



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

June 16, 2020

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

Following the period of public comment, the court reviewed submitted comments and has approved the following substantive modifications to the originally proposed amendments. All other proposed amendments will be adopted without additional substantive changes.

Stylistic, cross-reference, and similar changes are not included. New language is shown in **bold**; omitted language is shown with ~~striketrough~~.

**FEDERAL CIRCUIT RULE 25**

(e) Service.

(1) Electronic Filings. A filing does not require proof of service if it is served on all parties through the court's electronic filing system. Service of a filing to a 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~~ **user** has failed to timely provide an updated valid email address and the served email address is invalid. Any non-electronic filers in the case must be served in paper **or by an alternative method of service permitted by Federal Rule of Appellate Procedure 25(c);** ~~and~~ the filing must include proof of service **noting the method of service.**

\* \* \*

(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)~~ **using one of the other service methods permitted by Federal Rule of Appellate Procedure 25(c).**

(4) Consent to Electronic or ~~Alternate~~ **Alternative** 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, including non-electronic filers, may consent in writing to electronic service by other means. Absent such an agreement,**

**Federal Rule of Appellate Procedure 25(c)(1) applies.** ~~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.~~

### FEDERAL CIRCUIT RULE 25.1

(e) Contents and Format for Confidential Filings.

(1) Two Versions.

(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. **Except for redactions in exhibits, addenda, and appendices,** 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.

### Practice Note to FCR 25.1

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.”~~ **When including a general descriptor of redacted information, that description must appear in 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).~~

**FEDERAL CIRCUIT RULE 26**

(a) Computation of Time; ~~Closing~~ **Inaccessibility of the Clerk's Office.**

\* \* \*

(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.~~

**Inaccessibility of Nonelectronic Filing. The clerk of court may provide notice that the clerk's office is inaccessible for purposes of receiving nonelectronic filings and submissions, and deadlines for nonelectronic filings and submissions will be automatically extended in accordance with Federal Rule of Appellate Procedure 26(a)(3). Such a notice will be posted publicly.**

(4) Inaccessibility of Electronic Filing. In the event of a scheduled system outage ~~or~~, **unscheduled technical failure of the court's electronic filing system, or other matter preventing electronic filing**, 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. **Electronic filing is not "inaccessible" for purposes of extending filing deadlines under Federal Rule of Appellate Procedure 26(a)(3) absent a notice issued pursuant to this subsection or an order entered pursuant to Federal Circuit Rule 26(a)(1).**

(b) Motion to Extend Time.

\* \* \*

(4) ~~Upon certification by~~ **At any time before the expiration of a filing deadline, the filer may notify the court that additional time is needed to resolve confidentiality issues, and the court will grant provide a one-time per document extension of five (5) days to file the document. The notice must include an affidavit or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746 certifying that additional time is needed to resolve confidentiality issues.** Any additional requests for extension to resolve confidentiality issues are by leave of court.

**FEDERAL CIRCUIT RULE 28**

\* \* \*

(j) Briefs in Related Cases.

Parties may not file entirely duplicative briefs in related cases. If **all or** a portion of a brief is duplicative of ~~a portion of~~ a brief in a related case, **as defined by Federal Circuit Rule 47.5**, the filing party must so advise the court at the beginning of the brief **or** section containing the duplicative content.

**FEDERAL CIRCUIT RULE 30**

\* \* \*

(b) Preparing the Appendix.

(1) Designation of Material. The parties 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~~**To the extent practicable, 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.

(B) If the parties cannot agree within the timeframe, the appellant must serve its designation on the appellee along with a statement of the issues the appellant intends to present no later than thirty (30) days prior to the deadline for the appellant's principal brief. Within fourteen (14) days ~~thereafter~~ **after service of appellant's designation**, the appellee ~~must~~**may** serve on the appellant a counter-designation of additional material, which the appellant must include, or inform the appellant that no additional material needs to be added.

**FEDERAL CIRCUIT RULE 31**

(a) Time for Service and Filing.

\* \* \*

(2) Brief or Appellee or Cross-Appellant. The appellee or cross-appellant must serve and file its principal brief within forty (40) days after the appellant's brief is served. **In a petition for review or appeal from an agency, if the certified list or index is served after the appellant's principal brief, the appellee or cross-appellant must serve and file its principal brief within forty (40) days after service of the certified list or index.**

\* \* \*

(e) Informal Brief; Time for Filing.

\* \* \*

(2) Brief or 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. **In a petition for review or appeal from an agency, if the certified list or index is served after the appellant's or petitioner's brief, the appellee or respondent must serve and file its informal brief** within twenty-one (21) days after the certified list or index is served ~~pursuant to Federal Circuit Rule 17(e), whichever is later.~~

**FEDERAL CIRCUIT RULE 34**

\* \* \*

Practice Notes to Rule 34

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 **by email or, if time permits, by filing a citation of supplemental authority pursuant to Federal Rule of Appellate Procedure 28(j).**