDENTIAL MATERIAL OMITTED~~

~~The material omitted on page 42 describes the circumstances of an alleged lost sale; the material omitted in the first line of page 43 indicates the dollar amount of an alleged revenue loss; the material omitted on page 44 indicates the quantity of the party's inventory and its market share; the material omitted in the text on page 45 describes the distributor's experiences concerning the inventories and order lead times; and the material omitted in the footnote on page 45 describes non-price factors affecting customers' preferences between competing methods.~~

### **JUSTIFICATION FOR CLAIM OF CONFIDENTIALITY.**

~~Unnecessarily designating material in the briefs and appendix as confidential may hinder the court's preparation and issuance of opinions. Counsel must be prepared to justify at oral argument any claim of confidentiality.~~

**Practice Notes to Rule 28**

**~~INCLUSION OF PATENT CLAIMS.~~**

~~Any party or intervenor may include the language of a patent or claim at issue beginning on the inside of the front cover of the brief (this duplicate language is not counted pursuant to Federal Rule of Appellate Procedure 32(g)(1)), provided the same language is included in the brief.~~

**~~CERTIFICATE OF COMPLIANCE WITH CONFIDENTIALITY REQUIREMENTS.~~**

~~Federal Circuit Rule 28(d) limits the amount of material that can be marked confidential in briefs. A brief including confidential material must be accompanied by a certificate that the brief complies with the word limitation. Federal Circuit Form 31 is a suggested form of a certificate of compliance with this rule. The form can be embedded within the brief or filed separately. It is the responsibility of the filing party to ensure that its certificate of compliance is accurate.~~



**FEDERAL CIRCUIT RULE 28.1****Cross-Appeals****(a) Page Limitation.**

Unless it complies with [Federal Circuit Rule 28.1\(b\)](#), the appellant's principal brief must not exceed [thirty \(30\)](#) pages; the appellee's principal and response brief, [thirty-five \(35\)](#) pages; the appellant's response and reply brief, [thirty \(30\)](#) pages; and the appellee's reply brief, [fifteen \(15\)](#) pages.

**(b) Type-Volume Limitation.**

(1) The appellant's principal brief or the appellant's response and reply brief is acceptable if [it meets one of the following](#):

(A) it contains no more than 14,000 words; or

(B) it uses a monospaced face and contains no more than 1,300 lines of text.

(2) The appellee's principal and response brief is acceptable if [it meets one of the following](#):

(A) it contains no more than 16,500 words; or

(B) it uses a monospaced face and contains no more than 1,500 lines of text.

(3) The appellee's reply brief is acceptable if it [meets one of the following](#):

[\(A\) it contains no more than 7,000 words; or](#)

[\(B\) it uses a monospaced face and contains no more than 650 lines of text.](#)

**FEDERAL CIRCUIT RULE 28.1**

**(c) Certificate of Compliance.**

A brief submitted under this rule must comply with [Federal Circuit Rule 32\(gb\)\(13\)](#).

**(d) Brief Contents.**

Appellant's principal brief must comply with Federal Circuit Rule 28(a). Appellee's principal and response brief must comply with Federal Circuit Rule 28(a), and (b) to the extent that it refers to the statement of the case. Appellee's principal and response brief must also include the addendum under Federal Circuit Rule 28(a)(11) to the extent that the materials differ from those produced in the appellant's principal brief. Appellant's response and reply brief must comply with Federal Circuit Rule 28(b).

### **Practice Notes to Rule 28.1**

#### **CROSS-APPEALS.**

A party may file a cross-appeal only when it seeks to modify or overturn the judgment of a trial tribunal. Although a party may present additional arguments in support of the judgment as an appellee, counsel are cautioned against improperly designating an appeal as a cross-appeal when they merely present arguments in support of the judgment. See *Bailey v. Dart Container Corp.*, 292 F.3d 1360 (Fed. Cir. 2002). Further, counsel are cautioned, in cases involving a proper cross-appeal, ~~to limit that~~ the fourth brief **must be limited** to the issues presented by the cross-appeal. **In the third brief, moreover, the reply argument on the appeal issues should not exceed the length that would be permitted if there were no cross-appeal.** In all cases, counsel should be prepared to defend the filing of a cross-appeal and the propriety of arguments presented in the fourth brief at oral argument. **See *Aventis Pharma S.A. v. Hospira, Inc.*, 637 F.3d 1341 (Fed. Cir. 2011).**

#### **TIME TO SERVE AND FILE A BRIEF.**

Please refer to [Federal Circuit Rule 31\(a\)](#) for brief due dates when there is a cross-appeal.

#### **CLARIFICATION TO FEDERAL RULE OF APPELLATE PROCEDURE 28.1(c)(4).**

Where the term “appellee” is used, it refers to the “cross-appellant.”

**FEDERAL CIRCUIT RULE 29****Brief of an Amicus Curiae****(a) Contents; ~~Form.~~**

In addition to the contents required by [Federal Rule of Appellate Procedure 29](#), the brief of an amicus curiae must include a certificate of interest ~~(see under~~ [Federal Circuit Rule 47.4](#)) in front of the table of contents.

**(b) ~~List of Amicus Curiae~~ Length.**

~~The clerk will maintain a list of bar associations and other organizations to be invited to file amicus curiae briefs when the court directs. Bar associations and other organizations will be placed on the list if they request. The request must be renewed annually not later than October 1.~~ An amicus brief exceeding one-half the maximum number of pages authorized for a principal brief must contain no more than one-half the maximum number of words or lines authorized by Federal Circuit Rule 32(b) for a principal brief. An amicus brief exceeding the page limitation must include a certificate of compliance with the type-volume limitation that adheres to Federal Rule of Appellate Procedure 32(g).

**(c) ~~Consent~~ Citations to the Record.**

~~If an~~ Each amicus brief ~~is filed on consent of all parties, then no motion for leave is required and the brief should state, pursuant to~~ must comply with Federal Circuit Rule of Appellate Procedure 29(a), that all parties have consented to its filing ~~28(f). An amicus curiae should contact the parties to obtain the designation of material for the appendix. Leave of court is required for an amicus curiae to cite directly to the record or to file a separate appendix.~~

**Practice Note to Rule 29**

~~An amicus curiae must file an entry of appearance and a certificate of interest, if applicable. See Federal Circuit Rules 47.3, 47.4, and Forms 8 and 9.~~

**CONSENT.**

If an amicus brief on the merits is filed on consent of all parties, then no motion for leave is required and the brief should state, pursuant to Federal Rule of Appellate Procedure 29(a), that all parties have consented to its filing.

**FEDERAL CIRCUIT RULE 30**

**Appendix to the Briefs**

**(a) ~~Purpose; Contents of Appendix; Time for Filing; Number of Copies; Cover; Service~~Multiple Volumes; Failure to File.**

~~(1) **Purpose.** The purpose of this rule is to limit the size of the appendix of documentary materials that is printed and filed with the court. The rule also authorizes a supplementary video recording media appendix under some circumstances.~~

**(2) ~~Contents; Indiscriminate Referencing to Blocks of the Record~~Prohibited.**

(A) In addition to the ~~matters~~material required by Federal Rule of Appellate Procedure 30(a)(1)(A), (B), and (C), the appendix must include the following:

- (i) the entire docket sheet, certified list, or index from the proceedings below;
- (ii) in an appeal from a jury case, the judge’s charge, the jury’s verdict, and the jury’s responses to interrogatories; and
- (iii) in an appeal involving a patent, the patent in suit in its entirety. ~~The patent in suit may also be included as an addendum to appellant’s initial brief.~~ Any other patents included in an appendix must be included in their entirety; and
- ~~(iv) any nonprecedential opinion or order cited in accordance with Federal Circuit Rule 32.1(e).~~

(B) Parts of the record ~~authorized by Federal Rule of Appellate Procedure 30(a)(1)(D)~~ must not be included in the appendix unless they are actually referenced ~~cited~~ in the briefs; ~~but the~~ Parties are encouraged to ~~must, however,~~ include in the appendix sufficient surrounding record and transcript pages to provide context for a ~~referenced transcript~~ cited excerpt, as well as the transcript cover page identifying participating counsel if included in the record. Inclusion of unnecessary pages in the appendix is prohibited.

**FEDERAL CIRCUIT RULE 30**

- (C) ~~Indiscriminate referencing in briefs to blocks of record pages or inclusion of unnecessary pages in the appendix is prohibited.~~ In an appeal from the Patent and Trademark Office, unless the parties agree otherwise, the appendix must include the following:
- (i) a copy of all rejected claims that are being appealed from a final decision of the Patent Trial and Appeal Board;
  - (ii) a copy of all counts in a patent interference appeal or claims involved in a derivation proceeding; or
  - (iii) a copy of the trademark sought to be registered or cancelled and a copy of any registration relied on to refuse or oppose registration or to seek cancellation of registered mark in a trademark appeal.
- (D) If the appellant includes in the appendix material counter-designated by the appellee under Federal Circuit Rule 30(b) that the appellant considers ~~that parts of the record have been referred to be included~~ in violation of this rule, the appellant may so advise the appellee and the appellee must advance the costs of including those parts in the appendix.
- (E) The following must not be included in the appendix except by leave of the court, and any motion for leave must state the number of pages requested to be included:
- (i) briefs and memoranda, ~~in their entirety (except as otherwise provided in~~ permitted by Federal Circuit Rule 30(a)(1)(F);
  - (ii) notices;
  - (iii) subpoenas—except where the enforcement or validity of a subpoena is at issue;
  - (iv) summonses—except in appeals from the Court of International Trade;
  - (v) motions to extend time; or

**FEDERAL CIRCUIT RULE 30**

(vi) jury lists.

(F) Nothing in ~~this~~ [Federal Circuit Rule 30](#) prohibits from designation and inclusion in an appendix any of the following:

(i) an examiner’s answer in an ex parte patent case;

(ii) a trademark examining attorney’s appeal brief in an ex parte trademark case;~~or~~

(iii) ~~the~~ briefs and memoranda ~~in their entirety~~ in a case where ~~the only issue is~~ the propriety of summary judgment is an issue or where there is an issue of waiver; or

(iv) the notice of appeal.

~~(3) — **Additional Mandatory Appendix Items in Patent and Trademark Office Appeals.** In an appeal from the Patent and Trademark Office, unless the parties mutually agree otherwise, the appendix must include:~~

~~(A) — a copy of all rejected claims in an ex parte patent appeal;~~

~~(B) — a copy of all counts in a patent interference appeal; or~~

~~(C) — a copy of the trademark sought to be registered or cancelled and a copy of any registration relied on to refuse or oppose registration or to seek cancellation of a registered mark in an ex parte or an inter partes trademark appeal.~~

~~(42)~~ **Time for Filing.** The appellant must serve and file ~~an~~the appendix within seven (7) days after the last reply brief is served and filed. When there is no cross--appeal, if the appellant does not file a reply brief, the appendix must be served and filed within the time for filing the reply brief. In a cross--appeal, if the cross--appellant does not file a reply brief, the appendix must be served and filed within seven (7) days after the time for filing the cross--appellant’s reply brief has expired.

~~(53)~~ **Number of Copies.** Six (6) paper copies of the appendix must be filed with the court in accordance with [Federal Circuit Rule 25\(c\)](#).



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- (64) ~~Multi Volume Appendix: Covers and Page Numbers~~**Volumes.** No appendix volume filed electronically may exceed 400 sheets of paper when printed. Appendices exceeding 400 printed sheets of paper must be divided into separate volumes before filing. A multi-volume appendix must have a volume number in ~~†~~Roman numerals and the pages included in the volume listed at the top of the cover of each volume (e.g., Volume II, Pages 542 to 813). Parties must not include a volume number on the cover of an appendix if that appendix consists of only one volume. A complete table of contents or index must be included in each volume of the appendix.
- ~~(7) Service. One paper copy must be served on, or by, each pro se party. In a case in which all parties are represented by counsel, service of nonconfidential material is made through CM/ECF and no paper copies are required to be served on the parties. See Rule 30(h)(3) for provisions related to service of confidential appendices.~~
- (85) **Consequence of Failing to File an Appendix.** If the appellant fails to file ~~an~~the appendix, the clerk of court is authorized to dismiss the case.

**(b) ~~Determination of Contents of Preparing the Appendix; Designation of Materials; Extension of Time.~~**

- (1) **Designation of Material.** ~~The parties are encouraged to agree on the contents of an appendix that will comply with this~~must compile a designation of material, consisting of all items in the record and other items required by Federal Circuit Rule 30, from which the appendix will be prepared.
  - (A) The parties must attempt to agree on the designation no later than forty-five (45) days prior to the deadline for the appellant’s principal brief.

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~~(2B) In the absence of an agreement~~If the parties cannot agree within the timeframe, the appellant must, ~~within 14 days after docketing in an appeal from a court or after service of the certified list or index in a petition for review or appeal from an agency,~~ serve its designation on the appellee ~~or cross-appellant a designation of materials from which the appendix will be prepared and~~along with a statement of the issues the appellant intends to be presented for review no later than thirty (30) days prior to the deadline for the appellant's principal brief. ~~The appellee or cross-appellant may, w~~Within fourteen (14) days thereafter receiving the designation, the appellee must serve on the appellant a counter-designation of additional ~~parts to be included in~~material, which the appendix~~appellant must include, or inform the appellant that no additional material needs to be added.~~

~~(3) A designation or counter-designation must not be filed with the court.~~

~~(42) Table of Page Numbers; Physical Compilation~~Page~~ation.~~

~~(A) Within 14 days after the parties have designated the material for the appendix, t~~The appellant must assign consecutive page numbers to the designated material and serve on all parties either a table reflecting the page numbers of each item ~~designated.~~

~~(B) or, If not prohibited in~~by an outstanding protective order, ~~instead of the table the appellant may—at the appellant's option—serve on the parties one copy of~~ a physical compilation of the ~~designated~~ material with the assigned page numbers shown. ~~This copy may be in micrographic format.~~

~~(C) The first page numbers in the designated material must be assigned to~~the all judgments, ~~or orders, agency actions, or other decisions~~ appealed from and any opinions, ~~memorandum~~memoranda, or findings and conclusions supporting ~~it~~them. Other items must follow in accordance with Federal Rule of Appellate Procedure 30(d).

~~(D) The table of page numbers or the physical compilation of the designated material, whichever is used, must not be filed with~~

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~~the court. If all designated material comprises no more than 100 pages, Federal Circuit Rule 30(d) applies.~~

- (~~EC~~) The pages of the ~~appendix or supplemental appendix~~ shall designated material must be numbered by the automated Bates numbering feature of the software used to convert the ~~appendix document into a .pdfPDF document~~ and must be in the format “Appx” or “SAppx” followed by the page number(s); e.g., “Appx134,” “Appx3-17,” or “SAppx1385” required by the clerk of court in the court’s Electronic Filing Procedures.”
- (~~53~~) **Extension of Time Limits.** The ~~time limits for designating, counter designating, and compiling the table may be extended by agreement of the parties~~ may extend the time to complete the designation without ~~seeking~~ leave of the court; ~~however, as long as an extension of the time is not required for filing designation and pagination must be completed before the appellant’s files its principal brief or the parties must move to extend the time to file the brief. But if the designation cannot be timely completed due to a pending transcript of the proceedings is required before the material can be designated and if the transcript has been ordered but not completed within the time prescribed by this rule, the appellant must move for an extension of time within which to designate the material request. An affidavit explaining in detailing what has been done to expedite transcription of the trial proceedings must be attached to the motion.~~
- (4) **Prohibition on Filing.** The parties are prohibited from filing the designation of material and any counter-designation, table of page numbers, or physical compilation with the court.

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(65) **Preparation of Appendix.** The appellant must prepare the appendix ~~to be filed with the court~~ by selecting from the designated material ~~by selecting from that material~~ only items required by these rules and pages specifically ~~referred to~~ cited in the briefs of the parties, including the briefs of intervenors and amici. Pages ~~of the designated material~~ not ~~referenced~~ cited in the briefs—other than items required by these rules—must be omitted from the appendix ~~filed with the court~~. If all material designated by the parties comprises no more than 100 pages, the entire designation may be filed as the appendix and combined with the appellant’s principal brief pursuant to Federal Circuit Rule 30(d).

