

## **TOP 10 MOST COMMON ERRORS IN BRIEFS AND MOTIONS**

During one six-month sampling period from October 2013 to April 2014, the error rate in filing of briefs and motions was **16.7%**, which means **166** individual filings were incorrectly filed. The ten most common errors in filing of briefs and motions are:

### **1. DOCUMENT IS NOT TEXT-SEARCHABLE**

Documents filed electronically (e-filed) must be in Portable Document Format (PDF) which is generated from an original word processing file and is text searchable. PDF images created by scanning paper documents generally do not comply with this requirement. Fed. Cir. R. 25; Administrative Order Regarding Electronic Case Filing (ECF) 7(B). Additionally, all attorneys who appear before the U.S. Court of Appeals for the Federal Circuit are required to register as electronic filers using the ECF system. ECF-2. Consult the ECF User Guide on the CM/ECF tab of the court's website.

### **2. DOCUMENT DOES NOT COMPLY WITH FORMAT RULES**

Several rules govern the content and format of briefs, appendices and motions. For example, briefs may not be printed in a double-sided format; however the court encourages use of double-sided print in appendices (including when filing a combined brief and appendix). For rules related to briefs, see Fed. R. App. Proc. 28, and 32; Fed. Cir. R. 28 and 32; and Practice Notes. The format and content of an appendix are included in Fed. R. App. Proc. 30 and 32; and Fed. Cir. R. 30 and 32. The required content and format for motions are contained in Fed. R. App. Proc. 27; Fed. Cir. R. 27; and Practice Notes. Electronic file limits are contained in the ECF User Guide at page 103 (currently 60 MB per uploaded document; consult the ECF User Guide on procedures for splitting oversized PDF documents).

### **3. WRONG EVENT OR WRONG RELIEF IS SELECTED WHEN E-FILING**

Consult the User Guide on CM/ECF tab of the court's website when e-filing a brief or motion to ensure you are using the correct filing event. Use the event that most closely matches what you are filing or the relief you are requesting. For example, if you are filing a confidential brief, ensure you select the brief filing event specifically designated to protect confidential material: "Brief/Appendix or Joinder Tendered Confidential" (selecting the alternate event "Brief/Appendix Joinder Tendered" will result in the confidential material being publicly available in PACER). Similarly, when filing a corrected brief, select the event "file corrected brief" and not "correct document." A list of events and available relief is provided in the ECF User Guide.

#### **4. ENTRY OF APPEARANCE IS NOT FILED OR IS INCOMPLETE**

An Entry of Appearance (EOA) must be filed in every case in which a party is represented by counsel. Each participating attorney must file a separate EOA. If there is a change in participating attorneys or in an attorney's role (e.g., a change in principal counsel) an updated EOA must be filed. Only one attorney may be listed on an EOA as principal counsel. Fed. Cir. R. 47.3 and 47.4; ECF-2; see also the Clerk's Office tab on the court's website under Forms (Form 8, Entry of Appearance).

#### **5. CERTIFICATE OF INTEREST IS MISSING OR INCOMPLETE**

The requirements of Fed. R. App. Proc. 12(b) are met by filing the entry of appearance and certificate of interest required under Fed. Cir. R. 47.3 and 47.4. All information is required. When information changes (e.g., a change in the parent corporation or any publicly held companies that own 10 percent or more of the stock of the party or *amicus curiae* represented by you) the COI must be updated. See Form 9, Certificate of Interest, on the court website on the Clerk's Office tab under Forms.

#### **6. DOCKETING STATEMENT IS INCOMPLETE**

The Docketing Statement must include all related cases known to counsel. Updating the form is required when information changes. See Form 26, Docketing Statement, on the court website on the Clerk's Office tab under Forms.

#### **7. THE ATTORNEY FILING A BRIEF DOES NOT REPRESENT A PARTY**

An attorney may not file a brief on behalf of a person or entity that is not a party to the case on appeal. An exception is the filing of a brief as *amicus curiae*. The filing of a so-called "*amicus* brief" is governed Fed. R. App. P. 29; and Fed. Cir. R. 29. An attorney filing an *amicus* brief must first file an EOA (Form 8). Fed. Cir. R. 47.3 and 47.4.

#### **8. ATTORNEY IS NOT A MEMBER OF THE FEDERAL CIRCUIT BAR**

Only an attorney admitted to practice before the U.S. Court of Appeals for the Federal Circuit may appear on behalf of a party and file a brief. Admission procedures are governed by Fed. R. App. Proc. 46; and Fed. Cir. R. 46. The admission form is available on the court's website on the Clerk's Office tab under Forms (Form 21, Application for Admission).

## **9. MULTIPLE DOCUMENTS ARE FILED TOGETHER**

E-filed documents must be filed and uploaded to ECF separately. This is because each document has a unique status in the ECF system (e.g., a motion requires related relief; a brief triggers the next filing event). Please consult the User Guide posted on the CM/ECF tab of the court's website.

## **10. BRIEF OR APPENDIX IS FILED OUT OF TIME**

The appellant's brief must be filed within 60 days of docketing the appeal from a court (in an agency appeal, 60 days from service of the certified list). Fed. Cir. R. 31(a)(1). If the appellant fails to file an initial brief, the Clerk of Court is authorized to dismiss the appeal. Fed. Cir. R. 31(d). The appellee or cross-appellant's brief must be filed within 40 days of service of the appellant's brief. Fed. Cir. R. 31(a)(2). The appellant must file the appendix within 7 days of the last reply brief. Fed. Cir. R. 30(a)(4). Failure to file an appendix may result in dismissal of the case. Fed. Cir. R. 30(a)(8). When a brief and an appendix are combined, the cover must so indicate. Fed. Cir. R. 30(d)(1). Computing of time is governed by Fed. R. App. P. 26. 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. Fed. R. App. Proc. 26(b).