UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

RULES OF PRACTICE

FEDERAL RULES OF APPELLATE PROCEDURE
FEDERAL CIRCUIT RULES
PRACTICE NOTES
FEDERAL CIRCUIT ATTORNEY DISCIPLINE RULES

March 1, 2023

Washington, DC

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Incorporating final amendments to Federal Circuit Rules 25, 26, 27, 28, 28.1, 30, 31, 32, 33, 33.1, 34, 35, 39, 40, 41, 47.4, 47.5, and 47.6.

United States Court of Appeals for the Federal Circuit

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FOREWORD

This document contains the rules for proceedings in the United States Court of Appeals for the Federal Circuit. These rules include the Federal Rules of Appellate Procedure and the corresponding Federal Circuit Rules. The Federal Rules of Appellate Procedure appear on a shaded blue background for ease in distinguishing them from the Federal Circuit Rules that are on a white background. Certain provisions within the Federal Rules of Appellate Procedure are inapplicable to this court or have been modified by the Federal Circuit Rule; where appropriate, informational cross-references and annotations to the relevant Federal Circuit Rule have been added as footnotes to the Federal Rules of Appellate Procedure. Parties should review both the Federal Rule and the Federal Circuit Rule for each rule to determine whether a Federal Circuit Rule provides for additional requirements or limitations than what is stated in the Federal Rule of Appellate Procedure. Inapplicable provisions of the Federal Rules of Appellate Procedure are noted as [OMITTED].

Practice Notes following the various rules are in boxed informational sections. These Practice Notes discuss matters that are often asked of the Clerk's Office staff or provide additional explanatory information concerning the related rule. Parties may rely on the Practice Notes to assist in applying the Federal Rules and the Federal Circuit Rules, but they may not be used to avoid controlling statutes or rules.

The Federal Circuit Attorney Discipline Rules are included in this document. Other documents are available on the court's website at https://www.cafc.uscourts.gov/, including the Internal Operating Procedures, Electronic Filing Procedures, Guide for Unrepresented Parties, Appellate Mediation Program Guidelines, Guide for Oral Argument, and Federal Circuit Forms.

Inquiries about the Rules of Practice may be made to the Clerk's Office at 202-275-8000. Public access, email and telephone hours for the Clerk's Office are 8:30 a.m. to 4:30 p.m. (Eastern), Monday through Friday. Please refer to the court's website for additional contact information for the Clerk's Office and various filing resources, argument resources, electronic filing resources, and unrepresented filer resources developed by the Clerk's Office that may be of assistance to you.

Comments on the Rules of Practice are welcome at any time. Please send comments to FederalCircuitRules@cafc.uscourts.gov or Clerk of Court, United States Court of Appeals for the Federal Circuit, 717 Madison Place, NW, Washington, DC 20439.

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TITLE I — APPLICABILITY OF RULES

FEDERAL RULE OF APPELLATE PROCEDURE 1

Scope of Rules; Definition; Title

(a) Scope of Rules.

(1) These rules govern procedure in the United States courts of appeals.

(2) When these rules provide for filing a motion or other document in the district court, the procedure must comply with the practice of the district court.

(b) Definition.

In these rules, 'state'* includes the District of Columbia and any United States commonwealth or territory.

(c) Title.

These rules are to be known as the Federal Rules of Appellate Procedure.

FEDERAL CIRCUIT RULE 1

Scope of Rules; Definitions; 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.

*So in original.

FEDERAL CIRCUIT RULE 1

(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) 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;

(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.

FEDERAL CIRCUIT RULE 1

(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 RULE OF APPELLATE PROCEDURE 2

Suspension of Rules

On its own or a party's motion, a court of appeals may — to expedite its decision or for other good cause — suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

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TITLE II — APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

FEDERAL RULE OF APPELLATE PROCEDURE 3

Appeal as of Right — How Taken

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

FEDERAL RULE OF APPELLATE PROCEDURE 3

(B) designate the judgment — or appealable order — from which the appeal is taken; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) The notice of appeal encompasses all orders that, for purposes of appeal, merge into the designated judgment or appealable order. It is not necessary to designate those orders in the notice of appeal.

(5) In a civil case, a notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Federal Rule of Civil Procedure 58, if the notice designates:

(A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or

(B) an order described in Rule 4(a)(4)(A).

(6) An appellant may designate only part of a judgment or appealable order by expressly stating that the notice of appeal is so limited. Without such an express statement, specific designations do not limit the scope of the notice of appeal.

(7) An appeal must not be dismissed for informality of form or title of the notice of appeal, for failure to name a party whose intent to appeal is otherwise clear from the notice, or for failure to properly designate the judgment if the notice of appeal was filed after entry of the judgment and designates an order that merged into that judgment.

(8) Forms 1A and 1B in the Appendix of Forms are suggested forms of notices of appeal.*

* Federal Circuit Form 1 is available as a suggested form of a notice of appeal.

FEDERAL RULE OF APPELLATE PROCEDURE 3

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the filing of a notice of appeal by sending a copy to each party's counsel of record — excluding the appellant's — or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries — and any later docket entries — to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.

(3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk sends copies, with the date of sending. Service is sufficient despite the death of a party or the party's counsel.

(e) Payment of Fees.

Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

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.

Appeals Under 5 U.S.C. § 3416(c) and Petitions Under 42 U.S.C. § 300aa-12(f).

Notices of appeal under 15 U.S.C. § 3416(c) from 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 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 clerks of those courts.

FEDERAL RULE OF APPELLATE PROCEDURE 4

Appeal as of Right — When Taken

(a) Appeal in a Civil Case.

(1) **Time for Filing a Notice of Appeal.**

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;

(ii) a United States agency;

(iii) a United States officer or employee sued in an official capacity; or

(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf — including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) **Filing Before Entry of Judgment.**

A notice of appeal filed after the court announces a decision or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry.

(3) **Multiple Appeals.**

If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

FEDERAL RULE OF APPELLATE PROCEDURE 4

(4) **Effect of a Motion on a Notice of Appeal.**

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure — and does so within the time allowed by those rules — the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)

(i) If a party files a notice of appeal after the court announces or enters a judgment — but before it disposes of any motion listed in Rule 4(a)(4)(A) — the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal — in compliance with Rule 3(c) — within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

FEDERAL RULE OF APPELLATE PROCEDURE 4

(5) **Motion for Extension of Time.**

(A) The district court may extend the time to file a notice **of** appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) or may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) **Reopening the Time to File an Appeal.**

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) **Entry Defined.**

(A) A judgment or order is entered for purposes of this Rule 4(a):

FEDERAL RULE OF APPELLATE PROCEDURE 4

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from that judgment or order.

(b) Appeal in a Criminal Case.

(1) **Time for Filing a Notice of Appeal.**

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) **Filing Before Entry of Judgment.**

A notice of appeal filed after the court announces a decision, sentence, or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry.

FEDERAL RULE OF APPELLATE PROCEDURE 4

(3) **Effect of a Motion on a Notice of Appeal.**

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order — but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) — becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective — without amendment — to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) **Motion for Extension of Time.**

Upon a finding of excusable neglect or good cause, the district court may — before or after the time has expired, with or without motion and notice — extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) **Jurisdiction.**

The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal

Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) **Entry Defined.**

A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. § 1746 — or a notarized statement — setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals.

If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

FEDERAL CIRCUIT RULE 4

Appeal as of Right — Untimely Notice

(a) Statutory Deadlines.

This court cannot waive or extend the 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	28 U.S.C. § 2522 (Appeals)	60 days
	42 U.S.C. § 300aa-12(f) (Petitions)	60 days
Court of Appeals for Veterans Claims	38 U.S.C. § 7292	60 days

For petitions for review from agencies, see the Practice Notes 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

PRACTICE NOTES TO RULE 4

a timeliness defect not identified by a party or excuse non-compliance with a time limit for equitable reasons.