**(c) Format of Appendix; Pagination.**

(1) **Arrangement of Appendix.** Federal Rule of Appellate Procedure 30(d) governs the arrangement of the appendix, except the judgments, ~~or~~ orders, agency actions, or other decisions appealed from and any opinions, ~~memorandum memoranda~~, or findings and conclusions supporting ~~it~~ them must be placed first in the appendix. ~~(See Pursuant to Federal Circuit Rule 28(a)(11) for 25.1(e)(1)(A), if the appendix must include an excerpt of a duplicative requirement of the appellant’s statute imposing confidentiality or petitioner’s initial brief a judicial or administrative protective order, the excerpt or order must appear before the first page and may be paginated with Roman numerals.)~~

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- (2) **Pagination.** The page numbers ~~used~~ in the appendix must be ~~the page numbers~~ those assigned ~~by the appellant or petitioner~~ to the designated material in accordance with Federal Circuit Rule 30(b), ~~and the pages must appear in numerical order. The pages must retain the Bates numbering of the designated material.~~ The page numbers must appear centered in the bottom margin of each page ~~in the appendix~~ and meet the font size requirements of Federal Rule of Appellate Procedure 32(a)(5). Other ~~pagination~~ marks must be redacted if necessary to avoid confusion. ~~The materials in the appendix must be in numerical order according to the page numbers the appellant assigned to the designated materials.~~ Omission of pages need not be noted; (e.g., page 102 may be followed by page 230 without stating that pages 103-229 are not reproduced). ~~in the appendix. References in the briefs must be only to the page numbers of the appendix.~~
- (3) **Printing.** ~~Pages in an appendix—even when filing a combined brief and appendix—may be printed on both sides. To the extent possible, the court encourages this.~~ The court encourages the double-sided printing of the pages of the appendix, an appendix combined with a brief, and an addendum.

**FEDERAL CIRCUIT RULE 30**

**(d) Combined Brief and Appendix.**

- (1) When a brief and appendix are combined, the cover must so indicate.
- (2) If ~~all designated material~~either the appendix agreed upon by the parties or the designated material comprises no more than 100 pages, ~~all of it may be included in the appendix, in which case~~ it may be bound together with the appellant's or petitioner's ~~initial~~principal brief ~~and the~~as a combined brief ~~must be filed as provided in Federal Circuit Rule 31(a) and appendix.~~

**(e) Separate or Supplemental Appendix.**

Except as provided below, no party may file a separate or supplemental appendix without leave of the court.

**(1) Appellee's Appendix in an ~~Pro Se~~Unrepresented Party's Case.**

~~If an~~In cases involving only unrepresented appellants appearing pro se ~~files who have failed to participate in determining the contents of the appendix or have filed~~ an inadequate appendix, the appellee may file ~~with its brief~~ an appendix containing material permitted by [Federal Circuit Rule 30\(a\)](#)~~(2)~~.

**(2) Appendix Filed by the United States as an Appellee or Intervenor.** If all appellants have failed to participate in determining the contents of the appendix or have filed an inadequate appendix, the United States or an officer or agency of the United States, as an appellee or intervenor, may file an appendix containing material permitted by Federal Circuit Rule 30(a).

**(3) Cover and Binding.** If a separate or supplemental appendix contains no more than 100 pages, it may be bound together with the filer's principal brief. If it is separately bound, then the cover must be red.

**(4) Pagination.** The pages of a separate or supplemental appendix must be numbered by the automated Bates numbering feature of the software used to convert the document into a PDF and must be in the format required by the clerk of court in the court's Electronic Filing Procedures. The separate or supplemental appendix need not follow any designated material pagination.

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(5) Time for Filing. Any separate or supplemental appendix must be filed within seven (7) days after the appendix would be due under Federal Circuit Rule 30(a)(3).

~~(f) Separate or Supplemental Appendix.~~

~~If the appellant has failed to participate in determining the contents of an appendix or has filed an inadequate appendix, the United States or an officer or agency of the United States, as the appellee, may file a separate or supplemental appendix containing material permitted by Federal Circuit Rule 30(a)(2). The cover must be red. If the separate or supplemental appendix contains no more than 100 pages, it may be bound together with the appellee's initial brief. Except as provided in Federal Circuit Rule 30(e) and (f), no party may file a separate or supplemental appendix without leave of the court.~~

~~(gf) Costs.~~

~~The costs of the table of page numbers or the copy of the physical compilation of the designated material authorized in Federal Circuit Rule 30(b)(4) and of the appendix, including the separate segments authorized in Federal Circuit Rule 30(h), may be assessed as provided in Federal Rule of Appellate Procedure 30(b)(2). Costs associated with the inclusion of material under Federal Circuit Rule 30(a)(1)(D) may be recovered.~~

~~(hg) Appendices Containing Confidential or Sealed Material Subject to a Protective Order.~~

~~(1) (A) Confidentiality.~~ Material that retains its status as covered by a protective order may be marked confidential in appendices (and addenda to briefs). Material that has lost its coverage under a protective order under Federal Circuit Rule 11(e) or 17(e) based on Federal Circuit Rules 30(h)(1)(B), 27(m)(1), or 28(d)(1) may not be marked confidential in appendices (or addenda).

~~(B) Agreement by Parties to Modify a Protective Order; Certificate of Compliance.~~ If any portion of the record in the trial court or an agency is subject to a protective order and a notice of appeal has been filed, each party must promptly review the record to determine whether protected portions

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~~need to remain protected on appeal. If a party determines that some portions no longer need to be protected, that party must seek an agreement with the other party. Any agreement that is reached must be promptly presented to the trial court or the agency, which may issue an appropriate order. Whether or not an agreement is reached, each party must file a certificate of compliance no later than the time for filing the joint appendix stating it complied with this rule. This Federal Circuit Rule 30(h)(1)(B) does not apply in a case arising under 19 U.S.C. § 1516a, or to third party information marked as confidential.~~

~~(C) — **Motion to Modify the Protective Order.** A party may move at any time in this court to modify a protective order to remove protection from some material or to include another person within its terms. This court may decide the motion or may remand the case to the trial court. This court, sua sponte, may direct the parties to show cause why a protective order should not be modified.~~

~~(2) — **Two Versions of Appendices.** If a party refers in appendices to material subject to confidentiality mandated by statute or to a judicial or administrative protective order, consistent with Federal Circuit Rule 30(h)(1), two versions of appendices must be filed:~~

~~(A) — **Confidential Version; Labeling; Number of Copies.** One set of appendices, consisting of six paper copies of the complete appendix, must be labeled “confidential” and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., “CONFIDENTIAL UNTIL [DATE],” or “CONFIDENTIAL DURING JUDICIAL REVIEW.” The confidential appendix must include at the beginning (i.e., in front of the judgment or order appealed from) pertinent excerpts of any statutes imposing confidentiality or the entirety of any judicial or administrative protective order. Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.~~

~~(B) — **Nonconfidential Version; Labeling.** The second version of appendices from which confidential matter has been deleted, must be labeled “nonconfidential” and filed with the court. Each page from which material subject to a protective order~~



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~~has been deleted must bear a legend so stating. The table of contents of a nonconfidential appendix must describe the general nature of the confidential material that has been deleted.~~

~~(3) — **Service.** In a pro se case, each party to the appeal must be served one copy of the nonconfidential appendices and, when permitted by the applicable protective order, one copy of the confidential appendices. In a case in which all parties are represented by counsel, service is made through CM/ECF of a nonconfidential appendix; one paper copy of the confidential version must be served.~~

~~(4) — **Availability to the Public.** The confidential appendices will be made available only to authorized court personnel and must not be made available to the public. After 5 years following the end of all proceedings in the court, the parties may be directed to show cause why confidential appendices (except those protected by statute) should not be made available to the public. Federal Circuit Rule 25.1 applies to confidential or sealed material in appendices, exhibits, addenda, and attachments.~~

**(ih) Unrepresented Party's Informal Appendix to Informal Brief.**

~~The appendix to a~~An informal brief will be considered filed with an appendix if it includes a copy of the judgment and opinion of the trial court or the final order of an administrative agency. The initial decision of the administrative judge must also be included in the appendix in a Merit Systems Protection Board case. If an unrepresented party chooses to separately file an appendix, then the items noted above must be included if they are not already attached to the informal brief.

**(ji) Supplementary Video Recording Media Electronic Appendix Material Unable to be Produced in Paper.**

When the record ~~on appeal or review~~ has been perpetuated in whole or in part ~~on video recording media in accordance with the rules of the court or agency~~in an electronic format and that portion of the record cannot be reproduced in a non-electronic format, those ~~video recording media~~ portions of the record that would properly be included in the appendix if they were

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in documentary form ~~may~~will be ~~included in a~~considered supplementary ~~video recording media~~appendix material. ~~Four copies must be filed.~~

- (1) **Copies.** Four (4) copies must be filed on an electronic medium no later than the time to file the paper copies of the appendix under Federal Circuit Rule 25(c). These copies must be accompanied by a cover letter that includes the case number, short case name, and corresponding appendix page(s).
- (2) **Statement Concerning Instructions and Malware.** The copies must be accompanied by an affidavit or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746, preferably within or attached to the packaging, that does the following:
  - (A) sets forth the instructions for viewing the submission and the minimum equipment required for viewing; and
  - (B) verifies the absence of computer malware and lists the software used to ensure that the submission is free of any malware.
- (3) **Slip Sheet.** A slip sheet representing the supplementary appendix material must be placed in the electronically filed appendix and corresponding paper copies. The slip sheet must bear proper appendix pagination and be included in the appendix where the material would have appeared. No separate notification is required.

### Practice Notes to Rule 30

#### **~~FILING PAGE PROOF COPIES PROHIBITED; NOTICE OF NEW REFERENCES IN CROSS-APPELLANT'S REPLY BRIEF.~~**

~~Preparing the appendix requires extensive cooperation between the parties. Federal Circuit Rule 30, unlike Federal Rule of Appellate Procedure 30, does not permit filing page proof copies of briefs. An appendix prepared without careful attention to Federal Circuit Rule 30 may be rejected when submitted and may result in dismissal.~~ To expedite preparing the ~~joint~~ appendix, a cross-appellant will notify the appellant promptly on being served ~~the~~ the appellant's reply brief whether the cross-appellant will file a reply brief and, if so, whether it will refer to pages not ~~refereneed~~cited in the briefs already filed, listing any such pages.

#### **DISPENSING WITH THE APPENDIX.**

A motion to dispense with the appendix will be granted only in extraordinary circumstances.

#### **~~BRIEFS AND MEMORANDA.~~**

~~Briefs and memoranda presented to the trial court or agency may not ordinarily be included in their entirety in the appendix, but individual pages may be included when it is necessary to refer to them in the appellate briefs.~~

#### **~~TABLE OF CONTENTS OR INDEX.~~**

~~Parties are encouraged to include a table of contents or index in each volume of the appendix.~~

#### **TESTIMONY IN THE APPENDIX.**

~~To reduce bulk in the appendix, the use of condensed, columnar transcripts of testimony is encouraged.~~

**Practice Notes to Rule 30**

**APPENDIX VOLUMES.**

The limit of 400 sheets of paper per volume for appendix paper copies equates to 800 pages per volume in the electronic version when the paper copies are printed double-sided. Parties should decide on a binding method in advance of electronic filing to ensure even smaller volumes will not be required. There is no minimum number of pages per volume, though the court discourages unnecessary subdivision.

**FEDERAL CIRCUIT RULE 31****Serving and Filing Briefs****(a) Time for Service and Filing.****(1) Brief of Appellant or Petitioner.**

- (A) In an appeal from a court, the appellant must serve and file its ~~initial~~principal brief within sixty (60) days after docketing. ~~Docketing a cross appeal does not affect the time for serving and filing the appellant's initial brief.~~
- (B) In an appeal from an agency, the petitioner or appellant must serve and file its ~~initial~~principal brief within sixty (60) days after the certified list or index is served pursuant to Federal Circuit Rule 17(c).
- (C) When two or more appellants or petitioners choose to proceed by filing a single brief, ~~the initial~~that brief must be served and filed no later than the latest date on which the ~~initial~~principal brief of any of ~~these~~those appellants or petitioners is due.
- (D) In consolidated cases in which more than one set of parties filed a notice of appeal or petition for review, the deadline for the principal brief of the appellant or petitioner is computed from the docketing date of the last-docketed case or the date of service of the last-served certified list or index. In consolidated cross-appeals, the deadline is computed from the docketing date of the first-docketed case or date of service of the first-served certified list or index.

- (2) **Brief of Appellee or Cross-Appellant.** The appellee or cross-appellant must serve and file its ~~initial~~principal brief within forty (40) days after ~~the~~ appellant's brief is served or the certified list or index is served, whichever is later.

**(3) Cross-Appeal.** In a cross-appeal, the following apply:

- (A) the appellant must serve and file its response and reply brief within forty (40) days after ~~the~~ cross-appellant's principal and response brief is served; and

**FEDERAL CIRCUIT RULE 31**

(B) the cross-appellant must serve and file its reply brief within twenty-one (21) days after the appellant’s response and reply brief is served.

(4) **Single Brief Responding to Multiple Parties.** A ~~single~~ brief that responds to the briefs of multiple parties must be served and filed within the time prescribed after service of the last of ~~thesethose~~ briefs ~~or, if no such.~~ If one party timely files its brief ~~is and another party fails to file,~~ after then the ~~time expires for filing~~ deadline for any responsive brief will be calculated from the last of these date of service of the filed brief or the date the unfiled briefs was due, whichever is later.

**(b) Number of Copies.**

Six (6) paper copies of each brief, or three (3) paper copies if filing an informal brief, ~~shall~~must be provided to the court in accordance with [Federal Circuit Rule 25\(c\)](#).

**(c) Certain Motions Suspend the ~~Due Date of the Next Briefing~~ Schedule.**

When a motion is filed that, if granted, would terminate ~~the an~~ appeal, cross-appeal, or consolidated appeal, the ~~time to serve and file the next briefing due~~ schedule is suspended. This suspension does not apply to an appellant’s principal brief if the motion would only terminate a cross-appeal. If the motion is denied, the next brief becomes due, unless the court orders otherwise, within the balance of the time remaining under this rule when the motion was filed, but not fewer than fourteen (14) days from the date of the order.

**(d) Consequence of Failure to File a Brief by Appellant or Petitioner.**

If the appellant or petitioner fails to file an ~~an~~ initial principal brief, the clerk of court is authorized to dismiss the case.

**FEDERAL CIRCUIT RULE 31**

- (e) **Informal Brief; Time for Filing; ~~Number of Copies.~~**
- (1) **Brief of Appellant or Petitioner.**
- (A) In an appeal from a court, an ~~an~~ pro-seunrepresented appellant filing an informal brief must serve and file the brief within twenty-one (21) days after the appeal is docketed.
- (B) In a petition for review or an appeal from an agency, board, commission, or arbitrator, an ~~an~~ pro-seunrepresented petitioner or appellant filing an informal brief must serve and file the brief within twenty-one (21) days after the certified list or index is served pursuant to Federal Circuit Rule 17(c) ~~or within 21 days after docketing, whichever is later.~~
- (2) **Brief of Appellee or Respondent.** An appellee or respondent filing an informal brief must serve and file the brief within twenty-one (21) days after the petitioner's or appellant's brief is served or within twenty-one (21) days after the certified list or index is served pursuant to Federal Circuit Rule 17(c), whichever is later.
- (3) **Reply Brief.** When an informal brief is used, any reply brief must be served and filed within fourteen (14) days after the respondent's or appellee's brief is served.
- ~~(4) **Number of Copies.** Three paper copies of each informal brief must be filed with the court and one copy must be served on each party.~~

~~Practice Notes to Rule 31~~

~~**CONSOLIDATED APPEALS.**~~

~~In consolidated appeals in which more than one appellant filed a notice of appeal, the opening brief of all appellants will be governed by the docketing date of the last filed appeal.~~

~~**CONSOLIDATED CROSS APPEALS.**~~

~~In consolidated cross appeals, the briefing schedule is computed according to the docketing date of the first appeal.~~



**FEDERAL CIRCUIT RULE 32****Form of Briefs, Appendices, and Other Papers; Length****(a) ~~Noneonforming BriefCover.~~**

~~The clerk of court may require corrections to any brief that has not been prepared in conformity with Federal Rule of Appellate Procedure 32; as to word count, an appellant's and appellee's opening brief is acceptable if it contains no more than 14,000 words or uses a monospaced face and contains no more than 1,300 lines of text, and an appellant's reply brief is acceptable if it contains no more than 7,000 words. Whenever a document is filed with a cover, that cover must contain the official caption provided by the clerk of court, unless noted otherwise in these rules. See Federal Circuit Rule 12(b) and Federal Circuit Rule 15(b)(4). This caption satisfies the requirement under Federal Rule of Appellate Procedure 32(a)(2)(C). "Nonconfidential" or "public" may not appear on the cover or first page of any filing unless there is a corresponding confidential version.~~

**(b) ~~Exclusion from~~ Type-Volume Limitations.**

~~(1) **Brief Word or Line Limitation.** A principal brief may exceed thirty (30) pages in length if it contains no more than 14,000 words, or 1,300 lines of text if using a monospaced typeface. A reply brief may exceed fifteen (15) pages in length if it contains no more than 7,000 words, or 650 lines of text if using a monospaced typeface.~~

~~(2) **Exclusions.** In addition to the items listed in Federal Rule of Appellate Procedure 32(f) that are not counted in the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) these rules, the following items do not count toward ~~that~~ those limitations:~~

~~(1A) the~~ certificate of interest;

~~(2B) the~~ statement of related cases; ~~and~~

~~(3C) the~~ any addendum ~~in an initial brief of an appellant or petitioner;~~

~~(D) any requirements under Federal Circuit Rule 25.1(e); and~~

~~(E) statement of counsel for a petition for hearing or rehearing en banc under Federal Circuit Rule 35(b).~~

**FEDERAL CIRCUIT RULE 32**

(3) Certificate of Compliance for Briefs. Each brief exceeding the page limitation under Federal Rule of Appellate Procedure 32(a)(7)(A) or Federal Circuit Rule 28.1(a) must include a certificate of compliance with the type-volume limitation that adheres to the requirements in Federal Rule of Appellate Procedure 32(g). It is the responsibility of the filing party to ensure that the certificate of compliance is accurate.

