



**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**
717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439

PETER R. MARKSTEINER
CLERK OF COURT

CLERK'S OFFICE
202-275-8000

April 24, 2020

**NOTICE OF PROPOSED AMENDMENTS TO THE
FEDERAL CIRCUIT RULES OF PRACTICE**

Pursuant to 28 U.S.C. § 2071(b), the United States Court of Appeals for the Federal Circuit gives notice that it proposes to amend Federal Circuit Rules of Practice 1, 3, 4, 5, 8, 10, 11, 12, 15, 17, 18, 21, 24, 25, 25.1 (new rule), 26, 26.1, 27, 28, 28.1, 29, 30, 31, 32, 32.1, 33, 33.1, 34, 35, 36, 39, 40, 41, 45, 46, 47, 47.2, 47.3, 47.4, 47.5, 47.7, 47.9, 47.10, 47.12, 50, 52, 54, and the Federal Circuit Attorney Discipline Rules. The proposed amendments are available on the court's website ([link](#)). If adopted, the amendments would take effect on July 1, 2020.

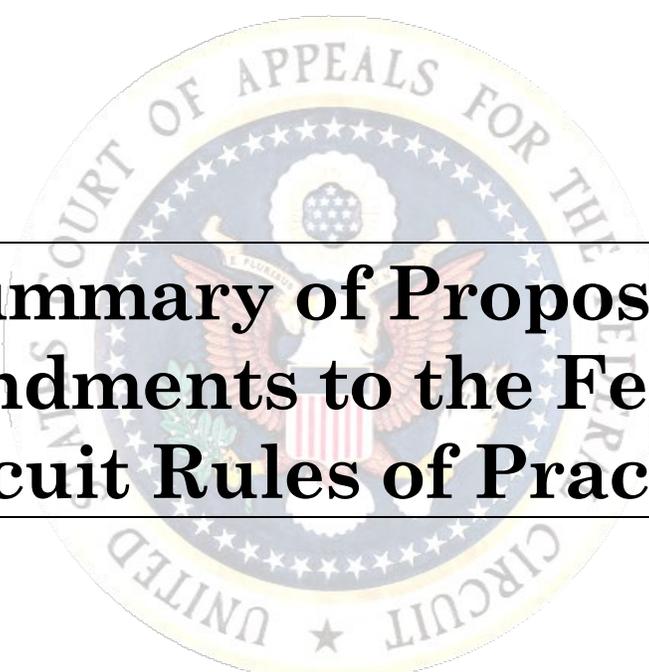
Public comments must be received by the Clerk of Court **on or before May 27, 2020**. Comments may be submitted by email to FederalCircuitRules@cafc.uscourts.gov or by mail to Proposed Rules Comments 2020, Clerk's Office, U.S. Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439.

All submitted comments must include the name and either a return email or mailing address for the submitter. Any submitted comments, including the name of the submitter, may be made available to the public unless a submitter specifically requests that either the submitter's name or comment not be released to the public.

FOR THE COURT

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court



Summary of Proposed Amendments to the Federal Circuit Rules of Practice

April 2020

The following summary was prepared by the Clerk's Office as a guide to the proposed amendments and should not substitute for reading the full text of the proposed amendments, which are available on the court's website in the two following formats.

[Redlined Copy of the Proposed Amendments](#)

[Clean Copy of the Proposed Amendments](#)

This summary is neither intended to serve as legal advice nor as commentary on the changes to the Federal Circuit Rules of Practice.

In addition to conforming amendments incorporating the 2019 amendments to the Federal Rules of Appellate Procedure (FRAP), the court is proposing amendments to the following Federal Circuit Rules of Practice (FCR).

1. **General Stylistic Changes:** Incorporating the following stylistic amendments in order to minimize stylistic differences between the Federal Rules of Appellate Procedure and the Federal Circuit Rules to the extent practicable. Additionally, the court's Federal Circuit Rules have internal stylistic inconsistencies, and the proposed amendments should remedy these issues. Lastly, some of the stylistic changes are proposed to assist with the implementation of newly proposed amendments which may require renumbering of current rules that have no other proposed amendments. The sections affected by the stylistic changes are shown in parenthesis following the explanation.
 - a. **Electronic Filing Procedures:** Renaming the document previously referred to as the "CM/ECF User Guide" or "User Manual" to "Electronic Filing Procedures." (Practice Notes to Rule 5, FCR 8, FCR 15, FCR 18, FCR 21, FCR 25, and FCR 52.)
 - b. **Formatting and Style:**
 - i. Where a Federal Circuit Rule has inconsistently lowercased or capitalized words, those words are now properly capitalized or lowercased respectively. (FCR 8, FCR 15, FCR 17, FCR 18, FCR 24, FCR 25, FCR 26, FCR 47.3, FCR 47.7, FCR 47.9, FCR 47.12, and FCR 52.)
 - ii. For numbers 1-99, we are now uniformly spelling out the number and including the numeric representation in parentheses thereafter when that number is a required amount or maximum, or indicates a deadline. All numbers have been further reviewed to ensure proper hyphenation. (FCR 8, FCR 15, Practice Notes to Rule 15, FCR 17, FCR 18, FCR 21, Practice Notes to Rule 24, FCR 25, FCR 26, FCR 26.1, FCR 27, FCR 28, FCR 28.1, FCR 30, FCR 31, FCR 32, Practice Notes to Rule 32, FCR 33, FCR 34, Practice Notes to Rule 34, FCR 35, FCR 39, Practice Notes to Rule 39, FCR 40, FCR 45, FCR 46, FCR 47.3, FCR 47.4, FCR 47.7, FCR 47.9, FCR 52, Federal