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. This court's clerk of court will deactivate 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, 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 principal brief well before the applicable deadlines. For further information on expedition procedures, see the Practice Notes to Rule 27.

FEDERAL RULE OF APPELLATE PROCEDURE 5

Appeal by Permission

(a) Petition for Permission to Appeal.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition with the circuit clerk and serve it on all other parties to the district-court action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.

(b) Contents of the Petition; Answer or Cross-Petition; Oral Argument.

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and

(E) an attached copy of:

(i) the order, decree, or judgment complained of and any related opinion or memorandum, and

(ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

(2) A party may file an answer in opposition or a cross-petition within 10 days after the petition is served.

FEDERAL RULE OF APPELLATE PROCEDURE 5

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) Form of Papers; Number of Copies; Length Limits.

All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.* Except by the court's permission, and excluding the accompanying documents required by Rule 5(b)(1)(E):

(1) a paper produced using a computer must not exceed 5,200 words; and

(2) a handwritten or typewritten paper must not exceed 20 pages.†

(d) Grant of Permission; Fees; Cost Bond; Filing the Record.

(1) Within 14 days after the entry of the order granting permission to appeal, the appellant must:

(A) pay the district clerk all required fees; and

(B) file a cost bond if required under Rule 7.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c).

*No copies are required. *See* Fed. Cir. R. 25(c)(3).

†A petition for permission to appeal, cross-petition, or response must include a certificate of compliance with the type-volume limitations in accordance if filed under Fed. R. App. P. 5(c)(1). *See* Fed. R. App. P. 32(g).

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.

FEDERAL RULE OF APPELLATE PROCEDURE 6

Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel

[OMITTED]

FEDERAL RULE OF APPELLATE PROCEDURE 7

Bond for Costs on Appeal in a Civil Case

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

FEDERAL RULE OF APPELLATE PROCEDURE 8

Stay or Injunction Pending Appeal

(a) Motion for Stay.

(1) **Initial Motion in the District Court.**

A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of a district court pending appeal;

(B) approval of a bond or other security provided to obtain a stay of judgment; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) **Motion in the Court of Appeals; Conditions on Relief.**

A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(A) The motion must:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time

FEDERAL RULE OF APPELLATE PROCEDURE 8

requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other security in the district court.

(b) Proceeding Against a Security Provider.

If a party gives security with one or more security providers, each provider submits to the jurisdiction of the district court and irrevocably appoints the district clerk as its agent on whom any papers affecting its liability on the security may be served. On motion, a security provider's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district clerk, who must promptly send a copy to each security provider whose address is known.

(c) Stay in a Criminal Case.

Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case.

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 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) Notice When Requesting Immediate Action.

A party moving for a stay or injunction pending appeal and requesting immediate action by the court must — before filing — notify all parties that a motion will be filed.

(c) Statement.

If an initial motion for a stay or injunction pending appeal was not made in the 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 trial court and remains pending, the movant must include in its motion in this court a statement specifically identifying when it filed the motion in the trial court and why it is not practicable to await a ruling by the trial court on that motion.

PRACTICE NOTES TO RULE 8

Format Requirements.

See Federal Rule of Appellate Procedure 27 for format requirements concerning motions.

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. 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 RULE OF APPELLATE PROCEDURE 9

Release in a Criminal Case

[OMITTED]

FEDERAL RULE OF APPELLATE PROCEDURE 10

The Record on Appeal

(a) Composition of the Record on Appeal.

The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

(1) **Appellant's Duty to Order.**

Within 14 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

FEDERAL RULE OF APPELLATE PROCEDURE 10

(B) file a certificate stating that no transcript will be ordered.*

(2) **Unsupported Finding or Conclusion.**

If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) **Partial Transcript.**

Unless the entire transcript is ordered:

(A) the appellant must — within the 14 days provided in Rule 10(b)(1) — file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 14 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

(C) unless within 14 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 14 days either order the parts or move in the district court for an order requiring the appellant to do so.†

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*The appellant will not be able to file the certificate until this court dockets the appeal. The appellant must file the certificate as soon as possible once the appeal is docketed if the 14-day period has already expired.

†The court's Docketing Statement (Form 26) satisfies the statement of the issues requirement of Fed. R. App. P. 10(b)(3)(A). *See* Fed. Cir. R. 47.6. However, the appellant will not be able to file the docketing statement until this court dockets the appeal. In order to ensure adequate time to prepare the transcript and to comply with this rule, the appellant must serve the intended statement of the issues or Docketing Statement on the appellee within the 14-day period provided in this rule. This court will accept the later filing of the Docketing Statement based on the timeframe provided in the court's Mediation Guidelines.

FEDERAL RULE OF APPELLATE PROCEDURE 10

(4) **Payment.**

At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable.

If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal.

In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it — together with any additions that the district court may consider necessary to a full presentation of the issues on appeal — must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.*

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

*Filing an agreed statement will not waive this court's appendix requirement. *See* Fed. Cir. R. 10(b).

FEDERAL RULE OF APPELLATE PROCEDURE 10

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

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 trial court may direct the parties to proceed under Federal Rule of Appellate Procedure 10(c) or (d).

(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 30 and Federal Circuit Rule 30.

PRACTICE NOTES TO RULE 10

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 RULE OF APPELLATE PROCEDURE 11

Forwarding the Record

(a) Appellant's Duty.

An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

(b) Duties of Reporter and District Clerk.

(1) **Reporter's Duty to Prepare and File a Transcript.**

The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) **District Clerk's Duty to Forward.**

When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a

FEDERAL RULE OF APPELLATE PROCEDURE 11

party must arrange with the clerks in advance for their transportation and receipt.*

(c) Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal.

The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event, the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.†

(d) [Abrogated.]

(e) Retaining the Record by Court Order.

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.‡

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.

(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.

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*The district court clerk must retain the record and must not send the record to this court. *See* Fed. Cir. R. 11(a)(1).

†This procedure is not necessary as the district court clerk must retain the record for appeals to this court. *See* Fed. Cir. R. 11(a)(1).

‡For any request that the district court forward the record, including physical exhibits, the party must direct that request to this court in the form of a motion. *See* Fed. Cir. R. 11(a)(1)(A).

(f) Retaining Parts of the Record in the District Court by Stipulation of the Parties.

The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or request by a party. The parts of the record so designated remain a part of the record on appeal.*

(g) Record for a Preliminary Motion in the Court of Appeals.

If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- for dismissal;
- for release;
- for a stay pending appeal;
- for additional security on the bond on appeal or on a bond or other security provided to obtain a stay of judgment; or
- for any other intermediate order —

the district clerk must send the court of appeals any parts of the record designated by any party.†

*This procedure is not necessary as the district court clerk must retain the record for appeals to this court. *See* Fed. Cir. R. 11(a)(1).

†The district court clerk must retain the record and must not send the record to this court. *See* Fed. Cir. R. 11(a)(1).

FEDERAL CIRCUIT RULE 11

Forwarding the Record

(a) Retaining the Record; Certified Copy of the Docket Entries; Archival Storage.

(1) **Record and Docket.**

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.

(c) Protective Orders.

Federal Circuit Rule 25.1(c) applies to the status of trial court protective orders and modification thereof.

FEDERAL RULE OF APPELLATE PROCEDURE 12

Docketing the Appeal; Filing a Representation Statement; Filing the Record

(a) Docketing the Appeal.

Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

(b) Filing a Representation Statement.

Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 14 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.*

(c) Filing the Record, Partial Record, or Certificate.

Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

FEDERAL CIRCUIT RULE 12

Docketing the Appeal

(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.

*See the Practice Notes to Rule 12 (Representation Statement) for information concerning how to satisfy this requirement.

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.

Representation Statement.

The requirements of Federal Rule of Appellate Procedure 12(b) are met by filing the entry of appearance required under Federal Circuit Rule 47.3. 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.

Trial Court Intervenors.