**(c) Informal Brief.**

An informal brief must be prepared on a form provided by the clerk of court. The form contains instructions for preparing and filing an informal brief. An informal brief should be typewritten, but block printing or, as a last resort, legible handwriting is permitted. An informal brief including continuation pages must not exceed thirty (30) pages of typewritten double-spaced text or its equivalent. The paper informal briefs may be secured by a single staple in the left-hand corner in lieu of any other form of binding required by Federal Circuit Rule 32(h).

**(d) Form of Appendix or Addendum.**

~~Pages in an appendix—even when filing a combined brief and appendix—may be printed on both sides. To the extent possible, the court encourages this~~The court encourages the double-sided printing of the pages of the appendix, an appendix combined with a brief, and an addendum.

**(e) ~~Filing Corresponding Brief on Compact Disc~~Pagination.**

~~In addition to the filing of a paper brief, a party may file a corresponding brief contained on a compact disc read-only memory (CD-ROM), subject to the following requirements~~Submissions to the court over two (2) pages must include page numbers. The page number must be centered at the bottom of the page and need not be included on a cover page.

**FEDERAL CIRCUIT RULE 32**

- ~~(1) — **Consent; Motion.** Within 14 days of docketing an appeal, a party intending to file a corresponding brief must ascertain whether any other party consents or objects. If the other parties consent, the filing party must promptly file with the court a notice of intent to file a corresponding brief. If any other party does not consent, the party seeking to file a corresponding brief must promptly file a motion for leave with the court. If no response is filed within seven days, the clerk will grant the motion for leave to file a corresponding brief. The court will deny a motion for leave to file a corresponding brief only if an opposing party demonstrates substantial prejudice.~~
- ~~(2) — **Content.** A corresponding brief must be identical in content to the paper brief. A corresponding brief may provide hypertext links to the complete versions of material that was part of the record below. Hypertext links to other material must be confined to materials such as cases, statutes, treatises, law review articles, and similar authorities. A corresponding brief must be self contained and static.~~
- ~~(3) — **Statement Concerning Instructions and Viruses.** A corresponding brief must be accompanied by a statement, preferably within or attached to the packaging, that:~~
- ~~(A) — sets forth the instructions for viewing the brief and the minimum equipment required for viewing; and~~
- ~~(B) — verifies the absence of computer viruses and lists the software used to ensure that the brief is virus free.~~
- ~~(4) — **Time for Filing.** A corresponding brief, if any, must be filed no later than the time for filing the joint appendix.~~
- ~~(5) — **Filing and Service.** Except for the time of filing, a corresponding brief must be filed and served in the same manner and the same number of copies as the paper brief.~~
- ~~(6) — **Single CD ROM.** All parties to an appeal who intend to file a corresponding CD ROM brief are encouraged to cooperate in placing all such briefs on a single CD ROM.~~

**FEDERAL CIRCUIT RULE 32**

- ~~(7) **Table of Contents.** Parties filing a corresponding brief are encouraged to include a table of contents with links to all of the items required in a joint appendix under Federal Rule of Appellate Procedure 30 and Federal Circuit Rule 30 and to all other parts of the record contained on the corresponding brief.~~
- ~~(8) **Labeling.** A label with the caption of the case, the number of the case, and the types of briefs included on the CD-ROM must be included on both the packaging and the CD-ROM.~~

**(f) Page Proof.**

Page proof copies of documents must not be filed with the court.

**(g) Signature Authority; Multiple Signatures.**

- ~~(1) **Appearance Prerequisites.** After a case is docketed, documents filed in that case on behalf of a represented party can only be signed by an attorney who has filed an entry of appearance for that party.~~
- ~~(2) **Signature Authority.** Any person having actual authority may sign a document on behalf of counsel or an unrepresented party who is unavailable to sign or incapable of signing, provided the filing also includes as an attachment an affidavit of authority or an unsworn declaration of authority under penalty of perjury pursuant to 28 U.S.C. § 1746.~~
- ~~(3) **Documents Requiring Multiple Signatures.** Any document requiring the signature of more than one party or individual must include the signature of the filer and account for all other signatures in either one or a combination of the following fashions:~~
- ~~(A) The document may contain the handwritten signatures of the other parties or individuals.~~
- ~~(B) The document may contain the electronic signatures of the other parties or individuals with their consent and must so state that consent.~~

**FEDERAL CIRCUIT RULE 32**

(C) The document may identify the other parties or individuals required to sign, and those parties or individuals must file a notice endorsing the signature within three (3) business days after filing.

**(h) Binding.**

Paper copies of briefs and appendices must be securely bound along the left margin to ensure that the bound copies will not loosen or fall apart and that the brief will lie reasonably flat when open.

**(i) Extraneous Markings.**

Parties must not include any highlighting or extraneous markings within either the briefs or the appendix beyond confidentiality notations required by these rules or markings that originally appeared on appendix materials in the record below.

### Practice Notes to Rule 32

#### **PREFERRED COVER CONTENT.**

In addition to the requirements of [Federal Rule of Appellate Procedure 32\(a\)\(2\)\(D\)](#), the court encourages inclusion on the cover of the name of the judge, when applicable, from whose judgment appeal is taken.

#### ~~**PREFERRED BINDING.**~~

~~The court prefers that a brief be securely bound along the left margin to ensure that the bound copy will not loosen or fall apart; that a brief lie flat when open; that a ring type binding, plastic or metal, or a binding that protrudes from the front and back covers not be used; and that any externally positioned staple be covered with tape.~~

#### **PRINT SIZE OF BRIEFS.**

~~Counsel~~Parties should avoid photo-reproduction that reduces the print size of the original smaller than the size required by [Federal Rule of Appellate Procedure 32](#).

#### **FOOTNOTES.**

The typeface requirements of [Federal Rule of Appellate Procedure 32\(a\)\(5\)](#) apply to all text in the brief, including footnotes.

#### ~~**BRIEF COVERS IN CROSS APPEALS.**~~

~~The color of the cover of the cross appellant's principal brief is red. The color of the covers of appellant's reply brief is yellow and cross appellant's reply brief is gray.~~

#### **COPIES OF PATENT DOCUMENTS.**

Oversize patent documents reproduced in a brief or appendix should be photo-reduced to 8 1/2 by 11 inches if readability can be maintained; otherwise, they should be folded and bound so they do not protrude from the covers of the brief or appendix.

### Practice Notes to Rule 32

#### ~~ERRATA; CORRECTIONS TO BE MADE BY COUNSEL OR A PARTY.~~

~~A brief may not be corrected merely by appending an errata sheet. Corrections, which must be limited to nonsubstantive matters, must be made by counsel or a party using suitable means directly in the paper briefs in the clerk's office. As a last resort, briefs may be replaced. Corrected or replacement briefs must also be submitted through CM/ECF. The time to file a brief in response to a corrected or replaced brief runs from service of the original brief. A corrected or replacement brief should so indicate on the cover. Counsel or a party must file a "Notice of Correction" with the court through CM/ECF and serve any unrepresented party with a paper copy, specifically delineating each correction. Any pro se party filing a corrected brief must file an original and three paper copies of the corrected brief. Any individual making corrections to the paper briefs in the clerk's office must provide written authorization and present proper photo identification.~~

#### ~~TESTIMONY IN THE APPENDIX.~~

~~To reduce bulk in the appendix, the use of condensed, columnar transcripts of testimony is encouraged.~~

#### **CERTIFICATE OF COMPLIANCE.**

~~Federal Rule of Appellate Procedure 32(g) states that the use of Federal Rules of Appellate Procedure Form 6 is sufficient to satisfy the requirements of Rule 32(g). That form is reproduced as [Using Federal Circuit Form 19](#) satisfies the requirements for a certificate of compliance with type-volume limitations under Federal Rule of Appellate Procedure 32(g)(1) and Federal Circuit Rule 32(b)(3). Parties are reminded that some software programs do not automatically include footnotes. When certain text is marked for word count or line count purposes, a party may need to separately mark text in footnotes and include those words or lines in the certified count. ~~It is the responsibility of the filing party to ensure that its certificate of compliance is accurate.~~~~

**Practice Notes to Rule 32**

**FILINGS IN COMPANION CASES.**

Except when otherwise ordered, all filings in companion cases must be made in each individual case with the individual case numbers and case captions included on each respective case-specific filing. Unless otherwise directed, required paper copies must be submitted in each respective case.



**FEDERAL CIRCUIT RULE 32.1****Citing Judicial Dispositions****(a) Nonprecedential Disposition of Appeal, Motion, or Petition.**

~~Disposition of an appeal may be announced in an opinion; disposition of a motion or petition may be announced in an order. An appeal may also be disposed of in a judgment of affirmance without opinion pursuant to Federal Circuit Rule 36.~~ A nonprecedential disposition ~~shall~~must bear a legend designating it as nonprecedential. A precedential disposition ~~shall~~will bear no legend.

**(b) Nonprecedential Opinion or Order.**

An opinion or order which is designated as nonprecedential is one determined by the panel issuing it as not adding significantly to the body of law.

**(c) Parties' Citation of Nonprecedential Dispositions.**

Parties are not prohibited or restricted from citing nonprecedential dispositions ~~issued after January 1, 2007. This rule does not preclude assertion of claim preclusion, issue preclusion, judicial estoppel, law of the case, and the like based on a nonprecedential disposition issued before that date.~~

**(d) Court's Consideration of Nonprecedential or Unpublished Dispositions.**

The court may refer to a nonprecedential or unpublished disposition in an opinion or order and may look to a nonprecedential or unpublished disposition for guidance or persuasive reasoning, but will not give one of its own nonprecedential dispositions the effect of binding precedent. The court will not consider nonprecedential or unpublished dispositions of another court as binding precedent of that court unless the rules of that court so provide.

**FEDERAL CIRCUIT RULE 32.1****(e) Request to Make an Opinion or Order Precedential; ~~Time for Filing.~~**

Within sixty (60) days after ~~any~~the court issues a nonprecedential opinion or order ~~is issued~~, any person may request, ~~with accompanying reasons, through motion filed in the case~~ that the opinion or order be reissued as precedential. ~~An original and six paper copies of the request must be filed with the court unless the request is made by an electronic filer. All electronic filers must file documents through CM/ECF in accordance with Federal Circuit Rule 25(a)(2).~~ The request will be considered by the panel that rendered the disposition. The ~~requester~~motion must ~~notify the court and the parties of~~identify any case that person knows to be pending that would be determined or affected by reissuance as precedential. Parties to pending cases ~~who have~~having a stake in the outcome of a decision ~~to make precedential on the motion~~ must be given an opportunity to respond. If the request is granted, the opinion or order may be revised as appropriate.

**(f) Public Records.**

All dispositions by the court in any form will be in writing and are public records.

### Practice Notes to Rule 32.1

#### **FILING AN OPINION.**

An opinion is issued when ready. No particular day of the week is considered a “down day.” ~~An opinion is not issued on a holiday, as defined in Federal Rule of Appellate Procedure 26 and Federal Circuit Rule 26.~~ The judgment is entered on the day the opinion is filed with the clerk of court and transmitted to the parties.

#### **AVAILABILITY OF AN OPINION.**

The court’s precedential and nonprecedential opinions are available in a variety of commercially available print and electronic media, as well as online through the court’s website and the U.S. Government Publishing Office’s website.

#### **SUBSCRIPTIONS.**

Subscriptions to daily opinions and other items are ~~not~~ available ~~from through~~ the court’s; ~~but are available from several commercial sources website at~~ <http://www.cafc.uscourts.gov/email-subscriptions>.

#### **INFORMATION ABOUT AN OPINION.**

~~Information about decisions rendered, opinions issued, and actions taken on petitions for rehearing is posted daily on the court’s website, [www.cafc.uscourts.gov](http://www.cafc.uscourts.gov). The court’s opinions, rules, and other information are also available on the Federal Circuit website.~~

#### **REQUEST TO MAKE AN OPINION OR ORDER PRECEDENTIAL.**

It is improper to refer in a brief to a request to make an opinion or order precedential before the request has been acted on. ~~The opinion or order that is subject to the request remains nonprecedential unless and until the court grants the request.~~

**FEDERAL CIRCUIT RULE 33****Appeal Conferences****(a) Settlement Discussion; Joint Statement of Compliance or Agreement to Dismiss.**

- (1) **Timing.** When all ~~the~~ parties are represented by counsel, within seven (7) days after the first two briefs in an appeal or the first three briefs in a cross-appeal are served and filed, the parties through counsel must discuss settlement in appeals under 28 U.S.C. §§ 1292(c)(1)-(2); 1295(a)(1); 1295(a)(4)(A) ~~[with respect to patent interferences only]; 1295(a)(4)~~-(B) [with respect to inter partes proceedings only]; 1295(a)(4)(C) [with respect to civil actions under 35 U.S.C. § 146 only]; and 1295(a)(6).
- (2) **Compliance.** No later than the time for filing ~~a separate~~ the appendix under Federal Circuit Rule 30(a)(42), the parties must file ~~one copy of~~ either of the following ~~(select only one)~~:
- (A) a joint statement of compliance with this rule indicating that settlement discussions have been conducted; or
  - (B) an agreement that the proceeding be dismissed under Federal Rule of Appellate Procedure 42(b).

**(b) Other Settlement Discussions.**

This rule does not preclude the parties from discussing settlement or agreeing to dismiss the proceedings at other times, including after oral argument but before decision.

**FEDERAL CIRCUIT RULE 33.1**

**Mediation Guidelines**

**(a) Guidelines.**

The court may adopt mediation guidelines with respect to mediation of the cases pending before the court. These guidelines ~~shall be~~are binding on the parties.

**(b) Docketing Statement.**

Filing a docketing statement under the court's mediation guidelines satisfies the requirement for an appellant to file a statement of the issues under Federal Rule of Appellate Procedure 10(b)(3)(A).

**FEDERAL CIRCUIT RULE 34****Oral Argument****(a) Reply Brief Instead of Oral Argument.**

If an appeal is not called for oral argument and the appellant declined to file a reply brief in anticipation of replying during oral argument, the appellant may file a reply brief within fourteen (14) days after the notice that the appeal will be submitted on the briefs.

**(b) Time Allowed.**

The time allowed each side for oral argument will be determined by the court. The clerk of court will advise ~~counsel~~the parties of the time allotted. A party is not obliged to use all the time allowed. The court may terminate the argument if it deems further argument unnecessary.