Circuit Attorney Discipline Rule 5, Federal Circuit Attorney Discipline Rule 6, Federal Circuit Attorney Discipline Rule 7, Federal Circuit Attorney Discipline Rule 8, and Federal Circuit Attorney Discipline Rule 9.)

- c. Electronic Filing System:** The “CM/ECF system” will be referred to as the “electronic filing system.” A “CM/ECF filer” will be referred to as an “electronic filer.” Non-CM/ECF filings will be referred to as “paper filings,” or “physical filings” where appropriate. (FCR 8, FCR 15, Practice Notes to Rule 15, FCR 18, FCR 21, FCR 25, Practice Notes to Rule 25, FCR 26, FCR 27, Practice Notes to Rule 27, FCR 28, FCR 30, Practice Notes to Rule 32, FCR 32.1, FCR 34, FCR 35, Practice Notes to Rule 40, FCR 46, FCR 47.3, Practice Notes to Rule 47.3, FCR 47.9, and FCR 52.)
- d. Movants:** Referring to the filer as “the movant” rather than “movant.” By itself, “movant” seems as though it would refer to a specific filer. (FCR 8, FCR 18, and FCR 24.)
- e. Pro Se Filers:** Changing the term “pro se” to “unrepresented” when referring to the individual filer and not the manner of appearance before the court. (FCR 15, Practice Notes to Rule 15, FCR 21, FCR 25, Practice Notes to Rule 25, FCR 26, FCR 28, FCR 30, FCR 31, Practice Notes to Rule 38, Practice Notes to Rule 39, FCR 40, Practice Note to Rule 40, FCR 47.3, FCR 52, and FCR 54.)
- f. Page/Type-Volume Limitations:** Where the Federal Circuit Rules state different length requirements based on whether a party is using a computer or handwriting or typewriting a document, the Clerk’s Office proposes those rules be adjusted using the following language: “<#> words if prepared electronically or <#> pages otherwise,” which is more concise and straightforward. (FCR 8, FCR 18, FCR 21, FCR 35, FCR 39, FCR 40, and FCR 47.9.)
- g. Clerk of Court:** Where the Federal Circuit Rules refer to a clerk, the rules will specify “clerk of court” if that intended clerk is the Clerk of Court of the Federal Circuit. If the intended clerk is currently ambiguous, we have proposed clarification. (FCR 4, Practice Notes to Rule 4, Practice Notes to Rule 12, FCR 15, FCR 29, FCR 34, Federal Circuit Attorney