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.

Transferred Appeal.

An appeal transferred from another court will be given a new docket number and 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 RULE OF APPELLATE PROCEDURE 12.1

Remand After an Indicative Ruling by the District Court on a Motion for Relief That Is Barred by a Pending Appeal

(a) Notice to the Court of Appeals.

If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the circuit clerk if the district court states either that it would grant the motion or that the motion raises a substantial issue.

(b) Remand After an Indicative Ruling.

If the district court states that it would grant the motion or that the motion raises a substantial issue, the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal. If the court of appeals remands but retains jurisdiction, the parties must promptly notify the circuit clerk when the district court has decided the motion on remand.

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TITLE III — APPEALS FROM THE UNITED STATES TAX COURT

FEDERAL RULE OF APPELLATE PROCEDURE 13

Review of a Decision of the Tax Court

[OMITTED]

FEDERAL RULE OF APPELLATE PROCEDURE 14

Applicability of Other Rules to the Review of a Tax Court Decision

[OMITTED]

TITLE IV — REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

FEDERAL RULE OF APPELLATE PROCEDURE 15

Review or Enforcement of an Agency Order

(a) Petition for Review; Joint Petition.

(1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in a petition to the same court to review the same order.

(2) The petition must:

(A) name each party seeking review either in the caption or the body of the petition — using such terms as "et al.," "petitioners," or "respondents" does not effectively name the parties;

(B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and

(C) specify the order or part thereof to be reviewed.*

(3) Form 3 in the Appendix of Forms is a suggested form of a petition for review.†

(4) In this rule "agency" includes an agency, board, commission, or officer; "petition for review" includes a petition to enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.

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*The petition must also include contact information for the counsel or unrepresented party filing the petition. *See* Fed. Cir. R. 15(a)(3). A petition from an arbitrator's decision must include contact information for the arbitrator as well. *See* Fed. Cir. R. 15(d).

†Federal Circuit Form 5 is available for a petition for review to this court.

FEDERAL RULE OF APPELLATE PROCEDURE 15

(b) Application or Cross-Application to Enforce an Order; Answer; Default.

(1) An application to enforce an agency order must be filed with the clerk of a court of appeals authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may file a cross-application for enforcement.

(2) Within 21 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.

(3) The application must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief requested.

(c) Service of the Petition or Application.

The circuit clerk must serve a copy of the petition for review, or an application or cross-application to enforce an agency order, on each respondent as prescribed by Rule 3(d), unless a different manner of service is prescribed by statute. At the time of filing, the petitioner must:

(1) serve, or have served, a copy on each party admitted to participate in the agency proceedings, except for the respondents;

(2) file with the clerk a list of those so served; and

(3) give the clerk enough copies of the petition or application to serve each respondent.

(d) Intervention.

Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion — or other notice of intervention authorized by statute — must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

FEDERAL RULE OF APPELLATE PROCEDURE 15

(e) Payment of Fees.

When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.

FEDERAL CIRCUIT RULE 15

Review of an Agency Order or Action

(a) Petition for Review or Notice of Appeal; Payment of Fees; Contact Information of Counsel or Unrepresented Petitioner or Appellant.

(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. The appellant must simultaneously file the notice with the clerk of court. The Director must promptly advise the clerk of court whether the notice is 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.

(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) **Contact Information of Counsel or Unrepresented Petitioner or Appellant.**

Each petition for review or notice of appeal must contain the counsel's — or the unrepresented petitioner's or appellant's — name, current address, email address, and telephone number.

(4) **Filing and Payment.**

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).

(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.

(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 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 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 file a statement indicating whether or not a claim of discrimination by reason of race, color, religion, sex, age, national origin, or handicapping condition has been or will be

made in the case. A petitioner must file the statement on the form prescribed by the court.

(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) Arbitrator Contact Information.

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 Under 38 U.S.C. § 502.

(1) **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 six (6) years after issuance of the action challenged in the petition. *See* 28 U.S.C. § 2401(a).

(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 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 and the event that starts the period.

AGENCY	STATUTE	TIME
Arbitrator	5 U.S.C. §§ 7121, 7703	60 days
Board of Contract Appeals	41 U.S.C. § 7107	120 days
Board of Directors, Office of Congressional Workplace Rights	2 U.S.C. § 1407(c)(3)	90 days
Bureau of Justice Assistance	42 U.S.C. § 3796c-2	90 days
Government Accountability Office Personnel Appeals Board	31 U.S.C. § 755	30 days
International Trade Commission	19 U.S.C. § 1337	60 days
Merit Systems Protection Board	5 U.S.C. § 7703	60 days
Patent Trial and Appeal Board; Trademark Trial and Appeal Board; Director of the United States Patent and Trademark Office	35 U.S.C. § 142; 15 U.S.C. § 1071; 37 C.F.R. §§ 90.3(a)(1), 1.304, 2.145	2 months or 63 days

PRACTICE NOTES TO RULE 15

AGENCY	STATUTE	TIME
Secretary of Agriculture	7 U.S.C. § 2461	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
Secretary of Veterans Affairs	38 U.S.C. § 502; Fed. Cir. R. 15(f)	60 days

Filing in the Patent and Trademark Office.

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

Office of the General Counsel
United States Patent and Trademark Office
P.O. 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
10B20, Madison Building East
600 Dulany Street, Alexandria, Virginia.

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.

PRACTICE NOTES TO RULE 15

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 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.

Statement Concerning Discrimination.

Using Federal Circuit Form 10 satisfies the requirements under Federal Circuit Rule 15(c). The clerk of court will include 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.

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 appeals, cross-appeals, or petitions for review from rulings in the same underlying proceeding, the petitions or appeals will usually be consolidated 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.

PRACTICE NOTES TO RULE 15

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.

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.

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.

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 principal brief well before the deadline for such actions. For further information on expedition procedures, see the Practice Notes to Rule 27.

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 RULES OF APPELLATE PROCEDURE 15.1

Briefs and Oral Argument in a National Labor Relations Board Proceeding

[OMITTED]

FEDERAL RULE OF APPELLATE PROCEDURE 16

The Record on Review or Enforcement

(a) Composition of the Record.

The record on review or enforcement of an agency order consists of:

(1) the order involved;

(2) any findings or report on which it is based; and

(3) the pleadings, evidence, and other parts of the proceedings before the agency.

(b) Omissions from or Misstatements in the Record.

The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

FEDERAL RULE OF APPELLATE PROCEDURE 17

Filing the Record

(a) Agency to File; Time for Filing; Notice of Filing.

The agency must file the record with the circuit clerk within 40 days after being served with a petition for review, unless the statute authorizing review provides otherwise, or within 40 days after it files an application for enforcement unless the respondent fails to answer or the court orders otherwise. The court may shorten or extend the time to file the record. The clerk must notify all parties of the date when the record is filed.

(b) Filing — What Constitutes.

(1) The agency must file:

(A) the original or a certified copy of the entire record or parts designated by the parties; or

(B) a certified list adequately describing all documents, transcripts of testimony, exhibits, and other material constituting the record, or describing those parts designated by the parties.*

(2) The parties may stipulate in writing that no record or certified list be filed. The date when the stipulation is filed with the circuit clerk is treated as the date when the record is filed.

(3) The agency must retain any portion of the record not filed with the clerk. All parts of the record retained by the agency are a part of the record on review for all purposes and, if the court or a party so requests, must be sent to the court regardless of any prior stipulation.

*The agency must retain the record and must only send this court the certified list or index. *See* Fed. Cir. R. 15(a).

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 this court dockets 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.

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) Protective Orders.

Federal Circuit Rule 25.1(c) applies to the status of agency protective orders and modification thereof.

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.

FEDERAL RULE OF APPELLATE PROCEDURE 18

Stay Pending Review

(a) Motion for a Stay.

(1) **Initial Motion Before the Agency.**

A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order.