**(c) Visual Aids.**

- (1) **Visual Aids Used at a Trial or Administrative Hearing;**  
**Notice.** If ~~counsel~~a party intends to ~~use~~display at oral argument a visual aid used at a trial or administrative hearing, ~~counsel~~the party must advise the ~~clerk through CM/ECF~~court by letter no later than fourteen (14) days before argument ~~of the proposed visual aid~~.
- (2) **Visual Aids Not Used at a Trial or Administrative Hearing;**  
**Notice.** If ~~counsel~~a party intends to ~~use~~display at oral argument a visual aid that was not used at a trial or administrative hearing, ~~counsel~~the party must give notice to opposing counsel and notify the ~~clerk of court~~ by letter ~~through CM/ECF~~ no later than twenty-one (21) days before ~~the oral~~ argument.
- (3) **Objection to the Use of Visual Aids.** An objection to the proposed use of a visual aid at oral argument must be submitted ~~through CM/ECF~~ as a letter and filed no later than seven (7) days before the oral argument. If a party objects, the parties' submissions will be treated as a motion and response and will be referred to the panel.

**FEDERAL CIRCUIT RULE 34**

- (4) **Scope.** Presentation programs or projection equipment may not be utilized during argument without leave of the court. A motion for leave must be filed no later than twenty-one (21) days before argument. This rule does not preclude use of a chalkboard or equivalent ~~during oral arguments~~ supplied by the party.
- (5) **Disposition.** The clerk of court may dispose of visual aids not removed by the parties.

**(d) Scheduling Conflicts.**

- (1) **Notice from the Clerk.** In cases to be scheduled for oral argument, the clerk of court will issue a notice to the parties following the end of briefing to request scheduling conflict information from counsel.
- (2) **Requirement to Notify of Conflicts.** Within seven (7) days after the clerk of court issues a notice, the parties must notify the court in writing of any scheduling conflicts. Until the case is scheduled for argument or submitted or resolved without argument, counsel has a continuing obligation to advise the court of any additional scheduling conflicts or changes to existing scheduling conflicts that arise after counsel responds to the clerk of court's initial notice.
- (3) **Good Cause Requirement.** Arguing counsel must show good cause for each identified scheduling conflict; conflicts that do not provide sufficient showing of good cause will not be considered. If arguing counsel fails to show good cause for a scheduling conflict in advance of scheduling and the court schedules the case on a day arguing counsel is unavailable, then the case will not be rescheduled absent a showing of compelling reason and leave of court.

**(e) Arguing Counsel.**

- (1) **Notice of Oral Argument.** The clerk of court will notify parties when a case has been scheduled for argument. Arguing counsel must respond to the notice of oral argument on the form prescribed by the clerk of court within the time requested by the clerk of court.

**FEDERAL CIRCUIT RULE 34**

- (2) **Limitation on the Number of Arguing Counsel.** Absent leave of court requested at least seven (7) days before argument, no more than two counsel may argue on behalf of each side and no more than one counsel may argue on behalf of each party.



### Practice Notes to Rule 34

#### SCHEDULING CONFLICTS.

Counsel should not submit any scheduling conflicts before receiving the notice from the clerk of court. In responding to the notice, counsel are advised that the unavailability of a client or non-arguing co-counsel is an insufficient basis for showing good cause.

#### **COURT SESSIONS; HEARING DATE.**

Sessions of the court will be held as announced by the court. Sessions are held regularly in Washington, DC, but the court may sit elsewhere pursuant to Federal Circuit Rule 47.1. ~~Appeals are usually calendared for oral argument or submission without argument within 2 months after the briefs and joint appendix are filed. The Notice of Oral Argument is usually issued within four (4) months after all briefs and the appendix are filed.~~ Counsel are advised of the ~~firm~~scheduled date of hearing approximately ~~30 days~~six (6) weeks before the session. ~~Once scheduled, a case will not be postponed except on motion showing compelling reasons.~~ The clerk's office will issue a Notice of Docket Activity (NDA) when a case is fully briefed. ~~Counsel should advise the clerk of court in writing within 7 days of such NDA of scheduling conflicts for the next three court weeks, or thereafter as soon as such conflicts are known, and should not wait until an actual conflict arises. Counsel requiring a courtroom accessible to the disabled, if oral argument is scheduled, should notify the clerk of court of this requirement when counsel files the entry of appearance. Counsel may elect to submit on the briefs to avoid delay in disposition or for any other reason.~~

#### ACCESSIBILITY ACCOMMODATIONS.

A party or counsel of record requiring a communication-based disability accommodation should notify the clerk of court at least two (2) weeks before the scheduled hearing. A party requiring a mobility-based disability accommodation should notify the clerk of court at the time of filing the notice of scheduling conflicts. Additional information about accessibility accommodations is available on the court's website, [www.cafc.uscourts.gov](http://www.cafc.uscourts.gov).

### **Practice Notes to Rule 34**

#### **ORAL ARGUMENT.**

Counsel must report to the clerk's office at least thirty (30) minutes before the scheduled session and before proceeding to the courtroom. The members of the panel will have read the briefs before oral argument. Counsel should, therefore, emphasize the dispositive issue or issues. Time allotted for oral argument is ordinarily fifteen (15) minutes per side (not per party or attorney), although the court may vary this depending on the nature of the case. The court may extend the allotted time during the argument, or it may terminate the argument, if it deems it appropriate.

#### **JUSTIFICATION FOR CLAIM OF CONFIDENTIALITY.**

Unnecessarily designating material in the briefs and appendix as confidential may hinder the court's preparation and issuance of opinions. Counsel must be prepared to justify at oral argument any claim of confidentiality.

#### **CONDUCT OF ORAL ARGUMENT.**

Guidelines for the conduct of oral argument are available on the court's [website](http://www.cafc.uscourts.gov), [www.cafc.uscourts.gov](http://www.cafc.uscourts.gov), ~~and should be viewed once a case is assigned for argument~~ in the Clerk's Office's Guide for Oral Argument.

#### **COPIES OF RECORDINGS AVAILABLE.**

Oral arguments are recorded for the convenience of the court. Recordings are available on the court's [website](http://www.cafc.uscourts.gov), [www.cafc.uscourts.gov](http://www.cafc.uscourts.gov), free of charge. ~~The court does not provide or produce transcripts of oral argument or recommend transcription services.~~

#### **OPEN TO PUBLIC.**

Unless held in camera, oral arguments are open to the public. Those in attendance whose attire or behavior reflects adversely on the dignity of the proceedings will be asked to leave.

**Practice Notes to Rule 34**

**ORAL ARGUMENT ON MOTIONS.**

Oral argument is ordinarily not granted on motions. See [Federal Rule of Appellate Procedure 27\(e\)](#).

**INTRODUCING NEW AUTHORITY AT ARGUMENT.**

A party seeking to raise new authority at argument that was not previously submitted to the court should provide a copy of the new authority to the opposing party in advance of argument.

**USE OF VISUAL AIDS.**

The court discourages the use of visual aids or presentations during argument.

**FORMS**

Using Federal Circuit Form 32 satisfies the requirements for responding to the clerk of court's notice to advise of scheduling conflicts and for ongoing advising of schedule conflict changes under Federal Circuit Rule 34(d). Using Federal Circuit Form 33 satisfies the requirements for responding to the clerk of court's notice of oral argument under Federal Circuit Rule 34(e).

**FEDERAL CIRCUIT RULE 35**

**En Banc Determination**

**(a) General.**

- (1) **Arguing to a Panel to Overrule a Precedent.** Although only the court en banc may overrule a binding precedent, a party may argue, in its brief and oral argument, to overrule a binding precedent without petitioning for hearing en banc. The panel will decide whether to ask the ~~regular active~~ judges in regular active service to consider hearing the case en banc.
- (2) **Frivolous Petition.** A petition for hearing or rehearing en banc that does not meet the standards of [Federal Rule of Appellate Procedure 35\(a\)](#) may be deemed frivolous and ~~subject to~~ sanctions may be imposed.

**(b) Statement of Counsel.**

- (1) **Petition for Hearing En Banc.** A petition that an appeal be initially heard en banc must contain the following statement of, and separately signed by, counsel at the beginning:

Based on my professional judgment, I believe this appeal requires an answer to one or more precedent-setting questions of exceptional importance: (set forth each question in a separate sentence).

~~/s/ \_\_\_\_\_~~

~~ATTORNEY OF RECORD FOR \_\_\_\_\_~~

- (2) **Petition for Rehearing En Banc.** A petition that an appeal be reheard en banc must contain one or both of the following statements of, and separately signed by, counsel at the beginning:

Based on my professional judgment, I believe the panel decision is contrary to the following decision(s) of the Supreme Court of the United States or the precedent(s) of this court: (cite specific decisions).

Based on my professional judgment, I believe this appeal requires an answer to one or more precedent-setting questions of

**FEDERAL CIRCUIT RULE 35**

exceptional importance: (set forth each question in a separate sentence).

/s/ \_\_\_\_\_

ATTORNEY OF RECORD FOR \_\_\_\_\_

**(c) ~~Petition for Hearing or Rehearing En Banc; Response.~~**

~~(1) — **Certificate of Interest.** A certificate of interest (see Federal Circuit Rule 47.4) must be included in a petition for a hearing or rehearing en banc or a response to such a petition. The certificate must appear immediately following the cover.~~

~~(2) — **Items Excluded from Page or Word Limitation.** The following items do not count against the page or word limitation in Federal Rule of Appellate Procedure 35(b)(2):~~

~~(A) — the certificate of interest;~~

~~(B) — the table of contents;~~

~~(C) — the table of citations; and~~

~~(D) — any addendum containing statutes, rules, regulations, and similar matters.~~

~~(3) — **Rehearing En Banc: Copy of Opinion or Judgment.** A petition for a rehearing must include a copy of the opinion or the judgment of affirmance without opinion. The copy must be bound with the petition as an addendum.~~

~~(4) — **Number of Copies.**~~

~~If only nonconfidential copies are filed, in addition to the copy filed through CM/ECF, eEighteen (18) paper copies of any petition for hearing or rehearing en banc, combined petition, or related response must be filed with the court in accordance with Federal Circuit Rule 25(c)(1). If confidential and nonconfidential copies are filed, in addition to the copies filed through CM/ECF, eighteen copies of the confidential petition and three copies of the nonconfidential petition must be filed with the court.~~

**FEDERAL CIRCUIT RULE 35**

~~Two copies of the confidential petition must be served on each party separately represented.~~

**(d) Combined Petition for Panel Rehearing and Rehearing En Banc.**

If a party chooses to file both a petition for panel rehearing; ~~see under~~ [Federal Circuit Rule 40](#); and a petition for a rehearing en banc, then the two must not be filed separately and they must be combined. ~~A combined petition for panel rehearing and rehearing en banc must comply with Federal Circuit Rule 35(e).~~ The cover of a combined petition must indicate that it is a combined petition.

**(e) Contents of Petition for Hearing En Banc, Petition for Rehearing En Banc, and Combined Petition; Response.**

- (1) ~~Petition for Hearing En Banc~~ **Required Contents.** The ~~preferred~~ required contents ~~and organization~~ for a petition for a hearing en banc, petition for rehearing en banc, and combined petition are as follows:
- (A) a white cover or first sheet ~~with the information~~ as prescribed in [Federal Rule of Appellate Procedure 32\(ac\)\(2\)\(A\)](#);
  - (B) the certificate of interest ~~(see under Federal Circuit Rule 47.4),~~ which must appear immediately after the front page;
  - (C) the table of contents;
  - (D) the table of authorities;
  - (E) the statement of counsel required ~~in~~ under [Federal Circuit Rule 35\(b\)](#);
  - (F) if filing a combined petition, the points of law or fact the filer believes the court has overlooked or misapprehended as required under Federal Rule of Appellate Procedure 40(a)(2);
  - ~~(FG)~~ the argument; ~~and~~
  - ~~(G) the proof of service (see Federal Rule of Appellate Procedure 25(d)).~~

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- (H) ~~if filing a petition for rehearing en banc or combined petition, a copy of this court’s dispositive order, opinion, or judgment of affirmance without opinion attached as an addendum; and~~
  - (I) ~~a certificate of compliance that adheres to Federal Rule of Appellate Procedure 32(g).~~
- (2) ~~**Petition for Rehearing En Banc.** The preferred contents and organization for a petition for a rehearing en banc are:~~
- (A) ~~white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);~~
  - (B) ~~the certificate of interest (see Federal Circuit Rule 47.4);~~
  - (C) ~~the table of contents;~~
  - (D) ~~the table of authorities;~~
  - (E) ~~the statement of counsel required in Federal Circuit Rule 35(b);~~
  - (F) ~~the argument;~~
  - (G) ~~the addendum containing a copy of the court’s opinion or judgment of affirmance without opinion sought to be reheard; and~~
  - (H) ~~the proof of service (see Federal Rule of Appellate Procedure 25(d)).~~
- (3) ~~**Combined Petition for Panel Rehearing and Rehearing En Banc.** The preferred contents and organization for a combined petition for panel rehearing and a rehearing en banc are:~~
- (A) ~~white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);~~
  - (B) ~~the certificate of interest (see Federal Circuit Rule 47.4);~~
  - (C) ~~the table of contents;~~
  - (D) ~~the table of authorities;~~

**FEDERAL CIRCUIT RULE 35**

- ~~(E) — the statement of counsel required in Federal Circuit Rule 35(b);~~
  - ~~(F) — the points of law or fact overlooked or misapprehended by the panel of the court;~~
  - ~~(G) — the argument in support of a rehearing;~~
  - ~~(H) — the argument in support of rehearing en banc;~~
  - ~~(I) — the addendum containing a copy of the court’s opinion or judgment of affirmance without opinion sought to be reheard; and~~
  - ~~(J) — the proof of service (see Federal Rule of Appellate Procedure 25(d)).~~
- ~~(4) — **Response.** If the court requests a response, which must not exceed 3,900 words if produced using a computer prepared electronically or fifteen (15) pages if handwritten or typewritten otherwise, the preferred required contents ~~and organization~~ are as follows:~~
- ~~(A) a white cover or first sheet with the information as prescribed in Federal Rule of Appellate Procedure 32(ac)(2)(A);~~
  - ~~(B) the certificate of interest (see under Federal Circuit Rule 47.4), which must appear immediately after the front page;~~
  - ~~(C) the table of contents;~~
  - ~~(D) the table of authorities;~~
  - ~~(E) the argument ~~against a rehearing, rehearing en banc, or both in response~~; and~~
  - ~~(F) the proof of service (see Federal Rule of Appellate Procedure 25(d)); any addendum under Federal Circuit Rule 35(i); and~~
  - ~~(G) a certificate of compliance that adheres to Federal Rule of Appellate Procedure 32(g).~~



**FEDERAL CIRCUIT RULE 35**

**(f) ~~Additional~~ Copies of Briefs in Cases to be Heard or Reheard En Banc.**

~~Within 7 days after the order granting a rehearing en banc, counsel must file 30 paper sets~~ copies of the all briefs and appendices that were before the panel that initially heard the appeal, as well as any briefs and appendices ordered by the court during en banc consideration, must be provided to the court in accordance with Federal Circuit Rule 25(c), unless the court directs otherwise.

**(g) Amicus Curiae Brief.**

~~In addition to the content requirements under Federal Rule of Appellate Procedure 29(b)(4), the following apply to amicus curiae briefs filed during the court's consideration of whether to grant a petition for hearing en banc, petition for rehearing en banc, or combined petition for panel rehearing and rehearing en banc. Except as otherwise permitted or directed by the court's permission or direction, an amicus curiae.~~

~~(1) **Leave.** The brief submitted in connection with a petition for hearing en banc, a petition for rehearing en banc, or a combined petition for panel rehearing and rehearing en banc, must be accompanied by a motion for leave and must not exceed 2,600 words if produced using a computer or 10 pages if handwritten or typewritten to file.~~

~~(2) **Timeliness.** Except by the court's permission or direction, a Any brief ~~amicus curiae or any~~ and motion for leave ~~to file a brief amicus curiae~~ must be filed within fourteen (14) days ~~of~~ after the date of the filing of the petition or response that the amicus curiae supports. If the amicus curiae does not support either party, then the brief ~~or~~ and motion ~~for leave to file the brief~~ must be filed within fourteen (14) days ~~of~~ after the date of the filing of the petition.~~

~~(3) **Type-Volume Limitation.** The brief must not exceed 2,600 words if prepared electronically or ten (10) pages otherwise.~~

~~(4) **Number of Copies.** Eighteen (18) paper copies of the brief must be provided to the court in accordance with Federal Circuit Rule 25(c).~~

**FEDERAL CIRCUIT RULE 35****(h) Informal En Banc Petition; Response.**

- (1) Informal Petition.** An unrepresented party may file three (3) copies of an informal petition for hearing en banc, petition for rehearing en banc, or combined petition for panel rehearing and rehearing en banc in letter form not to exceed fifteen (15) typewritten double-spaced pages, attaching to each a copy of the dispositive order, opinion, or judgment sought to be reheard, if applicable.
- (2) Informal Response.** If the court requests a response to an informal petition for hearing en banc, informal petition for rehearing en banc, or informal combined petition for panel rehearing and rehearing en banc, or if the court requests an unrepresented party to respond to a formal petition, the response may be informal. The informal response may not exceed fifteen (15) typewritten double-spaced pages, and three (3) copies must be filed in accordance with Federal Circuit Rule 25(c).