- Discipline Rule 4, Federal Circuit Attorney Discipline Rule 5, Federal Circuit Attorney Discipline Rule 6, Federal Circuit Attorney Discipline Rule 7, and Federal Circuit Attorney Discipline Rule 9.)
- h. Cross-References:** Updating cross-references to other rules when those rules have changed location or numbering, as well as inserting cross-references where needed for clarification and deleting unnecessary cross-references. (Practice Notes to Rule 4, FCR 8, FCR 11, Practice Notes to Rule 12, FCR 15, Practice Notes to Rule 15, FCR 17, FCR 18, FCR 21, FCR 24, Practice Notes to Rule 24, FCR 25, Practice Notes to Rule 25, FCR 26, FCR 27, FCR 28, FCR 28.1, FCR 29, FCR 30, FCR 31, FCR 32, FCR 33, Practice Notes to Rule 34, FCR 35, FCR 40, FCR 45, FCR 46, and FCR 47.3.)
- i. Principal Briefs:** Uniformly referring to an appellant or petitioner's first brief as the "principal" brief. (Practice Notes to Rule 4, Practice Notes to Rule 15, FCR 25, FCR 28, FCR 30, FCR 31, and FCR 32.)
- j. Enumerated Lists:** Standardize the format of all enumerated lists. (FCR 1, FCR 8, FCR 11, the Practice Notes to Rule 15, the Practice Notes to Rule 25, FCR 26, FCR 27, FCR 28.1, FCR 30, FCR 31, FCR 32, FCR 35, FCR 40, FCR 45, FCR 46, FCR 47.5, FCR 47.7, FCR 47.9, FCR 47.12, FCR 54; Federal Circuit Attorney Discipline Rule 8.)
- k. Forms:** Standardizing references to forms in the local rules to ensure references to our court's forms appear in the format "Federal Circuit Form X" to avoid any confusion with FRAP forms. (FCR 15, the Practice Notes to FCR 15, the Practice Notes to Rule 24, FCR 39, the Practice Notes to FCR 39, FCR 46, the Practice Notes to Rule 47.3, FCR 47.4, FCR 47.7, FCR 52, the Practice Notes to FCR 52.)
- 2. Fed. Cir. R. 1:** Clarifying that the term "agency" includes certain arbitrator cases.
- 3. Fed. Cir. R. 3:** Clarifying the filing requirements for cases arising under 15 U.S.C. § 3416(c) (relating to enforcement of presidential subpoenas and orders pertaining to emergency presidential authority to collect information during a

natural gas shortage) and 42 U.S.C. § 300aa-12(f) (relating to review of Court of Federal Claims [CFC] vaccine determinations).

4. **Fed. Cir. R. 4:** Clarifying the case law and statutory requirements for filing a timely notice of appeal or petition for review; authorizing the clerk of court to return a petition for review that is untimely on its face and clarifying when the court will deactivate an appeal pursuant to FRAP 4(a)(4).
5. **Fed. Cir. R. 5:** Removing duplicative information on how to file a petition for permission and the use of the court's electronic filing system. This information can already be found in FCR 25.
6. **Fed. Cir. R. 8 and 18:** Proposing unrepresented filer electronic filing changes in FCR 25 requires corresponding changes to FCR 8 and 18; eliminating redundancy in FCR 8 and 18 regarding filing methods and content requirements, as well as new language for notifying the Clerk's Office about emergency filings.
7. **Fed. Cir. R. 10:** Clarifying the duties of the trial court clerk and clarifying how FRAP 10(d) interacts with the court's local rules; revising the Practice Notes to reflect current court practice and clarify transcript compliance requirements.
8. **Fed. Cir. R. 11:** Deleting the reference to physical exhibits since the rule does not discuss physical exhibits; providing conforming changes consistent with the creation of new FCR 25.1 to consolidate all confidentiality requirements under one rule.
9. **Fed. Cir. R. 12:** Clarifying that the clerk of court will provide the parties with the appeal number, short case name, and official caption at the time of case opening; creating two new Practice Notes to clarify how the court will reflect the official caption in cases that have been consolidated before the trial court or when an appellee chooses not to participate on appeal.
10. **Fed. Cir. R. 15:** Duplicative service information, paper copy requirements, and fee payment requirements have either been removed or clarified in order to conform to concurrent FCR 25 changes; clarifying when the clerk of court may return a petition for untimeliness and when the clerk of court is authorized to dismiss for failure to file a statement concerning discrimination.

11. **Fed. Cir. R. 17:** Aligning the rule with current Clerk's Office procedures; providing conforming changes consistent with the creation of new FCR 25.1 to consolidate all confidentiality requirements under one rule.
12. **Fed. Cir. R. 21:** Clarifying writ requirements; clarifying the mechanism for amici curiae to request leave to file in support of, or opposition to, petitions for writs of mandamus and detailing specific timing and type-volume limitations; clarifying rehearing requirements on writ petitions.
13. **Fed. Cir. R. 24:** Improving language clarity and reducing redundancy in light of other proposed amendments and current court practice.
14. **Fed. Cir. R. 25:** Clarifying, streamlining, and updating filing requirements to reflect current court practice; authorizing the clerk of court to permit electronic filing for unrepresented litigants and to suspend electronic filing accounts for system security violations or non-compliance with established filing procedures; ending pro se facsimile and email transmission of documents in light of the former change; eliminating proof of service requirements for documents filed and served entirely within the court's electronic filing system.
15. **Fed. Cir. R. 25.1:** Creating a new FCR 25.1 that consolidates all privacy and confidentiality rules into a single rule and clarifies requirements for advising the court of confidential material.
16. **Fed. Cir. R. 26:** Codifying court closure practices and the impact on filing deadlines; authorizing the clerk of court to extend filing deadlines in the event of a system failure of the court's electronic filing system.
17. **Fed. Cir. R. 26.1:** Clarifying that the court's certificate of interest rule satisfies the disclosure statement requirements of FRAP 26.1.
18. **Fed. Cir. R. 27:** Clarifying and simplifying existing language, including combining or removing language to reflect the court's current practice.
19. **Fed. Cir. R. 28:** Clarifying brief requirements and addressing gaps that have led to questions regarding brief contents; requiring certain patent information be included within patent-case briefs and requiring disclosure when a filer reuses brief language from a brief filed in a related case.