(2) **Motion in the Court of Appeals.**

A motion for a stay may be made to the court of appeals or one of its judges.

(A) The motion must:

(i) show that moving first before the agency would be impracticable; or

(ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) The motion must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(b) Bond.

The court may condition relief on the filing of a bond or other appropriate security.

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) Notice When Requesting Immediate Action.

A party moving for a stay or injunction pending review and requesting immediate action by the court must — before filing — notify all parties that a motion will be filed.

(c) 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 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 for format requirements concerning motions.

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. 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 RULE OF APPELLATE PROCEDURE 19

Settlement of a Judgment Enforcing an Agency Order in Part

When the court files an opinion directing entry of judgment enforcing the agency's order in part, the agency must within 14 days file with the clerk and serve on each other party a proposed judgment conforming to the opinion. A party who disagrees with the agency's proposed judgment must within 10 days file with the clerk and serve the agency with a proposed judgment that the party believes conforms to the opinion. The court will settle the judgment and direct entry without further hearing or argument.

FEDERAL RULE OF APPELLATE PROCEDURE 20

Applicability of Rules to the Review or Enforcement of an Agency Order

All provisions of these rules, except Rules 3–14 and 22–23, apply to the review or enforcement of an agency order. In these rules, "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.

FEDERAL CIRCUIT RULE 20

Applicability of Rules to the Review of an Agency Order or Action

All provisions of these Federal Circuit Rules, except Federal Circuit Rules 3–12, apply to the review of an agency order. In these Federal Circuit Rules, "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.

TITLE V — EXTRAORDINARY WRITS

FEDERAL RULE OF APPELLATE PROCEDURE 21

Writs of Mandamus and Prohibition, and Other Extraordinary Writs

(a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing.

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file the petition with the circuit clerk and serve it on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2) (A) The petition must be titled "In re [name of petitioner]."

(B) The petition must state:

(i) the relief sought;

(ii) the issues presented;

(iii) the facts necessary to understand the issue presented by the petition; and

(iv) the reasons why the writ should issue.

(C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The clerk must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

FEDERAL RULE OF APPELLATE PROCEDURE 21

(4) The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, the trial-court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The circuit clerk must send a copy of the final disposition to the trial-court judge.

(c) Other Extraordinary Writs.

An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk and serving it on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).

(d) Form of Papers; Number of Copies; Length Limits.

All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.* Except by the court's permission, and excluding the accompanying documents required by Rule 21(a)(2)(C):

(1) a paper produced using a computer must not exceed 7,800 words; and

(2) a handwritten or typewritten paper must not exceed 30 pages.†

*No copies are required. *See* Fed. Cir. R. 21(c)(1); Fed. Cir. R. 25(c)(3).

†A petition for writ of mandamus or prohibition and any response must include a certificate of compliance with the type-volume limitations if filed under Fed. R. App. P. 21(d)(1). *See* Fed. R. App. P. 32(g).

FEDERAL CIRCUIT RULE 21

Writs of Mandamus and Prohibition, and Other Extraordinary Writs

(a) Title; Fee; 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 unrepresented.

(3) The petition must 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.

(5) No response may be filed unless ordered by the court.

(b) 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 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 electronically or fifteen (15) pages 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.

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TITLE VI — HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

FEDERAL RULE OF APPELLATE PROCEDURE 22

Habeas Corpus and Section 2255 Proceedings

[OMITTED]

FEDERAL RULE OF APPELLATE PROCEDURE 23

Custody or Release of a Prisoner in a Habeas Corpus Proceeding

[OMITTED]

FEDERAL RULE OF APPELLATE PROCEDURE 24

Proceeding in Forma Pauperis

(a) Leave to Proceed in Forma Pauperis.

(1) **Motion in the District Court.**

Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;*

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) **Action on the Motion.**

If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and

* Federal Circuit Form 6 is this court's version of Form 4.

costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) **Prior Approval.**

A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court — before or after the notice of appeal is filed — certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

(4) **Notice of District Court's Denial.**

The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) **Motion in the Court of Appeals.**

A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) Leave to Proceed in Forma Pauperis on Appeal from the United States Tax Court or on Appeal or Review of an Administrative Agency Proceeding.

A party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1):

FEDERAL RULE OF APPELLATE PROCEDURE 24

(1) in an appeal from the United States Tax Court; and

(2) when an appeal or review of a proceeding before an administrative agency, board, commission, or officer proceeds directly in the court of appeals.

(c) Leave to Use Original Record.

A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

FEDERAL CIRCUIT RULE 24

Proceeding in Forma Pauperis

(a) Form.

Within fourteen (14) days after docketing, 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. 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 the motion and affidavit, the movant must file a supplemental form for prisoners.

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 Rule 30(h); Federal Circuit Forms 11–17.

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 Unrepresented Petitioners and Appellants for further information.

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).

TITLE VII — GENERAL PROVISIONS

FEDERAL RULE OF APPELLATE PROCEDURE 25

Filing and Service

(a) Filing.

(1) **Filing with the Clerk.**

A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

(2) **Filing: Method and Timeliness.**

(A) **Nonelectronic Filing.**

(i) **In General.** For a paper not filed electronically, filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

(ii) **A Brief or Appendix.** A brief or appendix not filed electronically is timely filed, however, if on or before the last day for filing, it is:

- mailed to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage prepaid; or
- dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(iii) **Inmate Filing.** If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(A)(iii). A paper not filed electronically by an inmate is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

- it is accompanied by: a declaration in compliance with 28 U.S.C. § 1746 — or a notarized statement — setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that

FEDERAL RULE OF APPELLATE PROCEDURE 25

the paper was so deposited and that postage was prepaid; or

- the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(A)(iii).

(B) **Electronic Filing and Signing.**

(i) **By a Represented Person — Generally Required; Exceptions.** A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.*

(ii) **By an Unrepresented Person — When Allowed or Required.** A person not represented by an attorney:

- may file electronically only if allowed by court order or by local rule; and
- may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.†

(iii) **Signing.** A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.‡

(iv) **Same as a Written Paper.** A paper filed electronically is a written paper for purposes of these rules.

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*See Fed. Cir. R. 25(c)(1)(A)–(B) and Fed. Cir. R. 30(i) for situations where a person represented by an attorney may file in paper.

†Fed. Cir. R. 25(a)(1)(B) authorizes the clerk of court to permit electronic filing for unrepresented parties which began on October 1, 2020.

‡The acceptable formats for the electronic signature are described in Fed. Cir. 25(g)(1)(A). The oath of admission to the Federal Circuit bar requires a handwritten signature. *See* Fed. Cir. R. 25(g)(2).

FEDERAL RULE OF APPELLATE PROCEDURE 25

(3) **Filing a Motion with a Judge.**

If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.

(4) **Clerk's Refusal of Documents.**

The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(5) **Privacy Protection.**

An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case. The provisions on remote electronic access in Federal Rule of Civil Procedure 5.2(c)(1) and (2) apply in a petition for review of a benefits decision of the Railroad Retirement Board under the Railroad Retirement Act.

(b) Service of All Papers Required.

Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Nonelectronic service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail;

(C) by third-party commercial carrier for delivery within 3 days.

FEDERAL RULE OF APPELLATE PROCEDURE 25

(2) Electronic service of a paper may be made (A) by sending it to a registered user by filing it with the court's electronic-filing system or (B) by sending it by other electronic means that the person to be served consented to in writing.

(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on filing or sending, unless the party making service is notified that the paper was not received by the party served.

(d) Proof of Service.

(1) A paper presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(A)(ii), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies.

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FEDERAL RULE OF APPELLATE PROCEDURE 25

When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.*

*All of this court's paper copy requirements are consolidated under Fed. Cir. R. 25(c)(3).

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FEDERAL CIRCUIT RULE 25

Filing and Service

(a) General Filing Requirements.

(1) **Filing 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.**

Parties represented by counsel must submit all documents 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.