**(i) Addendum Contents.**

- (1) Court's Decision.** A copy of the dispositive order, opinion, or judgment of affirmance without opinion sought to be reheard must be bound with the petition as an addendum.
- (2) Reproduction of Statutes, Rules, Regulations, etc.** If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the petition or response, or in any addendum attached to the petition or response.
- (3) Other Material.** Material not listed in subsections (1)-(2) above or permitted under Federal Rule of Appellate Procedure 32.1(b) may not be included as an addendum without leave of the court.

**FEDERAL CIRCUIT RULE 35**

**(j) Time.**

A petition for rehearing en banc or combined petition for panel rehearing and rehearing en banc must be filed within the time prescribed for a petition for panel rehearing under Federal Circuit Rule 40(d).

### **Practice Notes to Rule 35**

#### **HEARING OR REHEARING EN BANC.**

The court may sua sponte order that an appeal be initially heard or be reheard en banc. The panel or a judge on the panel that is considering a case may at any time request the ~~active~~ judges of the court in regular active service to hear or rehear the case en banc with or without further briefs or argument by counsel.

#### **REHEARING EN BANC; SENIOR JUDGES.**

If a senior judge participated in the original hearing and disposition of a case for which rehearing en banc is granted, that senior judge may participate fully in the rehearing.

#### **COMBINED PETITION FOR PANEL REHEARING AND REHEARING EN BANC.**

When a combined petition for panel rehearing and petition for rehearing en banc is filed, the petition for panel rehearing is decided first in the same manner as a petition for panel rehearing without an accompanying petition for rehearing en banc. If the panel grants the requested relief, the petition for rehearing en banc is deemed moot.

#### **PETITION FOR REHEARING EN BANC REFERRED TO PANEL.**

A petition for rehearing en banc is presumed to request relief that can be granted by the panel that heard the appeal, and action on the petition for rehearing en banc will be deferred until the panel has an opportunity to grant the relief requested.

#### **TIMELINESS.**

A petition for hearing or rehearing en banc is filed when the court receives it, not on ~~mailing~~ the date it was mailed. The clerk of court ~~will~~ may return an untimely petition for hearing or rehearing en banc.

**Practice Notes to Rule 35**

**NONPRECEDENTIAL OPINIONS.**

A petition for rehearing en banc is rarely appropriate if the appeal was the subject of a nonprecedential opinion by the panel of judges that heard it.

**WRIT OF CERTIORARI.**

Filing a petition for a panel rehearing or for rehearing en banc is not a prerequisite to filing a petition for a writ of certiorari in the Supreme Court.

**FEDERAL CIRCUIT RULE 36****Entry of Judgment—~~Judgment of Affirmance Without Opinion~~****(a) Judgment of Affirmance Without Opinion.**

The court may enter a judgment of affirmance without opinion, citing this rule, when it determines that any of the following conditions exist and an opinion would have no precedential value:

- (~~a~~1) the judgment, decision, or order of the trial court appealed from is based on findings that are not clearly erroneous;
- (~~b~~2) the evidence supporting the jury's verdict is sufficient;
- (~~e~~3) the record supports summary judgment, directed verdict, or judgment on the pleadings;
- (~~d~~4) the decision of an administrative agency warrants affirmance under the standard of review in the statute authorizing the petition for review; or
- (~~e~~5) a judgment or decision has been entered without an error of law.

**(b) Separate Judgment.**

The clerk of court will not prepare a separate judgment when a case is disposed of by order without opinion. The order of the court serves as the judgment when entered.

~~Practice Note to Rule 36~~

~~SEPARATE JUDGMENT NOT PREPARED IN CERTAIN INSTANCES.~~

~~A separate judgment is not prepared when a case is dismissed on consent or on motion or for failure to prosecute. The order of dismissal serves as the judgment when entered.~~

**FEDERAL CIRCUIT RULE 39****Costs****(a) Notice of Entitlement to Costs.**

When the clerk of court provides notice of judgment or order disposing of an appeal, the clerk of court must advise which party or parties are entitled to costs. Notice of entitlement to costs may be made in the judgment, in the order disposing of the appeal, or on the docket.

**(b) Bill of Costs; ~~Copies~~; ~~Objection~~.**

A party must file the bill of costs on the form prescribed by the court. An objection to the bill of costs must not exceed 1,300 words if prepared using a computer or five (5) pages if handwritten or typewritten otherwise. Any objection must include a certificate of compliance that adheres to Federal Rule of Appellate Procedure 32(g)(1).

**(c) Rates.**

The clerk of court is authorized to set a maximum rate at which costs may be taxed. In setting the maximum rate, the clerk of court will evaluate the most economical means of printing, reproduction, and binding available in the Washington, D.C. metropolitan area. The maximum rates set will be posted on the court's website and included as an attachment to the court's published Federal Rules of Practice and Bill of Costs form. Costs are taxed at the maximum rate or at the actual cost, whichever is lower. Costs may not be taxed for more paper copies than those required by Federal Circuit Rule 25(c).

**(d) Taxable Costs.**

A motion for leave providing specific explanation and justification must accompany the bill of costs if costs for items not described in Federal Rule Appellate Procedure 39(c) are sought or if costs are sought at a rate higher than the allowable costs.



**FEDERAL CIRCUIT RULE 39**

**(e) Costs in Favor of Intervenors.**

No costs will be taxed in favor of intervenors without leave of the court.

### Practice Notes to Rule 39

#### **COSTS WHEN THE UNITED STATES IS A PARTY.**

28 U.S.C. § 2412(a) authorizes costs to be taxed against the United States; thus, costs (as defined in 28 U.S.C. § 1920) may be awarded both for and against the United States in this court.

#### **~~LIMIT ON PRINTING COSTS.~~**

~~The costs taxable under Federal Rule of Appellate Procedure 39 are limited to the costs of preparing typewritten briefs (even if a party elects to have a brief printed) and of copying briefs and appendices.~~

#### **~~CURRENT RATES.~~**

~~The following rates are the current maximum allowable costs: \$6.00 per page for the table of page numbers of designated materials, the originals of briefs, and the table of contents for the appendix (whether printed, typewritten, or word processed); \$0.08 per page for copying and collating; and \$2.00 per copy for covers and binding.~~

#### **ALLOWABLE COSTS.**

~~Costs may be billed for the number of copies of briefs and appendices required to be prepared by the court. The cost of service copies of the table or physical compilation of the designated materials may also be billed. Any other cost billed must be separately justified. The total billed for any item must be limited to the lesser of actual or allowable costs. Actual cost of briefs and appendices prepared in house includes word processing, copying, and binding, at the amount normally billed to a client for these services. The United States may assume its actual costs are the allowable costs. The costs of correcting a nonconforming brief or appendix are not taxable. Counsel are urged to stipulate to costs.~~

#### **PAYMENT OF COSTS TAXED.**

Pay the party or parties in whose favor costs are taxed by check sent to counsel for the party or to the party if the party ~~appeared pro se~~ is not represented. ~~Do not involve t~~The court is not involved in collection matters.

**Practice Notes to Rule 39**

**~~DOCKETING FEE AND~~ COSTS IN A CASE INVOLVING A CLAIM UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994.**

No costs are taxed, ~~and the docketing fee does not have to be paid, in a petition for review of a decision of the Merits Systems Protection Board~~ if the underlying appeal involved a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). 38 U.S.C. §§ 4323, 4324. The petitioner must complete Federal Circuit Form 6B to inform the court that the case involves a claim under USERRA.

**FORM FOR BILL OF COSTS.**

Using Federal Circuit Form 24 satisfies the Bill of Costs form requirements under Federal Circuit Rule 39(b).

**FEDERAL CIRCUIT RULE 40****Petition for Panel Rehearing****(a) Contents of Petition for Panel Rehearing.**

The ~~preferred~~required contents ~~and organization~~ for a petition for panel rehearing are as follows:

- (1) a white cover or first page ~~with the information~~s prescribed in Federal Rule of Appellate Procedure 32(ac)(2)(A);
- (2) the certificate of interest ~~(see under Federal Circuit Rule 47.4), which must appear immediately after the front page~~;
- (3) the table of contents;
- ~~(4)~~ the table of authorities;
- ~~(45)~~ the points of law or fact overlooked or misapprehended by the court;
- ~~(56)~~ the argument;
- ~~(67)~~ ~~the~~an addendum containing a copy of the court's dispositive order, opinion, or judgment of affirmance without opinion ~~sought to be reheard~~; and
- ~~(78)~~ ~~the proof of service (see Federal Rule of Appellate Procedure 25(d))~~a certificate of compliance that adheres to Federal Rule of Appellate Procedure 32(g).

**(b) Addendum Contents.**

- (1) Court's Decision. A copy of the dispositive order, opinion, or judgment of affirmance without opinion sought to be reheard must be bound with the petition for panel rehearing as an addendum.
- (2) Reproduction of Statutes, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the petition or response, or in any addendum attached to the petition or response.

**FEDERAL CIRCUIT RULE 40**

~~(3) **Other Material.** Material not listed in subsections (1)-(2) above or permitted under Federal Rule of Appellate Procedure 32.1(b) may not be included as an addendum without leave of the court.~~

~~(c) **Items Excluded from Page or Word Limitation; Other Material.**~~

~~(1) **Items Excluded.** The following items do not count against the page or word limitation in Federal Rule of Appellate Procedure 40(b):~~

~~(A) the certificate of interest;~~

~~(B) the table of contents;~~

~~(C) the table of citations;~~

~~(D) the addendum containing a copy of the opinion or judgment of affirmance without opinion; and~~

~~(E) any addendum containing statutes, rules, regulations, and similar matters.~~

~~(2) **Other Material.** Material not listed in this Federal Circuit Rule 40 may not be included in the addendum or in an appendix without leave of the court.~~

~~(dc) **Answer Response.**~~

~~If the court requests an answer response, which must not exceed 3,900 words if prepared using a computer electronically or fifteen (15) pages if handwritten or typewritten otherwise, the preferred required contents and organization for the answer are as follows:~~

~~(1) a white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(ac)(2)(A);~~

~~(2) the certificate of interest (see under Federal Circuit Rule 47.4), which must appear immediately after the front page;~~

~~(3) the table of contents;~~

~~(4) the table of authorities;~~

**FEDERAL CIRCUIT RULE 40**

- (45) the argument; ~~and~~
- ~~(5) — the proof of service (see Federal Rule of Appellate Procedure 25(d)).~~
- ~~(6) any addendum under Federal Circuit Rule 40(b); and~~
- ~~(7) a certificate of compliance that adheres to Federal Circuit Rule 32(g)(1).~~

**(ed) Time.**

Except for a civil case in which the United States or its officer or agency is a party, a petition for panel rehearing may be filed within thirty (30) days after entry of judgment. If the United States or its officer or agency is a party, a petition for panel rehearing may be filed within forty-five (45) days after entry of judgment. ~~The time limits set forth in this rule also apply to a motion for panel reconsideration of a dispositive panel order.~~

**(fe) Informal Petition for Panel Rehearing; AnswerResponse.**

- (1) **Informal Petition.** An ~~pro se~~unrepresented party may file three (3) copies of an informal petition for panel rehearing in letter form not to exceed fifteen (15) typewritten double-spaced pages, attaching to each a copy of the dispositive order, opinion, or judgment sought to be reheard.
- (2) **Informal AnswerResponse.** If the court requests an ~~answer response~~ to an informal petition for panel rehearing, or if the court requests an ~~pro se~~unrepresented party to ~~answer respond to~~ a formal petition for panel rehearing, the ~~answer response~~ may be informal, ~~following the standards prescribed for informal briefs~~. The informal ~~answer response~~ may not exceed fifteen (15) typewritten double-spaced pages, and three (3) copies must be filed in accordance with Federal Circuit Rule 25(c).

**FEDERAL CIRCUIT RULE 40****(gf) Amicus Curiae Brief.**

In addition to the content requirements under Federal Rule of Appellate Procedure 29(b)(4), the following apply to amicus curiae briefs filed during the panel's consideration of whether to grant a petition for panel rehearing. Except as otherwise permitted or directed by the court's permission or direction, an amicus curiae.

(1) **Leave.** The brief submitted in connection with a petition for panel rehearing must be accompanied by a motion for leave to file and must not exceed 2,600 words if produced using a computer or 10 pages if handwritten or typewritten.

(2) **Timeliness.** Except by the court's permission or direction, aAny brief amicus curiae or anyand motion for leave to file a brief amicus curiae must be filed within fourteen (14) days ofafter the date of the filing of the petition or response that the amicus curiae supports. If the amicus curiae does not support either party, then the brief ~~or~~and motion for leave to file the brief must be filed within fourteen (14) days ofafter the date of the filing of the petition.

(3) **Type-Volume Limitation.** The brief must not exceed 2,600 words if prepared electronically, or ten (10) pages otherwise.

(4) **Number of Copies.** Three (3) paper copies of the brief must be provided to the court in accordance with Federal Circuit Rule 25(c).

**(g) Number of Copies.**

Three (3) paper copies of any petition for panel rehearing or response to any petition for panel rehearing must be provided to the court in accordance with Federal Circuit Rule 25(c).

### Practice Notes to Rule 40

#### **PETITION FOR PANEL REHEARING NOT FILED WHEN MAILED/TIMELINESS.**

A petition for panel rehearing ~~must be received by the court or is~~ filed ~~through CM/ECF within~~when the ~~time fixed for filing. The time provided in Federal Circuit Rule 40(e) runs from~~court receives it, ~~not on~~ the date the judgment is entered (see ~~Federal Rule of Appellate Procedure 36~~), ~~not from the date counsel or the pro se party receives the opinion or order. Therefore, Federal Rule of Appellate Procedure 26(e) does not apply~~it was mailed. The clerk of court may return an untimely petition for panel rehearing.

#### **ACTION BY THE COURT.**

When a petition for panel rehearing is filed, the clerk of court will transmit copies to the panel that decided the case. The clerk of court will enter an order denying the petition unless a majority of the panel agrees to rehear the case. Rehearing before the panel may take place with or without further briefing or oral argument by the parties as the court directs.

#### **COMBINED PETITIONS.**

Federal Circuit Rule 35 governs the filing of combined petitioned for panel rehearing and rehearing en banc.

#### **WRIT OF CERTIORARI.**

Filing a petition for a panel rehearing is not a prerequisite to filing a petition for a writ of certiorari in the Supreme Court.



**FEDERAL CIRCUIT RULE 41****Issuance of Mandate**

An order dismissing a case on consent or for failure to prosecute, or dismissing, or remanding, ~~or transferring~~ a case on motion, will constitute the mandate. ~~The date of the certified order is the date of the mandate.~~ Except as above noted, ~~in~~ an appeal dismissed ~~or transferred~~ by the court sua sponte ~~in an opinion~~, the mandate will issue in regular course.

**Practice Note to Rule 41****RELATION OF MANDATE TO APPLICATION FOR CERTIORARI; STAY.**

That a mandate has issued does not affect the right to apply to the Supreme Court for a writ of certiorari. Consequently, a motion to stay the mandate should advance reasons for the stay beyond the mere intention to apply for certiorari, e.g., to forestall action in the trial court or agency that would necessitate a remedial order of the Supreme Court if the writ of certiorari were granted.