20. **Fed. Cir. R. 28.1:** Clarifying cross-appeal brief requirements and general brief content requirements.
21. **Fed. Cir. R. 29:** Clarifying amicus brief requirements and contents.
22. **Fed. Cir. R. 30:** Clarifying, streamlining, and updating language to reflect current appendix requirements.
23. **Fed. Cir. R. 31:** Clarifying briefing deadlines in consolidated cases and responsive brief deadlines when one party fails to file.
24. **Fed. Cir. R. 32:** Clarifying, streamlining, and updating document formatting requirements; ending the practice permitting parties to supply the court with corresponding briefs on CD-ROM; clarifying the requirement to include a certificate of compliance with type-volume limitations; inserting requirements regarding electronically filed documents requiring more than one attorney's signature.
25. **Fed. Cir. R. 32.1:** Removing duplicative information and clarifying the court's policies on nonprecedential and unpublished dispositions.
26. **Fed. Cir. R. 33:** Reflecting changes to the statutory scheme referenced in the section by requiring settlement discussions in inter partes proceedings.
27. **Fed. Cir. R. 33.1:** Incorporating the Mediation Guidelines docketing statement requirements into the local rules.
28. **Fed. Cir. R. 34:** Codifying the current practice for considering counsel scheduling conflicts at argument, limiting the number of counsel who can participate in argument; prohibiting the use of presentation programs, projection equipment, or certain visual aids without leave of the court.
29. **Fed. Cir. R. 35 and 40:** Adopting similar content and procedural requirements for all rehearing petitions and petitions en banc.
30. **Fed. Cir. R. 36:** Clarifying that a dispositive order issued without a separate opinion will constitute the court's judgment.
31. **Fed. Cir. R. 39:** Eliminating taxable costs amounts from the Practice Notes and delegating to the clerk of the court the authority to set reasonable cost

rates consistent with items taxable under FRAP 39; clarifying that intervenors may only receive costs under FCR 39 by leave of court.

32. **Fed. Cir. R. 41:** Clarifying dismissal and mandate requirements.
33. **Fed. Cir. R. 45:** Clarifying (1) the clerk of court's authority to issue paperless orders and sign documents electronically, (2) the authority of deputy clerks, and (3) public noticing requirements.
34. **Fed. Cir. R. 46:** Revising bar admission procedures under FCR 46 to remove redundancy with FCR 52; providing greater consistency with Form 21 requirements; clarifying when counsel can expect to receive certificates of admission and how to update electronic filing account information.
35. **Fed. Cir. R. 47:** Codifying the court's practice for amending the Federal Circuit Rules consistent with 28 U.S.C. § 2071.
36. **Fed. Cir. R. 47.2:** Clarifying the composition of a panel of the court and providing the relevant citation to the U.S. Code.
37. **Fed. Cir. R. 47.3:** Simplifying and recategorizing the requirements for an attorney to appear before the court, specifically, the process for non-principal and government counsel to withdraw from a case; requiring leave of court before an attorney can enter an appearance after a case has already been calendared.
38. **Fed. Cir. R. 47.4:** Clarifying, streamlining, and updating current certificate of interest requirements and address existing gaps that have led to questions regarding the filing procedures and contents of Federal Circuit Form 9.
39. **Fed. Cir. R. 47.5:** Clarifying language.
40. **Fed. Cir. R. 47.7:** Clarifying language and the addition of a practice note addressing Federal Circuit Form 20 use when seeking attorney fees under the Equal Access to Justice Act.
41. **Fed. Cir. R. 47.9:** Clarifying language and stylistic changes.
42. **Fed. Cir. R. 47.10:** Making stylistic changes.

43. **Fed. Cir. R. 47.12:** Relocating the rule's content to FCR 15 and reserving the rule for future use.
44. **Fed. Cir. R. 50:** Adding language requiring counsel to take reasonable steps to comply with FCR 50 requirements.
45. **Fed. Cir. R. 52:** Revising the court's fees rules to improve clarity and avoid redundancy in light of other proposed amendments and current court practice.
46. **Fed. Cir. R. 54:** Making minor adjustments to the language regarding who may use the court's library.
47. **Attorney Discipline Rules:** Clarifying language and minor stylistic changes.