(B) **Unrepresented Parties.**

Following public notice, the clerk of court may provide for unrepresented parties 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 documents in paper form 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. 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.*

*Ed. Note: Electronic filing for unrepresented parties was made available beginning on October 1, 2020.

FEDERAL CIRCUIT RULE 25

(2) **Electronic Filer Registration.**

Attorneys who appear before this court and unrepresented parties choosing to file electronically must register for the court's electronic filing system. Registration requirements are located in the court's Electronic Filing Procedures. Registration for electronic filing is not a substitute for admission to the bar or appearance in a case. 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.

(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

*Ed. Note: The Electronic Filing Procedures adopted by the clerk of court are available on the court's website at https://cafc.uscourts.gov/wp-content/uploads/ElectronicFilingProcedures.pdf.

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 been docketed.

(1) **Electronic Submissions.**

A case-initiating document is considered filed at the time and date registered by 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) **Nonelectronic Submissions.**

Unrepresented parties or parties represented at the lower tribunal by counsel who are not members of the bar of this court may choose to submit case-initiating documents in paper. Only one paper copy is required of any case-initiating document submitted in paper. 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 Electronic Filers.**

A document 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. Paper copies must not be provided to the court except to the extent required by Federal Circuit Rule 25(c)(3) or as ordered by the court.

(A) **Motion for Exemption.**

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) **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 physical form without leave of court. The party must file electronically a Notice of 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. If such an item is part of a brief, appendix, or petition, then additional copies must be 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.

(C) **Technical or System Failures.**

An electronic filer whose filing is untimely as the result of a technical or system failure may file a motion for leave to file out of time that includes (1) a declaration or affidavit attesting to the failed attempts to file electronically and (2) the document that could not be filed due to the technical or system failure.

(2) **Submissions by Nonelectronic Filers.**

A document 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 except to the extent required by Federal Circuit Rule 25(c)(3) or as ordered by the court.

(A) **Originals.**

Nonelectronic 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) **Paper Records.**

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.

(3) **Paper Copies.**

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.**

Thirteen (13) 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.

(D) **Briefs and Appendices in En Banc Cases.**

If the court orders en banc hearing or rehearing, twenty-six (26) 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-six (26) 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.

(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.

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 the court's Electronic Filing Procedures.

(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 user has failed to timely provide an updated valid email address and the served email address is

invalid. Any nonelectronic 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); the filing must include proof of service noting the method of service.

(2) **Paper or Physical Filings.**

A copy of any original filing submitted to the court in paper must be served on all other parties in paper. The original must include proof of service. 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.

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

(4) **Consent to Electronic or 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 nonelectronic filers, may consent in writing to electronic service by other means. Absent such an agreement, Federal Rule of Appellate Procedure 25(c)(1) applies.

(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.

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 filer (such as an affidavit signed by a person other than the filer) must be maintained in original form by the filer until the issuance of the mandate with no right of appeal or until such later date as the court prescribes. On request of the court, the 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.

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.

Unrepresented Party Who Is a Member of the Bar.

If an unrepresented party is also a member of the court's bar, that individual may proceed under the rules applicable for either represented or unrepresented parties, but not both in a single case.

Paper Copies of Briefs and Appendices.

Counsel should not submit paper copies of any briefs or appendices required under Federal Circuit Rule 25(c)(3)(A) 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)(3)(B)-(D).

PRACTICE NOTES TO RULE 25

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.

(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.

(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.*

*Ed. Note: The parties must be prepared to justify to the court any claim of confidentiality. *See* the

(continued on the next page)

FEDERAL CIRCUIT RULE 25.1

(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.

(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.

Practice Notes to Rule 25.1 (Justification for Claim of Confidentiality) and Rule 34 (Justification for Claim of Confidentiality).

FEDERAL CIRCUIT RULE 25.1

(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.

(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.

FEDERAL CIRCUIT RULE 25.1

(A) **Confidential Version.**

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. 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.

(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 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.

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

PRACTICE NOTES TO RULE 25.1

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 RULE OF APPELLATE PROCEDURE 26

Computing and Extending Time

(a) Computing Time.

The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) **Period Stated in Days or a Longer Unit.**

When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.*

(2) **Period Stated in Hours.**

When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) **Inaccessibility of the Clerk's Office.**

Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 26(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

*If a filing is served on a weekend or legal holiday, then calculate the responsive deadline as though the document were served on the next business day. *See* Fed. Cir. R. 26(a)(2),

FEDERAL RULE OF APPELLATE PROCEDURE 26

(B) during the last hour for filing under Rule 26(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.*

(4) **"Last Day" Defined.**

Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing in the district court, at midnight in the court's time zone;

(B) for electronic filing in the court of appeals, at midnight in the time zone of the circuit clerk's principal office;

(C) for filing under Rules 4(c)(1), 25(a)(2)(A)(ii), and 25(a)(2)(A)(iii) — and filing by mail under Rule 13(a)(2) — at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system; and

(D) for filing by other means, when the clerk's office is scheduled to close.

(5) **"Next Day" Defined.**

The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) **"Legal Holiday" Defined.**

"Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where either of the

*See Fed. Cir. R. 26(a)(3)–(4) for a broader explanation of how this court defines inaccessibility.

FEDERAL RULE OF APPELLATE PROCEDURE 26

following is located: the district court that rendered the challenged judgment or order, or the circuit clerk's principal office.*

(b) Extending Time.

For good cause, the court may extend the time prescribed by these rules or by its order to perform any act or may permit an act to be done after that time expires. But the court may not extend the time to file:

(1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or

(2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

(c) Additional Time after Certain Kinds of Service.

When a party may or must act within a specified time after being served, and the paper is not served electronically on the party or delivered to the party on the date stated in the proof of service, 3 days are added after the period would otherwise expire under Rule 26(a).†

*"Legal holiday" also means a day on which the clerk's office is closed by order of the court or chief judge. *See* Fed. Cir. R. 26(a)(1).

†Three days are not added to deadlines set by court order. *See* Fed. Cir. R. 26(a)(5).

FEDERAL CIRCUIT RULE 26

Computing and Extending Time

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

(1) **Legal Holiday.**

In addition to the definition under Federal Rule of Appellate Procedure 26(a)(6), "legal holiday" includes the day after Thanksgiving Day and any day on which the clerk's office is closed by order of the court or the chief judge. The clerk of court will publicly post any order issued in accordance with this provision.

(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) **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 notice will be posted publicly.

(4) **Inaccessibility of Electronic Filing.**

In the event of a scheduled system outage, unscheduled technical failure of the 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).

(5) **Court Order.**

Federal Rule of Appellate Procedure 26(c) does not apply to deadlines set by court order.

(b) Extending 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) In addition to 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.

(3) A request for an extension of more than fourteen (14) days must be accompanied by an affidavit or unsworn declaration of counsel or an unrepresented party under penalty of perjury under 28 U.S.C. § 1746 showing good cause for the extension.

(4) 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 provide a one-time per document extension of five (5) days to file the document. The notice must include an affidavit or unsworn declaration of counsel or an unrepresented party 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 26

(c) Electronic Service of Documents.

Three (3) additional days are not added to the time to file a responsive document, when the original document was served through the court's electronic filing system. The court considers service through the court's electronic filing system to be 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 (7) 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.

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 RULE OF APPELLATE PROCEDURE 26.1

Disclosure Statement*

(a) Nongovernmental Corporations.

Any nongovernmental corporation that is a party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.

(b) Organizational Victims in Criminal Cases.

In a criminal case, unless the government shows good cause, it must file a statement that identifies any organizational victim of the alleged criminal activity. If the organizational victim is a corporation, the statement must also disclose the information required by Rule 26.1(a) to the extent it can be obtained through due diligence.

(c) Bankruptcy Cases.