**FEDERAL CIRCUIT RULE 45****Clerk of Court's Duties****(a) Dismissal by Clerk of Court; Reconsideration.**

The clerk of court may dismiss an appeal for a failure to follow the Federal Rules of Appellate Procedure or these Federal Circuit Rules. A party may move that the court reconsider such dismissal. ~~And any~~ and any motion for reconsideration must:

~~(1) — be filed within~~ fourteen (14) days after issuance of the order of dismissal;

~~(2) — be in the form prescribed by Federal Rule of Appellate Procedure 27 and Federal Circuit Rule 27;~~ and must

~~(3) — not exceed five (5) pages. An unrepresented party may file an informal motion for reconsideration of the dismissal, which may be in the form of a letter.~~

**(b) ~~Informal Motion for Reconsideration~~ Release of Confidential or Sealed Materials.**

~~A pro se party may file one copy of an informal motion, which may be in the form of a letter, for reconsideration of the dismissal. The informal motion must not exceed 5 typewritten double-spaced pages. A copy of the dismissal order must be attached to the original and each copy of the informal motion. Absent court order or authorization by these rules, the clerk of court may not publicly release any confidential or sealed document except to serve case participants with court-issued documents filed under seal. Ex parte confidential filings will remain restricted to the court until such time as the court deems them fit for release to the parties or the public.~~

**(c) Authority to Enter Orders.**

The clerk of court may enter an order “For the Court” only when authorized by these rules or at the direction of a judge or the court.

**FEDERAL CIRCUIT RULE 45****(d) Communication with the Court.**

All correspondence and telephone calls about cases and motions and all press inquiries must be directed to the clerk of court.

**(e) Deputy Clerks.**

For purposes of these rules, any action that may be taken by the clerk of court may also be taken by any sworn deputy clerk of this court.

**(f) Electronic Orders and Court Documents.**

(1) **Entry and Notice.** The electronic filing by the clerk of court of any order, opinion, judgment, notice, or other court-issued document through the court's electronic filing system constitutes entry of that document on the docket maintained by the clerk of court under Federal Rule of Appellate Procedure 45(b), as well as notice to and service upon registered electronic filers under Federal Rule of Appellate Procedure 45(c). The clerk of court must give notice in paper form to any party not receiving electronic notice through the court's electronic filing system.

(2) **Signature and Validity.** Documents issued by the court, the clerk of court, or an authorized court representative are self-authenticating when issued through the court's electronic filing system. Documents requiring signature may be signed with an original, handwritten signature; an electronic signature consistent with the signature requirements for electronically filed documents under Federal Circuit Rule 25; or an affixed seal of the court. Any court document electronically signed and filed through the court's electronic filing system has the same force and effect as if it had been signed with an original, handwritten signature.

(3) **Paperless Orders.** For routine procedural and notification matters, the clerk of court has the discretion to enter a notice or an order on the electronic docket as a text-only entry. Such orders have the same force and effect as any other order or notice. The clerk of court must give notice in paper form to any party not receiving electronic notice through the court's electronic filing system.

**FEDERAL CIRCUIT RULE 45**

**(g) Public Notice.**

For purposes of these rules, the clerk of court satisfies any public notice requirement by posting the notice on the court's website.

**FEDERAL CIRCUIT RULE 46****Attorneys****(a) Eligibility.**

An attorney is eligible for admission to the bar of this court if that attorney is of good moral and professional character and is admitted to practice before and of good standing in any of the following:

- (1) any of the courts listed in [Federal Rule of Appellate Procedure 46\(a\)](#);
- (2) the United States Court of International Trade;
- (3) the United States Court of Federal Claims;
- (4) the United States Court of Appeals for Veterans Claims; or
- (5) the District of Columbia Court of Appeals.

**(b) Procedure for Admission.**

- (1) **Motion in Open Court.** An attorney may be admitted to the bar in open court by appearing personally with a sponsor who is a member of the bar of this court and who states the applicant's qualifications and moves the admission. Motions for admission to the bar will be entertained at the opening of each session of court.
- (2) **Written Motion by Member of the Court's Bar.** An attorney may be admitted on written motion of a member of the bar of the court who states attests to the applicant's qualifications.
- (3) **Written Motion by Attorney.** An attorney may be admitted on that attorney's own motion, accompanied by a certificate of good standing from a court listed in ~~[Federal Rule of Appellate Procedure 46\(a\)](#)~~ or [Federal Circuit Rule 46\(a\)](#). The certificate must be dated within thirty (30) days of the motion for admission and must bear the seal of the issuing court. A written motion for admission must be submitted on a form approved by this court. The clerk of court will furnish the form.
- (4) **Oath.** Each attorney admitted to the bar of this court must take an oath prescribed by the court.

**FEDERAL CIRCUIT RULE 46**

**(c) ~~Admission Fee; Pay.gov~~ Application, Submission, and Payment.**

~~The fee for~~An attorney seeking admission to the bar of ~~the~~this court ~~and the fee~~must electronically submit an application for a ~~duplicate certificate~~ are posted on the court's websiteadmission in accordance with the court's Electronic Filing Procedures. ~~Payment must be made through CM/ECF using pay.gov.~~After admission, Tthe applicant will receive a certificate of admission in the mail. ~~The fees for admission to the bar and a duplicate certificate are set by the court and are posted in accordance with Federal Circuit Rule 52(a).~~

**(d) Government Attorney.**

An attorney for any federal, state, or local government office or agency may appear before this court in connection with that attorney's official duties without formal admission to the bar of the court.

**(e) ~~Change of Name, Address, or Telephone Number~~ Contact Information.**

An attorney admitted to the bar of this court must promptly ~~notify the clerk of court of~~update electronic filing account information to reflect any change of name, ~~address, email address~~ or ~~telephone number~~change in contact information.

**(f) Disciplinary Action.**

Disciplinary action against an attorney will be conducted in accordance with the Federal Circuit Attorney Discipline Rules.

**Practice Notes to Rule 46**

**FORM FOR WRITTEN MOTION FOR ADMISSION.**

Using Federal Circuit Form 21 satisfies the requirements for a written motion for admission under Federal Circuit Rule 46(b)(2) and (3).

**FEDERAL CIRCUIT RULE 47****Adoption of Local Rules****(a) Regular Amendments.**

- (1) The court has adopted several local rules pursuant to Federal Rule of Appellate Procedure 47.
- (2) On its own motion or on the proposal of either the court's Advisory Council or any person, the court may propose amendments to these rules by giving public notice and the opportunity for public comment on any proposed amendments for a period of at least thirty (30) days. Following the period of public notice, the court may adopt, amend and adopt, or take no action on the proposed amendments and give public notice of its action.
- (3) In the event the court adopts final amendments to these rules, the clerk of court will give public notice of the effective date of any amendments. Unless otherwise ordered, any amendments will apply to all cases pending on or after the effective date of the amendments to the extent practicable.

**(b) Emergency Amendments.**

If the court determines that there is an immediate need for a new rule or a rule amendment based on the urgency of the matter involved, the court may provide that an amendment take immediate effect, with a period of public notice and opportunity for public comment to follow. See 28 U.S.C. § 2071(e).

**(c) Internal Operating Procedures and Other Matters.**

The court may adopt or amend internal operating procedures, standing or administrative orders, court forms, and other matters as necessary to implement these rules or otherwise provide for practice before this court. To the extent practicable, the court will provide public notice in advance of any effective date.



**FEDERAL CIRCUIT RULE 47.2**

**Panels**

**(a) Panels.**

~~Cases and controversies will be heard and determined by a panel consisting of an odd number of at least three judges, two of whom may be senior judges of the court~~When not heard en banc, cases and controversies will be heard and determined by a panel consisting of an odd number of at least three judges. A panel generally will include no more than one senior judge. See 28 U.S.C. § 46(c).

**(b) Assignment of Cases.**

Assignment of cases to panels will be made so as to provide each judge with a representative cross-section of the fields of law within the jurisdiction of the court. See 28 U.S.C. § 46(b).

**FEDERAL CIRCUIT RULE 47.3****Representation and Appearance****(a) Party and Amicus Curiae Must Be Represented; Pro Se Party; Attorney of Record; Of Counsel Representation Requirements.**

~~A corporation, partnership, organization, or other legal entity must be represented by counsel before this court. An individual (not a corporation, partnership, organization, or other legal entity) person may choose to be represented by counsel or to represent himself or herself pro se proceed without counsel, but may not be represented by a nonattorney member of the bar of this court. An individual represented by counsel, each other party in an action, each party seeking to intervene, and each amicus curiae must appear through an attorney authorized to practice before this court and must designate one attorney as the principal attorney of record. Any other attorney assisting the attorney of record must be designated as “of counsel.” Every attorney named on a brief must enter an appearance, except that the filing of an entry of appearance does not apply to government officials who, by reason of their status as supervisors or heads of offices, are listed on briefs in their ex officio capacity. Documents and matters that are sent by the court will be transmitted only to the principal attorney of record.~~

**(b) Petition for Writ of Mandamus or Prohibition Appearance.**

~~The attorney whose name, address, email address and telephone number appears first on a petition for a writ of mandamus or a writ of prohibition will be deemed attorney of record.~~

(1) **Counsel.** Counsel retained prior to docketing must file an entry of appearance within (14) days after the court docketes the case, and one counsel must be designated as the “principal counsel.” Counsel retained after initial docketing must file an entry of appearance within fourteen (14) days after being retained or admitted to the court’s bar, whichever is later. All counsel must file an entry of appearance, except for government officials, who, by reason of their status as supervisors or heads of offices, may be listed on filings in their ex officio capacity.

**FEDERAL CIRCUIT RULE 47.3**

- (2) **Counsel Not Entering Appearances.** Except for government officials noted above, counsel who have not filed an entry of appearance will neither be listed on the case docket nor on any decision in the case.
- (3) **Intervenor and Amicus Curiae.** Counsel for each intervenor, amicus curiae, or movant must file an entry of appearance contemporaneously with the first document filed by that intervenor, amicus curiae, or movant.
- (4) **Appearance Before Merits Panel.** Counsel seeking to appear for the first time after the case is assigned to a merits panel must file a motion for leave of court to appear. Only counsel who have filed entries of appearance may present oral argument.
- (5) **Unrepresented Parties.** Each unrepresented party must submit a notice of unrepresented person appearance within fourteen (14) days after the case is docketed or fourteen (14) days after the last remaining counsel for the party has withdrawn.
- (6) **Form and Contents.** An entry of appearance or notice of unrepresented person appearance must be prepared on the form supplied by the clerk of court, and all information requested on the form must be provided. At the time of filing an entry of appearance, any counsel listed on that form may file and sign the form on behalf of all listed counsel.

(c) **Appearance; Contents; Service of Papers Before Appearance; Substitution or Withdrawal of Counsel.**

- (1) ~~**Appearance.** Each attorney who intends to participate in an appeal must file, within 14 days of docketing, an entry of appearance on the form provided by the clerk of court. A pro se party must also file an entry of appearance unless all the necessary information appears on the petition for review or notice of appeal. Any attorney retained for the case later must file an entry of appearance within 14 days after being retained. An attorney representing a party seeking or permitted to intervene, and for each amicus curiae, must file an entry of appearance with the motion for leave to intervene (if required) or with the brief amicus curiae. If an attorney's entry of appearance is first submitted after a case is assigned to a merits panel, the appearance will be treated as a motion to appear and will~~

**FEDERAL CIRCUIT RULE 47.3**

~~be transmitted to the panel, which may choose to reject the entry of appearance. Counsel must immediately file an updated Entry of Appearance if representation changes, including a change in contact information. Electronic filers must also report a change in contact information to the PACER Service Center.~~

- ~~(2) — **Contents.** The appearance must include the name of the party or parties represented and the name, address, email address, and telephone number of the attorney or the pro se party. An attorney's appearance must show the name of the law firm or public or quasi-public legal office with which the attorney is associated. A new entry of appearance must be filed and served any time the information on record changes.~~
- ~~(3) — **Certificate of Interest.** A certificate of interest must be filed at the same time as the first filed entry of appearance. See Federal Circuit Rule 47.4. Both documents are due within 14 days of the date of docketing of the appeal or petition.~~
- ~~(4) — **Service of Papers Before Appearance.** Until an attorney files a written entry of appearance, service of all papers must be made on the attorney of record in the proceeding below at the last known address. If no attorney has filed an entry of appearance through ECF for a party, service of any matters must be made outside of CM/ECF until an attorney enters an appearance. In a pro se case, unless an attorney files an entry of appearance, service of all papers must be made on the pro se party at the last known address.~~
- ~~(5) — **Withdrawal of Counsel.** An attorney other than a government attorney who has been properly replaced, Principal counsel may not withdraw from representing a party without notice to the party, filing a motion with and leave of the court, and obtaining the court's consent. Government attorneys and non-principal counsel for other parties may withdraw by filing a notice with the clerk of court. To substitute principal counsel, the current principal counsel and new principal counsel must each file amended entries of appearance noting the changes in representation.~~

**(d) — Signature.**

~~At least one copy of each brief, petition, motion, application, notice, or other paper presented for filing must contain the signature of the pro se party or the electronic signature of the attorney who has entered an appearance.~~

**FEDERAL CIRCUIT RULE 47.3**

~~When no attorney appearing for a party is available to sign, any person having actual authority may sign on behalf of the attorney of record, attaching an affidavit of authority or an unsworn declaration of authority under penalty of perjury pursuant to 28 U.S.C. § 1746.~~

**Practice Notes to Rule 47.3****FORM FOR ENTRY OF APPEARANCE FORM.**

~~See Using Federal Circuit Form 8A, for a form for~~ satisfies the entry of appearance requirements under Federal Circuit Rule 47.3(b)(1) for counsel. Using Federal Circuit Form 8B satisfies the notice requirements under Federal Circuit Rule 47.3(b)(5) for unrepresented parties.

**FILINGS REQUIRING SIGNATURE AND APPEARANCE.**

~~After docketing, the clerk will accept no filing required to be signed, unless it is signed by a pro se party or an attorney who is a member of the bar, unless exempted under Federal Circuit Rule 46, and unless the pro se party or attorney has entered an appearance in the case.~~

**NEW COUNSEL ON APPEAL.**

For information on the service of documents on a party before counsel has entered an appearance, refer to Federal Circuit Rule 25(e)(5). New counsel on appeal should provide a copy of the entry of appearance form filed in this court to the lower court or agency to expedite service of the certified list and other communications.

**POST PANELING ENTRY OF APPEARANCE.**

~~When an entry of appearance is filed after the case has been assigned to a merits panel, that entry will be transmitted to the merits panel as a motion. Notification of the disposition of the motion, accepting or rejecting the entry of appearance, will be provided to counsel through CM/ECF.~~

**FEDERAL CIRCUIT RULE 47.4****Certificate of Interest****(a) Purpose; Contents.**

A certificate of interest is required ~~To~~ to determine whether recusal by a judge is necessary or appropriate, ~~an attorney—except an attorney for the United States—for each party, including a party seeking or permitted to intervene, and for each amicus curiae, must file a certificate of interest. The certificate of interest must be filed within 14 days of the date of docketing of the appeal or petition, except that for an intervenor or amicus curiae, the certificate of interest must be filed with the motion and with the brief. A~~ The certificate of interest must be in the form set forth in the appendix to these rules, and must contain the information below in the order listed. For purposes of subsections (1)-(4) below, “entity” refers to any party, intervenor, amicus curiae, or movant represented in the case by the counsel filing the certificate of interest. Negative responses, if applicable, are required as to each item ~~on the form.~~

- (1) The full name of every ~~party or amicus~~ entity represented in the case by the ~~attorney~~ counsel filing the certificate.
- (2) For each entity, ~~the~~ name of ~~the~~ every real party in interest, ~~if the party named in the caption~~ that entity is not the real party in interest.
- (3) ~~The corporate disclosure statement prescribed in Federal Rule of Appellate Procedure 26.1 and identifying~~ For each party with its ~~entity, that entity’s~~ parent corporation(s) ~~or any~~ and every publicly held corporation that owns ten percent (10%) or more of its stock. This satisfies the disclosure statement requirement of Federal Rule of Appellate Procedure 26.1(a).
- (4) The names of all law firms ~~and the,~~ partners, and associates that have not entered an appearance in the appeal, and
  - (A) appeared for the ~~party~~ entity in the lower tribunal; or
  - (B) are expected to appear for the ~~party~~ entity in this court ~~and who are not already listed on the docket for the current case.~~

**FEDERAL CIRCUIT RULE 47.4**

- (5) Other than the originating case number(s), the title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal.
- (6) All information required by Federal Rule of Appellate Procedure 26.1(b) and (c) that identifies organizational victims in criminal cases and debtors and trustees in bankruptcy cases.

**(b) Filing.**

~~The certificate~~ Each party, intervenor, amicus curiae, or movant must be filed with the entry of appearancea certificate of interest. The certificate must be filed contemporaneously with the first-filed entry of appearance. However, the United States, or its officers or agencies, and unrepresented individuals are exempt from filing a certificate of interest unless disclosing information under Federal Circuit Rule 47.4(a)(6) in compliance with Federal Rule of Appellate Procedure 26.1(b). The certificate must also be included with each motion, petition, or related response ~~thereto~~, and in each principal brief and brief amicus curiae. ~~When ownership, representation or contact information changes an updated Certificate of Interest must be filed when the change occurs.~~

**(c) Changes.**

If any of the information required ~~in~~ by Federal Circuit Rule 47.4(a) changes after the certificate is first filed and before the mandate has issued, ~~the party must file~~ an amended certificate must be filed within seven (7) days ~~of~~ after the change.

**Practice Note to Rule 47.4****CERTIFICATE OF INTEREST.**

Using [Federal Circuit Form 9](#) satisfies the certificate of interest requirements under [Federal Circuit Rule 47.4\(a\)](#).

**FEDERAL CIRCUIT RULE 47.5****Statement of Related Cases**

Each principal brief and certificate of interest must contain a statement of related cases indicating the following:

- (a) whether any other appeal in or from the same civil action or proceeding in the lower court or body was previously before this or any other appellate court, stating the following:
  - (1) the title and number of that earlier appeal;
  - (2) the date of decision;
  - (3) the composition of the panel; and
  - (4) the citation of the opinion in the Federal Reporter;
- (b) the title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal.

**Practice Note to Rule 47.5****CASES THAT ONLY INVOLVE SAME GENERAL LEGAL ISSUE.**

Cases are not “related” within the meaning of Federal Circuit Rule 47.4(a)(5) and Rule 47.5(b) simply because they involve the same general legal issue, for example, an issue as to the correct construction of a statute or regulation.



**FEDERAL CIRCUIT RULE 47.7****Attorney Fees and Expenses Incurred in This Court****(a) Time for Filing; Response.**

- (1) **Generally.** The court may award attorney fees and expenses when authorized by law. An award may be made by the court on its own motion or on application of a party.
- (2) **Time for Filing.** An application for an award of attorney fees and expenses must be served and filed within the time prescribed by the statute authorizing the award. If the statute does not prescribe a time, the application must be made within thirty (30) days after entry of the judgment or order denying rehearing, whichever is later. However, if a petition for writ of certiorari is filed, the application will not be due until thirty (30) days after all proceedings in the Supreme Court are concluded.
- (3) **Response.** No response may be filed to an application for attorney fees and expenses unless directed by the court, but no application will be granted without the court giving the party an opportunity to submit a response.
- (4) **Award on the Court's Motion.** A party awarded attorney fees and expenses by the court on its own motion must file and serve a bill of attorney fees and expenses containing the information required in [Federal Circuit Rule 47.7\(b\)\(2\)\(A\)-\(C\)](#) with the bill of costs authorized by [Federal Rule of Appellate Procedure 39\(d\)](#). Any objection must be filed within the time prescribed in [Federal Rule of Appellate Procedure 39\(d\)](#).

**(b) Contents of Application.**

- (1) **Application under the Equal Access to Justice Act.** An application for attorney fees and expenses under the Equal Access to Justice Act must be made on ~~Federal Circuit Form 20~~the form prescribed by this court.

**FEDERAL CIRCUIT RULE 47.7**

- (2) **Other Applications.** ~~Each~~All other applications for attorney fees and expenses must cite the authority for an award and must indicate how the prerequisites for an award, including timeliness, are met. In addition, ~~each~~all other applications must contain a statement, under oath, specifying the following:
- (A) the nature of each service rendered;
  - (B) the amount of time expended rendering each type of service; and
  - (C) the customary charge for each type of service rendered.

**Practice Note to Rule 47.7**

**EQUAL ACCESS TO JUSTICE ACT APPLICATION FORM.**

Using Federal Circuit Form 20 satisfies the requirements under Federal Circuit Rule 47.7(b)(1) for an application for attorney fees under the Equal Access to Justice Act.

**FEDERAL CIRCUIT RULE 47.9****Petition for Judicial Review Under 5 U.S.C. § 7703(d)****(a) Time for Filing.**

A petition for review of a final order or decision of the Merit Systems Protection Board or of an arbitrator pursuant to 5 U.S.C. § 7703(d) must be filed by the Director of the Office of Personnel Management within ~~sixty~~ **(60)** days after the date the Board or arbitrator issues notice of the final order or decision of the Board or arbitrator.

**(b) Contents.**

The Director's petition must contain the following:

- (1) a statement of jurisdiction ~~(see under~~ [Federal Rule of Appellate Procedure 28\(a\)\(4\)](#));
- (2) the Director's determination that the Board or arbitrator erred in interpreting a civil service law, rule, or regulation affecting personnel management and the reasons supporting the determination;
- (3) the Director's determination that the decision or order of the Board or arbitrator will have a substantial impact on a civil service law, rule, regulation, or policy directive, and the reasons supporting the determination; and
- (4) an appendix including a copy of the order or decision for which review is sought and any relevant portion of the record on review; the appendix may also include documents not part of the record on review that are relevant to the determination that the decision will have substantial impact.

**(c) Length of Petition, ~~Answer~~**Response** and Reply; Separate Brief.**

A petition or ~~answer~~**response** must not exceed 5,200 words if produced ~~using a computer~~**electronically** or ~~twenty~~ **(20)** pages ~~if handwritten or typewritten~~**otherwise**. A reply must not exceed 2,600 words if produced ~~using a computer~~**electronically** or ~~ten~~ **(10)** pages ~~if handwritten or~~

**FEDERAL CIRCUIT RULE 47.9**

~~typewritten otherwise~~. A separate brief supporting a petition, ~~answer response~~, or reply is not permitted.

**(d) Service and Filing.**

The Director must electronically file the petition with the clerk of court ~~through CM/ECF~~ and must serve a copy of the petition on the named respondents, all other parties before the Board or arbitrator, and the Board or arbitrator.

**(e) Notice of Docketing.**

On receipt, the clerk of court will enter the petition on the docket as a miscellaneous case and notify the Director, the named respondents, all other parties before the Board or arbitrator, and the Board or arbitrator of the docketing date.

**(f) Appearance by Others ~~Than the Named Respondent~~.**

The Board or arbitrator and any other party to the proceeding desiring to participate in the proceeding in this court must enter an appearance or file a notice if unrepresented. Anyone ~~entering an appearance appearing~~ will be deemed a respondent.

**(g) ~~Answer Response~~; Appendix; Reply.**

Within twenty-one (21) days after service of a petition, any respondent may file ~~an answer response~~. The ~~answer response~~ may include an appendix containing any relevant portion of the record on review not included in the appendix to the petition; the appendix may also include documents or affidavits not part of the record on review that are relevant to the determination that the decision will have substantial impact. Within fourteen (14) days after service of ~~an answer response~~, the Director may file a reply.

**FEDERAL CIRCUIT RULE 47.9**

**(h) Action by the Court.**

Granting a petition for review is at the discretion of the court. On receipt of an order granting review, the clerk of court must enter the petition for review on the general docket. The petition for review will then proceed as if filed under [Federal Rule of Appellate Procedure 15](#).

**FEDERAL CIRCUIT RULE 47.10**

**Dismissal of a Bankruptcy Stay Case**

An appeal stayed in accordance with the bankruptcy stay provisions of 11 U.S.C. § 362 may be dismissed by the clerk of court without prejudice to the appellant reinstating the appeal within thirty (30) days after the stay is lifted or the bankruptcy proceeding ends.

**FEDERAL CIRCUIT RULE 47.12****[Reserved]****Action for Judicial Review Under 38 U.S.C. § 502****(a) — Time for Filing.**

~~An action for judicial review under 38 U.S.C. § 502 of a rule and regulation of the Department of Veterans Affairs must be filed with the clerk of court within 60 days after issuance of the rule or regulation or denial of a request for amendment or waiver of the rule or regulation.~~

**(b) — Parties.**

~~Only a person or persons adversely affected by the rule or regulation or the rulemaking process may bring an action for judicial review. The Secretary of Veterans Affairs must be named the respondent.~~

**(c) — Contents.**

~~The action for judicial review must describe how the person or persons bringing the action are adversely affected and must specifically identify either:~~

- ~~(1) — the rule, regulation, opinion, or order of the Department of Veterans Affairs separately stated and published in the Federal Register pursuant to 5 U.S.C. § 552(a)(1) on which judicial review is sought;  
or~~
- ~~(2) — the notice and comment rulemaking process by the Department of Veterans Affairs pursuant to 5 U.S.C. § 553 on which judicial review is sought.~~

**(d) — Procedure.**

~~Except as provided in this rule, the procedures applicable to an action for judicial review under 38 U.S.C. § 502 are the same as those for a petition for review under Federal Rule of Appellate Procedure 15.~~

**FEDERAL CIRCUIT RULE 50**

**Employee and Former Employee**

**(a) Restrictions on Practice.**

No employee of the court may engage in the practice of law. No former employee of the court may participate or assist, by representation, consultation, or otherwise, in any case that was pending in the court during the period of employment.

**(b) Requirements of Counsel.**

All counsel appearing in cases before the court are required to take reasonable steps to ensure compliance with this rule. See *In re Violation of Rule 50*, 712 F. App'x 1005 (Fed. Cir. 2018).

**(c) Employee Defined.**

For purposes of this rule, a person serving at the court as an intern, whether in a judge's chambers or otherwise, is considered an employee of the court, whether such service is for pay, for law school credit, or voluntary.



**Practice Note to Rule 50**

**ALL FUTURE PARTICIPATION AND ASSISTANCE PROHIBITED.**

A former employee of the court is prohibited from participating or assisting in any case after employment with the court if the case was before this court at any point during the person's employment. Thus, for example, a former employee is prohibited from participating or assisting in a case in a trial forum, agency, or other forum if the case was before this court during the person's employment and was remanded by this court or otherwise continued in the trial forum, agency, or other forum for any other reason. A former employee is also prohibited, for example, from participating or assisting in the case if it is subsequently before this court again or if it is before the Supreme Court of the United States. In addition to [Federal Circuit Rule 50](#), former employees should also consult any applicable local bar rules and Canon 3(d) of the Code of Conduct for Judicial Employees.

**FEDERAL CIRCUIT RULE 52****Fees****(a) ~~Judicial Conference~~ Schedule of Fees.**

- (1) **General.** The fees charged by the clerk of court must be the fees prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1913 or by this rule adopted by the court. ~~No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in subsections (3)(B), (D) and (E) of this rule.~~ No fees under this schedule ~~shall~~may be charged to federal agencies or programs ~~which are~~ funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and Bankruptcy Administrator programs. ~~Fees paid to the court by attorneys must be made through CM/ECF using pay.gov~~The schedule of fees will be posted on the court's website and in a public area of the courthouse.
- (2) **Docketing Fee.** The docketing fee will be paid to the trial court clerk of court on filing a notice of appeal in that court. The docketing fee will be paid to this court's clerk of court on filing any other proceeding, ~~including an appeal or petition for review from the Patent and Trademark Office or the Merit Systems Protection Board, or any other agency, and including an extraordinary writ.~~
- (3) ~~**Judicial Conference Schedule of Fees.**~~ The fees charged by the court pursuant to the Judicial Conference Schedule of Fees are ~~posted on the court's website.~~
- ~~(4)~~ **Electronic Public Access Fee Schedule.** The fees for electronic public access are authorized by 28 U.S.C. § 1913 and promulgated in the Judicial Conference Electronic Public Access fFee sSchedule.

**(b) Copies of Opinions.**

All public court opinions are available on the court's website or PACER without charge. Printed copies of court orders and opinions are subject to the Electronic Public Access fFee sSchedule, ~~and are available without cost to those persons and organizations whose names are on a public interest list established by order of the court.~~

**FEDERAL CIRCUIT RULE 52****(c) Fees ~~T~~to Be Paid in Advance.**

~~The clerk of court is not required to docket any proceeding~~Each notice of appeal, petition for review, application or perform any other service until ~~all~~cross-application for enforcement, petition for an extraordinary writ, and petition for permission to appeal filed electronically as a case-initiating document with this court must be accompanied by the docketing fees ~~due the clerk of court are paid unless a party has been granted, or a motion for leave to proceed in forma pauperis or other waiver, as described in the court's Electronic Filing Procedures. The clerk of court may defer taking any additional action on these documents after initial docketing until any fee due is paid or the court or clerk of court grants a fee waiver. The clerk of court may also defer action on all other services requiring payment under the Schedule of Fees until payment is received.~~

**(d) Dismissal ~~of Appeal or Petition~~ for Failing ~~T~~to Pay Docketing Fee.**

If a proceeding is docketed without prepayment of the docketing fee, the appellant or petitioner must pay the fee within fourteen (14) days after docketing, unless ordered otherwise. If the clerk of court does not receive the docketing fee, a completed motion for leave to proceed in forma pauperis, or a completed Form 6BUSERRA notice within 14 days of the date of docketing of the appeal or petitionallotted timeframe, the clerk of court is authorized to dismiss the appeal or petitionproceeding.

**(e) Online Fee Payments; ~~Checks~~.**

~~Counsel shall use pay.gov to make~~Electronic filers must ~~payments for~~ all applicable fees. Instructions for use of pay.gov are available ~~electronically as provided in~~ the court's websiteElectronic Filing Procedures. ~~For matters that are not paid through pay.gov, and for pro se parties who do not use CM/ECF~~Paper filers must pay all fees in U.S. dollars in the manner set by the clerk of court based on applicable regulations of the Judicial Conference of the United States and United States Department of the Treasury. ~~eChecks in payment of fees~~ must be made payable to the Clerk of Court, United States Court of Appeals for the Federal Circuit.

### Practice Notes to Rule 52

#### **NO REFUND OF FEES.**

Fees are deposited with the Treasury Department on receipt. The clerk of court cannot refund any fee once it is deposited, except the clerk of court may refund (1) any fee paid in excess of the fee established by the court's Schedule of Fees or this court and (2) any duplicate fee for the same transaction.

#### **~~CHECKS AND DRAFTS~~METHODS OF PAYMENT.**

The clerk of court accepts only exact amounts in U.S. dollars and cannot provide change. For payment by personal check or direct debit (ACH), credit for payment will be given only after the check has been accepted by the issuing financial institution. Checks and drafts returned for insufficient funds are accepted subject to collection, and full credit including an additional fee for insufficient funds as set by the court's Schedule of Fees. The clerk of court will be given only when the check not accept credit or draft is accepted by debit card payments over the financial institution on which it is drawn phone.

#### **DOCKETING FEE AND COSTS IN A CASE INVOLVING A CLAIM UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994.**

The docketing fee does not have to be paid, and no costs are taxed, i  
In a petition for review of a ~~decision of the~~ Merits Systems Protection Board ~~decision~~, a petitioner is not required to pay the docketing fee if the ~~underlying appeal case~~ involved a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). 38 U.S.C. §§ 4323, 4324. ~~The~~ <sup>A</sup> petitioner ~~must complete~~ claiming exemption from the fee pursuant to USERRA should submit Federal Circuit Form 6B to inform the court within fourteen (14) days after the date of docketing of the petition and may be required to submit documentation that the case before the Board involves a USERRA claim under USERRA.

**FEDERAL CIRCUIT RULE 54**

**Library**

**(a) General.**

The library in the Howard T. Markey National Courts Building serves this court and the United States Court of Federal Claims.

**(b) Authorized Users.**

The library's authorized users are limited to the following:

- (1) the judges of the courts;
- (2) ~~their court~~ staff of either court;
- (3) members of the bars of either court;
- (4) ~~pro se litigants~~ unrepresented parties with pending cases in either court;
- (5) attorneys employed by the United States; and
- (6) employees of the Administrative Office of the United States Courts and the Federal Judicial Center.

**(c) Suspension; Closing.**

The librarian may suspend an authorized user for cause and may, when warranted, close the library to all except judges and the court staff.

**(d) Books: Check Out and Removal.**

Only judges and the court staff may check out books from the library. Library books must not be removed from the premises of the Howard T. Markey National Courts Building without express permission from the librarian.

## Federal Circuit Attorney Discipline Rules

### Introduction

The United States Court of Appeals for the Federal Circuit, in furtherance of its power and responsibility under [Federal Rule of Appellate Procedure 46](#) and its inherent power and responsibility to supervise the conduct of attorneys who are members of its bar, promulgates the following Attorney Discipline Rules.