In a bankruptcy case, the debtor, the trustee, or, if neither is a party, the appellant must file a statement that:

(1) identifies each debtor not named in the caption; and

(2) for each debtor that is a corporation, discloses the information required by Rule 26.1(a).

(d) Time for Filing; Supplemental Filing.

The Rule 26.1 statement must:

(1) be filed with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing;

(2) be included before the table of contents in the principal brief; and

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*The Disclosure Statement requirements of Fed. R. App. P. 26.1 are incorporated into and supplanted by this court's Certificate of Interest requirements in Fed. Cir. R. 47.4. *See* Fed. Cir. R. 26.1. The court does not require the Certificate of Interest or Disclosure Statement from unrepresented parties or the federal government except in limited circumstances. *See* Fed. Cir. R. 47.4(b). The court also does not require any paper copies of the Certificate of Interest by itself. *See* Fed. Cir. R. 25(c)(3).

FEDERAL RULE OF APPELLATE PROCEDURE 26.1

(3) be supplemented whenever the information required under Rule 26.1 changes.

(e) Number of Copies.

If the Rule 26.1 statement is filed before the principal brief, or if a supplemental statement is filed, an original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

FEDERAL CIRCUIT RULE 26.1

Disclosure Statement

The filing of a certificate of interest required by Federal Circuit Rule 47.4 satisfies the requirements of Federal Rule of Appellate Procedure 26.1.

PRACTICE NOTES TO RULE 26.1

Timely Updates.

The court uses the certificate of interest 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 RULE OF APPELLATE PROCEDURE 27

Motions

(a) In General.

(1) **Application for Relief.**

An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

(2) **Contents of a Motion.***

(A) **Grounds and Relief Sought.**

A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) **Accompanying Documents.**

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief must include a copy of the trial court's opinion or agency's decision as a separate exhibit.

(C) **Documents Barred or Not Required.**

(i) A separate brief supporting or responding to a motion must not be filed.

(ii) A notice of motion is not required.

(iii) A proposed order is not required.

(3) **Response.**

(A) **Time to File.**

Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 10 days after service of the motion unless the court shortens or extends the time. A motion authorized by

*See Fed. Cir. R. 27(a) and (c) for additional required contents.

FEDERAL RULE OF APPELLATE PROCEDURE 27

Rules 8, 9, 18, or 41 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

(B) **Request for Affirmative Relief.**

A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

(4) **Reply to Response.**

Any reply to a response must be filed within 7 days after service of the response. A reply must not present matters that do not relate to the response.

(b) Disposition of a Motion for a Procedural Order.

The court may act on a motion for a procedural order — including a motion under Rule 26(b) — at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions.* A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action.† Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) Power of a Single Judge to Entertain a Motion.

A circuit judge may act alone on any motion but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court

*See Fed. Cir. R. 27(h) and the Practice Notes to Rule 27 (Authority to Act on Motions; Motions Referred to Panel) for more information about the clerk of court's authority. *See also* Fed. Cir. R. 45(c), 45(e), 45(f)(3).

†See Fed. Cir. R. 27(j) and Fed. Cir. R. 45(a) for timing requirements for seeking further review of this court's orders or actions.

FEDERAL RULE OF APPELLATE PROCEDURE 27

may act on any motion or class of motions. The court may review the action of a single judge.*

(d) Form of Papers; Page Limits; and Number of Copies.

(1) **Format.**

(A) **Reproduction.**

A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) **Cover.**

A cover is not required, but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

(C) **Binding.**

The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) **Paper Size, Line Spacing, and Margins.**

The document must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

*See Fed. Cir. R. 27(h) and the court's Internal Operating Procedures available on the court's website for more information about the court's processes for considering motions.

(E) **Typeface and Type Styles.**

The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

(2) **Length Limits.**

Except by the court's permission, and excluding the accompanying documents authorized by Rule 27(a)(2)(B):

(A) a motion or response to a motion produced using a computer must not exceed 5,200 words;

(B) a handwritten or typewritten motion or response to a motion must not exceed 20 pages;

(C) a reply produced using a computer must not exceed 2,600 words; and

(D) a handwritten or typewritten reply to a response must not exceed 10 pages.*

(3) **Number of Copies.**

An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.†

(e) Oral Argument.

A motion will be decided without oral argument unless the court orders otherwise.

FEDERAL CIRCUIT RULE 27

Motions

(a) Contents and Format of a Motion.

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

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*A motion, response, or reply must include a certificate of compliance with the type-volume limitations if filed under Fed. R. App. P. 27(d)(2)(A) or (d)(2)(C). *See* Fed. R. App. P. 32(g).

†No copies are required. *See* Fed. Cir. R. 25(c)(3).

FEDERAL CIRCUIT RULE 27

(1) the caption (if the motion is for a procedural order on consent, the short caption may be used; for any other motion, the official caption must be used);

(2) a statement of consent or opposition representing that the movant has discussed the motion with the other parties and stating whether any party will object or file a response;

(3) a certificate of interest under Federal Circuit Rule 47.4; and

(4) 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.

(b) Response; Reply.

If a motion uses the 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 must include the following:

(1) the items in Federal Circuit Rule 27(a)(1), (3), and (4); 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) Motion to Expedite.

In addition to the requirements for a motion under Federal Circuit Rule 27(a), a motion to expedite proceedings must include the following:

(1) the label "Motion to Expedite" on the cover or front page of the motion, either centered at the top or contained in the title;

(2) a proposed expedited briefing schedule on the motion; and

(3) a proposed expedited merits briefing schedule or proposed argument date, if applicable.

(d) Attachments or Exhibits.

Attachments or exhibits to a motion, response, or reply 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.

FEDERAL CIRCUIT RULE 27

(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 Remand.

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

(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.

FEDERAL CIRCUIT RULE 27

(j) Reconsideration, Vacatur, or Modification of an Order or Action.

A party seeking to reconsider, vacate, or substantively modify a dispositive order, opinion, or judgment issued by a panel must file a petition for panel, en banc, or panel and en banc rehearing within the time prescribed by Federal Circuit Rule 40(d). For nonsubstantive corrections to a dispositive order, opinion, or judgment, a party may file a motion to correct within fourteen (14) days after the order or action apart from any rehearing petition. For nondispositive orders or actions by the court, including by a single judge, a panel of judges, or the clerk of court, a party must file for relief within fourteen (14) days after the order or action.

(k) Motions Containing Confidential or Sealed Material.

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

PRACTICE NOTES TO RULE 27

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 to withdraw counsel, and motions for leave to proceed in forma pauperis. Examples of nonprocedural motions include motions to dismiss, motions to remand, motions to transfer, motions to summarily affirm, motions for stays of injunctions, motions for injunctions, motions to strike, 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

PRACTICE NOTES TO RULE 27

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.

Telephone Inquiries about Motions; Access to Orders on Website.

Telephone inquiries about pending motions are discouraged, and contacting the court will not expedite action on any motion. Most orders are considered routine and counsel will receive notification by Notice of Docket Activity as soon as the motion is decided. Counsel or the parties may determine the status of a motion and obtain copies of court orders through the court's electronic filing system. Many pertinent orders are posted on the court's website. Under no circumstances should parties or counsel telephone a judge, a judge's chambers, or the office of the general counsel about a motion. However, when filing an emergency matter or a motion for expedited consideration, 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 appropriate cases. A motion for expedited proceedings is the procedural vehicle to request accelerated consideration of an appeal or petition for review, and it should be filed immediately after docketing. Such a motion is appropriate where the normal briefing and disposition schedule may adversely affect one of the parties, as in appeals involving preliminary or permanent injunctions or government contract bid protests.

FEDERAL RULE OF APPELLATE PROCEDURE 28

Briefs

(a) Appellant's Brief.