The rules contemplate that a disciplinary proceeding stemming from most misconduct that occurs before a merits or motions panel will be conducted by that panel. A proceeding stemming from more serious misconduct, based on conviction of a serious crime, or imposing reciprocal discipline will be conducted by a Standing Panel on Attorney Discipline composed of three judges. In conformance with [Federal Rule of Appellate Procedure 46](#), a hearing, if requested, will be available in any proceeding. The record in an ongoing proceeding will be confidential unless otherwise ordered. At the conclusion of a proceeding in which discipline is imposed, the final order and the record will be made a public record. A final order issued by a panel will be reviewable in a manner analogous to review under [Federal Rules of Appellate Procedure 35](#) and [40](#).

### Rule 1. Definitions

- (a) **Another Court.** Another court means any Court of the United States or any court of a state, the District of Columbia, a territory, or a commonwealth of the United States. For purposes of these rules, another court also includes the United States Court of Appeals for Veterans Claims and the United States Court of Federal Claims.
- (b) **Agency.** Agency means any agency of the United States as defined in 5 U.S.C. § 551.
- (c) **Serious Crime.** Serious crime means (1) any felony or (2) any lesser crime a necessary element of which, as determined by statutory or common law definition of such crime in the jurisdiction where the conviction occurred, is (i) interference with the administration of justice, (ii) false swearing, (iii) misrepresentation, (iv) fraud, (v) willful failure to file an income tax return, (vi) deceit, (vii) bribery, (viii) extortion, (ix) misappropriation, (x) theft, or (xi) an attempt or conspiracy or solicitation of another to commit a serious crime.

### Rule 2. Grounds for Discipline

- (a) **Conviction.** Conviction in another court of a serious crime may be the basis for discipline.
- (b) **Disbarment or Suspension.** Reciprocal discipline may be imposed based on disbarment or suspension by another court or by an agency.

- (c) **Resignation.** Disbarment may be imposed based on an attorney's disbarment on consent or resignation from the bar of another court or an agency while an investigation into an allegation of misconduct is pending.
- (d) **Act or Omission.** An act or omission by an attorney ~~that~~who violates the Federal Rules of Appellate Procedure, the Federal Circuit Rules, these rules, or orders or instructions of the court, other than an act or omission contemplated by Rule 3(d) of these rules, may be the basis for discipline. A failure to notify the court in compliance with Rule 6(a) may itself be the basis for discipline.
- (e) **Conduct Unbecoming.** Any conduct before the court unbecoming a member of the bar may be the basis for discipline.

### Rule 3. Types of Discipline

- (a) **Discipline for Misconduct.** Discipline for attorney misconduct may consist of disbarment, suspension for a definite period, monetary sanction, public reprimand, private reprimand, or any other disciplinary action that the court deems appropriate.
- (b) **Disbarment.** Disbarment is the presumed discipline for conviction of a serious crime.
- (c) **Reciprocal Discipline.** The imposition of reciprocal disbarment or suspension is the presumed discipline based on the disbarment or suspension of an attorney by another court or an agency. Disbarment based on an attorney's disbarment on consent or resignation from a bar of another court or an agency while an investigation into an allegation of misconduct is pending constitutes reciprocal discipline.
- (d) **Sanctions Under Other Provisions.** Assessment of damages, costs, expenses, or attorney fees under [Federal Rule of Appellate Procedure 38](#), 28 U.S.C. § 1927, or similar statutory provision are not disciplinary sanctions within the meaning of these rules and are not governed by these rules.

### Rule 4. Disciplinary Matters Referred to the Court

- (a) **Docketing.** The ~~C~~clerk ~~shall~~of court will maintain a miscellaneous attorney disciplinary matter docket and ~~shall~~will assign a number to each matter.
- (b) **Merits or Motions Panel.** When attorney misconduct under these rules occurs within the context of a case before a merits panel or a motions panel, that panel may impose any discipline except disbarment, suspension, or a monetary sanction over \$1,000. The proceeding is conducted in accordance with Rule 5. In lieu of conducting its own proceeding a majority of the panel may refer the matter to the Standing Panel on Attorney Discipline.

(c) **Standing Panel on Attorney Discipline.**

- (1) The Standing Panel ~~shall~~must conduct proceedings in any matter in which disbarment, suspension, or a monetary sanction over \$1000 may be considered, or in any matter referred by a merits or motions panel.
- (2) The Standing Panel ~~shall~~will consist of three judges, at least two of whom ~~shall~~must be ~~active~~-judges in regular active service, appointed by the Chief Judge. The Chief Judge may serve as a member of the Standing Panel. The initial appointments ~~shall~~will be for one-, two-, and three-year terms, so that the members' terms are staggered. Thereafter, a member ~~shall~~will be appointed for a three-year term. A member who has served on the Standing Panel for three years ~~shall~~is not ~~be~~-eligible for appointment to another term until three years after termination of his or her last appointment.
- (3) The chairperson of the Standing Panel shall be the senior ~~active~~-judge in regular active service.
- (4) If a member of the Standing Panel is unable or unavailable to hear a particular matter, the Chief Judge ~~shall~~will appoint another judge to be a member of the Standing Panel for that matter. If a member of the Standing Panel is unable to complete the remainder of his or her term for any reason, e.g., retirement, incapacity, death, the Chief Judge ~~shall~~will appoint another judge to serve the remainder of the term.

**Rule 5. Merits/Motions Panel or Standing Panel Procedure**

- (a) **Representation.** An attorney may be represented by counsel in any disciplinary proceeding. Counsel must enter an appearance promptly, and in any event prior to submitting any documents or at least fourteen (14) days before appearing at a hearing, whichever is earlier. Except as provided by [Federal Circuit Rule 46\(d\)](#), counsel must be a member of the bar of this court.



- (b) **Show Cause Order.** Any panel may issue an order describing an attorney's misconduct and ordering the attorney to show cause (1) why a specific discipline should not be imposed or (2) why a discipline to be determined later should not be imposed. Unless otherwise ordered, a response ~~shall be~~ due within thirty (30) days. Any request for a hearing ~~shall~~must be included in a response.
- (c) **Uncontested Matter.** If an attorney does not respond to a show cause order or does not object to the imposition of a specified discipline, the ~~C~~clerk of court may then issue a final order imposing such discipline.
- (d) **Contested Matter.** If an attorney contests the imposition of discipline or requests a hearing, further proceedings ~~shall~~must be conducted in accordance with Rule 8.
- (e) **Referral to State Bar Association or Other Disciplinary Entity.** The Standing Panel or any merits or motions panel may in its discretion refer a pending disciplinary matter or a matter that has been concluded to an appropriate state bar association or other disciplinary entity.
- (f) **Final Order.** At the conclusion of a proceeding, a panel ~~shall~~will issue a final order in the matter. The order may direct the attorney or the ~~C~~clerk of court to send a copy of the order to all other courts and agencies before which an attorney is admitted. The ~~C~~clerk of court may also be directed to notify the American Bar Association's National Lawyer Regulatory Data Bank of the discipline.
- (g) **Review by the Panel or the ~~Active~~ Judges of the Court.** An attorney may file a petition for rehearing by the panel or a combined petition for rehearing by the panel and suggestion for rehearing by the ~~active~~-judges of the court in regular active service, or a majority of the ~~active~~-judges in regular active service may order that a disciplinary matter be heard or reheard by them. Such a hearing or rehearing is not favored and ordinarily will not be ordered except when necessary to secure or maintain uniformity of the court's decisions or when the proceeding involves a question of exceptional importance. Any such petition ~~shall~~must be filed within thirty (30) days ~~of~~after the date of the panel's final order. The procedures governing a petition for rehearing or a combined petition/suggestion will otherwise be in accordance with the provisions of Federal Rules of Appellate Procedure 35 and 40 and Federal Circuit Rules 35 and 40.

**Rule 6. Conviction or Discipline Imposed by Another Court or an Agency**

- (a) **Duty of Attorney to Notify.** An attorney who is a member of the bar of this court ~~shall~~must notify the ~~C~~clerk of court in writing within fourteen (14) days ~~of~~after the member's (1) conviction of a serious crime, (2) disbarment or suspension by another court or by an agency, or (3) disbarment on consent or resignation from the bar of another court or an agency while an investigation into an allegation of misconduct is pending. Upon receipt of such information, the ~~C~~clerk ~~shall~~of court must follow the procedures set forth in Rule 7.
- (b) **Notification from Another Court or Agency; Sua Sponte.** Upon receipt of a copy of a judgment, order, or other document demonstrating that a member of the bar of this court has been disbarred or suspended from the practice of law by another court or an agency, or has resigned while an investigation into an allegation of misconduct is pending, the ~~C~~clerk ~~shall~~of court must follow the procedures set forth in Rule 7.

**Rule 7. Proceedings for Reciprocal Discipline or Conviction of Serious Crime**

- (a) **Show Cause Order.** On notification of an attorney's disbarment or suspension by another court or agency, the ~~C~~clerk ~~shall~~of court must issue a show cause order why the court should not impose the identical discipline. On notification of an attorney's conviction of a serious crime or resignation from the bar of another court or agency while a misconduct investigation is pending, the ~~C~~clerk ~~shall~~of court must issue a show cause order why disbarment should not be imposed.
- (b) **Response.** Unless otherwise ordered, a response to a show cause order ~~shall be~~ due within thirty (30) days to the clerk of court. ~~The response should be in an envelope marked "Direct to Chief Deputy Clerk" or e-mailed to chiefdeputyclerk@cafe.uscourts.gov and~~ should indicate the docket number of the matter. Any request for a hearing ~~shall~~must be included in a response. In any response, the attorney must (1) list all bars to which the attorney is admitted, including all bar numbers and other bar identification information and (2) list all cases pending before this court in which the attorney is involved.
- (c) **Uncontested Matter.** If an attorney does not object to the imposition of reciprocal discipline or does not respond to the show cause order, the ~~C~~clerk of court may then issue a final order imposing such reciprocal discipline.
- (d) **Contested Matter.** If an attorney contests the imposition of reciprocal discipline, further proceedings ~~shall~~will be conducted in accordance with Rule 8.

- (e) **Final Order and Further Review.** At the conclusion of a proceeding, the Standing Panel ~~shall~~will issue a final order in the matter. Any further review will be in accordance with Rule 5(g).

## Rule 8. Contested Proceedings

- (a) **No Request for a Hearing.** If an attorney does not request a hearing in response to a show cause order, then the panel ~~shall~~will prepare the record consisting of the show cause order, the response, and any other documents obtained by the panel. If the record includes documents in addition to the show cause order and the response, then an attorney ~~shall~~will be given notice that he or she may inspect and copy the record at his or her expense and may file a supplemental response. Information will be withheld from an attorney only in extraordinary circumstances, e.g., for national security or criminal investigation reasons. Any supplemental response ~~shall be~~is due within ~~fourteen (14) days~~ ~~of~~after the date of the notice concerning inspection and copying.
- (b) **Request for Hearing.** On request by an attorney, except in cases of reciprocal discipline under Rule 2(b) or resignation under Rule 2(c) where the ~~conducting of a~~ hearing ~~shall be~~is at the discretion of the panel, the panel ~~shall~~will schedule a hearing. A hearing scheduled by a merits or motions panel will be an oral hearing. If a merits or motions panel determines that an evidentiary hearing is necessary, that panel ~~shall~~will refer the matter to the Standing Panel. In matters that have not been referred by a merits or motions panel, the Standing Panel shall determine whether a hearing is oral or evidentiary. An attorney ~~shall~~must be given at least ~~thirty (30) days'~~ notice of the time, date, and place of a hearing.
- (1) The record consists of the show cause order, the response, and any other documents obtained by the panel. If the record includes documents in addition to the show cause order and the response, then an attorney ~~shall~~will be given notice that he or she may inspect and copy the record at his or her expense. Information will be withheld from an attorney only in extraordinary circumstances, e.g., for national security or criminal investigation reasons.
  - (2) The Standing Panel may compel by subpoena the attendance of witnesses, including the attorney subject to the proceeding, and the production of documents.
  - (3) During an evidentiary hearing, an attorney ~~shall~~will be afforded an opportunity to cross-examine any witnesses called by the Standing Panel and to introduce evidence in defense or mitigation.
  - (4) A hearing ~~shall~~will be recorded on tape unless an attorney arranges to have a reporting service present at his or her own expense.

- (c) **Reciprocal Disciplinary Matter.** Notification that an attorney has been disbarred or suspended by another court or agency ~~shall~~establishes that the conduct in fact occurred and that the discipline was appropriate unless an attorney shows ~~that~~the following:
- (1) the procedure was so lacking in notice or opportunity to be heard that it constituted a deprivation of due process; or
  - (2) there was such an infirmity of proof establishing the misconduct that it gave rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on the matter; or
  - (3) the imposition of the same discipline by this court would result in grave injustice; or
  - (4) the misconduct established is deemed by this court to warrant substantially different ~~-discipline~~.
- (d) **Conviction of a Serious Crime.** Notification of a conviction of a serious crime ~~shall be~~is conclusive evidence of the commission of that crime for purposes of these disciplinary proceedings. ~~If an attorney notifies the court that a conviction has been vacated or reversed, the Standing Panel shall~~will promptly review the matter.

## Rule 9. Reinstatement

- (a) **After Reciprocal Disbarment or Suspension.** If disbarment by this court was based on a disbarment by another court or agency or a suspension was directed to run concurrently with a suspension ordered by another court or agency, then an attorney ~~shall be~~is eligible for reinstatement when the original discipline is lifted or expires. An attorney must submit an affidavit notifying this court of the action of the court that imposed the original discipline. The ~~C~~lerk ~~shall~~of court will refer an attorney's notification affidavit to the Standing Panel. Unless otherwise ordered, the ~~C~~lerk ~~of court shall~~will issue an order reinstating the attorney within fourteen (14) days after reference to the Standing Panel.
- (b) **After Disbarment.** An attorney who has been disbarred as a result of misconduct before this court may not apply for reinstatement until the expiration of five (5) years from the effective date of the disbarment.

(c) **After Suspension.**

- (1) An attorney who has been suspended with automatic reinstatement as a result of misconduct before this court may file an affidavit of compliance with the suspension order after the suspension period has expired. The ~~C~~clerk ~~shall~~of court will issue an order reinstating the attorney within ~~fourteen~~ (14) days.
- (2) An attorney who has been suspended conditioned on applying for reinstatement as a result of misconduct before this court may file an application after the suspension period expires.

(d) **Application for Reinstatement.** The ~~C~~clerk ~~shall~~of court will refer an application for reinstatement to the Standing Panel. Any request for a hearing ~~shall~~must be included in an application.

- (1) The Standing Panel may issue an order granting an application or, if no hearing is requested, may issue an order denying an application.
- (2) If the Standing Panel is not satisfied initially that reinstatement is appropriate and a hearing is requested, the Standing Panel ~~shall~~will schedule a hearing. The Standing Panel ~~shall~~will decide whether a hearing ~~shall~~will be oral or evidentiary. At a hearing the applicant has the burden of showing that he or she has the moral qualifications, competency, and learning in the law required for readmission and that the resumption of practice will not be detrimental to the integrity and standing of the bar or to the administration of justice.
- (3) At the conclusion of a proceeding, the Standing Panel ~~shall~~will issue a final order. Further review ~~shall~~will be in accordance with Rule 5(g).

(e) **Successive Application.** A successive application for reinstatement may not be filed until one (1) year has elapsed after an adverse decision on an earlier application.

**Rule 10. Access to Information**

- (a) **Confidentiality During Proceedings.** An ongoing disciplinary proceeding ~~shall~~bear confidential (1) unless the attorney subject to the proceeding requests that it be made a public record or (2) except to the extent that a panel may disclose the subject matter and status of a proceeding if the proceeding is based on a conviction of a serious crime, or an allegation that has become generally known to the public, or there is a need to notify another person or entity to protect the public, the legal profession, or the administration of justice.
- (b) **Confidentiality Upon Issuance of a Final Order.** A final order issuing a private reprimand or imposing no discipline and the record of those

proceedings ~~shall be~~are confidential unless the attorney subject to the proceeding requests that it be made a public record. If other discipline is imposed, a final order and the record ~~shall~~will be made a public record at the time of issuance of a final order. However, a panel may issue a permanent protective order prohibiting the disclosure of any part of the record to protect the interest of a complainant, a witness, a third party or nonparty, or the attorney.

#### **Rule 11. Effective Date**

These rules ~~shall become~~are effective ~~February 1, 2016~~July 1, 2020.