The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a disclosure statement if required by Rule 26.1;

(2) a table of contents, with page references;

FEDERAL RULE OF APPELLATE PROCEDURE 28

(3) a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the brief where they are cited;

(4) a jurisdictional statement, including:

(A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;

(5) a statement of the issues presented for review;

(6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e));

(7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(8) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(9) a short conclusion stating the precise relief sought; and

FEDERAL RULE OF APPELLATE PROCEDURE 28

(10) the certificate of compliance, if required by Rule 32(g)(1).*

(b) Appellee's Brief.

The appellee's brief must conform to the requirements of Rule 28(a)(1) – (8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case; and

(4) the statement of the standard of review.†

(c) Reply Brief.

The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the reply brief where they are cited.

(d) References to Parties.

In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."

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*Fed. Cir. R. 28(a) lists the required contents for an appellant's principal brief, and in some instances, the requirements are merely restated from Fed. R. App. P. 28(a) to preserve the ordering of the materials. Parties must still satisfy the formal requirements for both Fed. R. App. P. 28(a) and Fed. Cir. R. 28(a). Where Fed. Cir. R. 28(a) requires information beyond what is required under Fed. R. App. P. 28(a) for a section or item, parties should follow the greater requirement in the Federal Circuit Rules. The certificate of interest in Fed. Cir. R. 28(a)(1) and certificate of compliance in Fed. Cir. R. 28(a)(13) replace the requirements of Fed. R. App. P. 28(a)(1) and Fed. R. App. P. 28(a)(10), respectively. *See* Fed. Cir. R. 26.1; Fed. Cir. R. 32(b).

†An appellee's brief must include the contents required under Fed. Cir. R. 28(a). Fed. Cir. R. 28(b) expressly excludes the statements listed under Fed. R. App. P. 28(b) absent disagreement between the parties.

FEDERAL RULE OF APPELLATE PROCEDURE 28

(e) References to the Record.

References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c).* If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- Answer p. 7;
- Motion for Judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) 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 brief or in an addendum at the end or may be supplied to the court in pamphlet form.

(g) [Reserved]

(h) [Reserved]

(i) Briefs in a Case Involving Multiple Appellants or Appellees.

In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

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*This court defers filing of the appendix but requires preparation of the appendix ("designation of materials") prior to the filing of appellant's principal brief. *See* Fed. Cir. R. 30(b); *see also* Fed. Cir. R. 28(f) (record and appendix citation requirements).

FEDERAL RULE OF APPELLATE PROCEDURE 28

(j) Citation of Supplemental Authorities.

If pertinent and significant authorities come to a party's attention after the party's brief has been filed — or after oral argument but before decision — a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

FEDERAL CIRCUIT RULE 28

Briefs

(a) Contents and Organization of Principal Briefs.

Principal briefs must contain a cover pursuant to Federal Circuit Rule 32(a), including any required material on the inside cover, and the following in the order listed:

(1) the certificate of interest under Federal Circuit Rule 47.4;

(2) the table of contents;

(3) the table of authorities;

(4) the statement of related cases under Federal Circuit Rule 47.5;

(5) the jurisdictional statement including information demonstrating that the judgment or order appealed from is final or, if not final, appealable on another basis (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, 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 which must appear with its own heading either within the argument section or immediately preceding the argument section;

(10) the conclusion and statement of relief sought;

(11) any addenda required by Federal Rule of Appellate Procedure 28(f), Federal Circuit Rule 28(c), or Federal Rule of Appellate Procedure 32.1(b); and

(12) the certificate of compliance, if required by Federal Circuit Rule 32(b)(3).

(b) Exclusion of Contents from Appellee's Brief.

An appellee's statements of jurisdiction, the issues, the case and facts, and the standard of review must be limited to specific areas of disagreement with those of the appellant. Absent disagreement, an appellee must not include those statements.

(c) Addendum Requirements.

(1) **Principal Brief.**

Unless an appellant or petitioner permissibly binds an appendix with its principal brief pursuant to Federal Circuit Rule 30(d), the principal brief of an appellant or petitioner must include the following material as an addendum bound with the brief:

(A) all judgments, orders, agency actions, or other decisions appealed from and any opinions, memoranda, or findings and conclusions supporting them, including any rehearing opinions or orders; and

(B) if the appeal involves a patent or patent application, all patents or applications at issue on appeal reproduced in their entirety.*

*Ed. Note: When an appellant permissibly binds an appendix to its brief, the materials listed under Fed. Cir. R. 28(c)(1)(a)-(b) will be included in that appendix pursuant to Fed. Cir. R. 30(a)(1)(A)(iii) and 30(c)(1), thus rendering the separate addendum requirement moot.

(2) **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.

(3) **Addendum Length.**

Parties may seek leave of the court to waive the addendum requirement of Federal Circuit Rule 28(c)(1) in whole or in part if the number of pages in the addendum to the principal brief will prevent the materials from being bound in a single volume, which equates to roughly 300 double-sided pages of printed addendum material, or 600 pages submitted electronically. If an addendum will cause the opening brief to exceed one volume, each volume of the brief must include a cover that identifies the volume number in Roman numerals and the range of pages within the volume centered at the top.

(d) Brief Containing Confidential or Sealed Material.

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

(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 Sponnable*, 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) Referring to the Record and Appendix.

Any reference in a brief to the underlying record or to material authorized to be included in an 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 format required by the clerk of court in the court's Electronic Filing Procedures.

FEDERAL CIRCUIT RULE 28

Indiscriminate references in briefs to blocks of record pages are prohibited.

(g) Unrepresented Party Briefs; Response.

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

(1) **Informal Brief.**

An informal principal brief must contain the information required by the form prescribed by the court. No other contents are required.

(2) **Formal Brief.**

A formal brief must comply with Rules 28 and 32 regarding format and contents.

(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 informal or formal response brief, the party must affirmatively state under a separate heading whether the party believes the court has jurisdiction over the 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 after docketing, with the required number of paper copies to be provided in accordance with Federal Circuit Rule 25(c)(3). The court may also order supplemental briefs as needed.

(i) Multiple Parties.

(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.

FEDERAL CIRCUIT RULE 28

(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 all or a portion of a brief is duplicative 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.

PRACTICE NOTES TO RULE 28

Informal Brief.

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).

Inclusion of Patents in the Addendum.

The addendum to the appellant's principal brief under Federal Circuit Rule 28(c)(1) must include only patents or patent applications that are the subject of the appeal. While prior art patents must not be included in the addendum, these patents may still be required to be included in the appendix if referenced in briefing by the parties. *See* Federal Circuit Rule 30(b)(5).

FEDERAL RULE OF APPELLATE PROCEDURE 28.1

Cross-Appeals

(a) Applicability.

This rule applies to a case in which a cross-appeal is filed. Rules 28(a)–(c), 31(a)(1), 32(a)(2), and 32(a)(7)(A)–(B) do not apply to such a case, except as otherwise provided in this rule.

(b) Designation of Appellant.

The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Briefs.

In a case involving a cross-appeal:

(1) **Appellant's Principal Brief.**

The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).*

(2) **Appellee's Principal and Response Brief.**

The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement.†

(3) **Appellant's Response and Reply Brief.**

The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)–(8) and (10), except that none of the following need

*Fed. Cir. R. 28.1(d) applies the requirements of Fed. Cir. R. 28(a) to an appellant's principal brief in a case involving a cross-appeal.

†Fed. Cir. R. 28.1(d) applies the requirements of Fed. Cir. R. 28(a) and part of Fed. Cir. R. 28(b) to a cross-appellant's principal and response brief in a case involving a cross-appeal.

FEDERAL RULE OF APPELLATE PROCEDURE 28.1

appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

(A) the jurisdictional statement;

(B) the statement of the issues;

(C) the statement of the case; and

(D) the statement of the standard of review.*

(4) **Appellee's Reply Brief.**

The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)–(3) and (10) and must be limited to the issues presented by the cross-appeal.

(5) **No Further Briefs.**

Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Cover.

Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; an intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 32(a)(2).

(e) Length.†

(1) **Page Limitation.**

Unless it complies with Rule 28.1(e)(2), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

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*Fed. Cir. R. 28.1(d) applies the limitations of Fed. Cir. R. 28(b) to an appellant's response and reply brief in a case involving a cross-appeal.

†Fed. Cir. R. 28.1(a)–(c) list this court's page, type-volume, and compliance requirements for briefs in cases involving a cross-appeal.

FEDERAL RULE OF APPELLATE PROCEDURE 28.1

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

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if it:

(i) contains no more than 13,000 words; or

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

(B) The appellee's principal and response brief is acceptable if it:

(i) contains no more than 15,300 words; or

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

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

(3) **Certificate of Compliance.**

A brief submitted under Rule 28.1(e)(2) must comply with Rule 32(g)(1).

(f) Time to Serve and File a Brief.

Briefs must be served and filed as follows:

(1) the appellant's principal brief, within 40 days after the record is filed;

(2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;

(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and

(4) the appellee's reply brief, within 21 days after the appellant's response and reply brief is served, but at least 7 days before argument unless the court, for good cause, allows a later filing.*

*See Fed. Cir. R. 31(a) for deadlines set by this court for briefs in cases involving cross-appeals. This court follows the Fed. R. App. R. 28.1(f) deadline to file the cross-appellant's reply brief.

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.

(c) Certificate of Compliance.

A brief submitted under this rule must comply with Federal Circuit Rule 32(b)(3).

(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(c)(1) to the extent that the materials differ from those produced in the appellant's

FEDERAL CIRCUIT RULE 28.1

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, 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 RULE OF APPELLATE PROCEDURE 29

Brief of an Amicus Curiae*

(a) During Initial Consideration of a Case on the Merits.

(1) **Applicability.**

This Rule 29(a) governs amicus filings during a court's initial consideration of a case on the merits.

(2) **When Permitted.**

The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a court of appeals may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification.

(3) **Motion for Leave to File.**

The motion must be accompanied by the proposed brief and state:

(A) the movant's interest; and

(B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(4) **Contents and Form.**

An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but must include the following:

(A) if the amicus curiae is a corporation, a disclosure statement like that required of parties by Rule 26.1;

(B) a table of contents, with page references;

*See Fed. Cir. R. 21(e) for additional requirements concerning amicus briefs filed during consideration of a petition for writ of mandamus or prohibition.

FEDERAL RULE OF APPELLATE PROCEDURE 29

(C) a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the brief where they are cited;

(D) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(E) unless the amicus curiae is one listed in the first sentence of Rule 29(a)(2), a statement that indicates whether:

(i) a party's counsel authored the brief in whole or in part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person — other than the amicus curiae, its members, or its counsel — contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;

(F) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

(G) a certificate of compliance under Rule 32(g)(1), if length is computed using a word or line limit.*

(5) **Length.**

Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.†

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*Fed. Cir. R. 29(a) restates this court's requirement for a certificate of interest in lieu of the disclosure statement listed under Fed. R. App. P. 29(a)(4)(A). Fed. Cir. R. 29(b) references this court's local certificate of compliance requirement in place of the certificate under Fed. Cir. R. 29(a)(4)(G), due to the court's different type-volume limitation for principal briefs from the limitation in the Federal Rules of Appellate Procedure.

†Fed. Cir. R. 32(b)(1) sets a different type-volume limitation than that required by the Federal Rules

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FEDERAL RULE OF APPELLATE PROCEDURE 29

(6) **Time for Filing.**

An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) **Reply Brief.**

Except by the court's permission, an amicus curiae may not file a reply brief.

(8) **Oral Argument.**

An amicus curiae may participate in oral argument only with the court's permission.

(b) During Consideration of Whether to Grant Rehearing.

(1) **Applicability.**

This Rule 29(b) governs amicus filings during a court's consideration of whether to grant panel rehearing or rehearing en banc, unless a local rule or order in a case provides otherwise.*

(2) **When Permitted.**

The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.†

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of Appellate Procedure. The court therefore requires that an amicus brief not exceed one-half the authorized maximum of the local requirement. *See* Fed. Cir. R. 29(b).

*See Fed. Cir. R. 35(g) and Fed. Cir. R. 40(f) for the court's local rules concerning amicus briefs during consideration on whether to grant panel rehearing, rehearing en banc, or hearing en banc.

†All prospective amici curiae, including the federal government, must file a motion for leave to file during the court's consideration of rehearing and en banc petitions. *See* Fed. Cir. R. 35(g)(1); Fed. Cir. R. 40(f)(1).

FEDERAL RULE OF APPELLATE PROCEDURE 29

(3) **Motion for Leave to File.**

Rule 29(a)(3) applies to a motion for leave.

(4) **Contents, Form, and Length.**

Rule 29(a)(4) applies to the amicus brief. The brief must not exceed 2,600 words.

(5) **Time for Filing.**

An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.*

FEDERAL CIRCUIT RULE 29

Brief of an Amicus Curiae

(a) Contents.

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 under Federal Circuit Rule 47.4 in front of the table of contents.

(b) Length.

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).

*Fed. Cir. R. 35(g)(2) and Fed. Cir. R. 40(f)(2) provide for later filing deadlines for prospective amici curiae during the court's consideration of rehearing and en banc petitions.

FEDERAL CIRCUIT RULE 29

(c) Citations to the Record.

Each amicus brief must comply with Federal Circuit Rule 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 NOTES TO RULE 29

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 RULE OF APPELLATE PROCEDURE 30

Appendix to the Briefs

(a) Appellant's Responsibility.

(1) **Contents of the Appendix.**

The appellant must prepare and file an appendix to the briefs containing:

(A) the relevant docket entries in the proceeding below;

(B) the relevant portions of the pleadings, charge, findings, or opinion;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the court's attention.*

(2) **Excluded Material.**

Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

(3) **Time to File; Number of Copies.**

Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.†

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*Only record materials actually cited by parties in their briefing may be included in the appendix filed with this court, unless otherwise required or permitted by Fed. Cir. R. 30. *See* Fed. Cir. R. 30(a)(1)(B).

†Fed. Cir. R. 30(a)(2) defers filing of the appendix in this court until after briefing is complete. Fed. Cir. R. 25(c)(3), cross-referenced in Fed. Cir. R. 30(a)(3), state the court's appendix paper copy requirements.

FEDERAL RULE OF APPELLATE PROCEDURE 30

(b) All Parties' Responsibilities

(1) **Determining the Contents of the Appendix.**

The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 14 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 14 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.*

(2) **Costs of Appendix.**

Unless the parties agree otherwise, the appellant must pay the cost of the appendix. If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.†

(c) Deferred Appendix.

(1) **Deferral Until After Briefs Are Filed.**

The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be

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*The court's local designation requirements for the deferred appendix are described in Fed. Cir. R. 30(b).

†See Fed. Cir. R. 25(h) for the court's local rule regarding sanctions. For additional local requirements regarding costs of the appendix, see Fed. Cir. R. 30(a)(1)(D) and Fed. Cir. R. 30(f).

FEDERAL RULE OF APPELLATE PROCEDURE 30

deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief and need not include a statement of the issues presented.*

(2) **References to the Record.**

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.†

(d) Format of the Appendix.

The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents.‡ Other parts of the record must follow

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*Fed. Cir. R. 30(a)(2) defers filing of the appendix in all cases before this court until after briefing is complete, though the court affords unrepresented parties the opportunity to submit an informal appendix earlier under Fed. Cir. R. 30(h). Preparation of the appendix is addressed in Fed. Cir. R. 30(b).

†The parties' references to record material must follow Fed. Cir. R. 28(f).

‡After the table of contents, this court requires that the judgments, orders, agency actions, or other decisions appealed from and any opinions, memoranda, or findings and conclusions supporting them, including any rehearing opinions or orders, be placed first in the appendix. *See* Fed. Cir. R. 30(c)(1).

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FEDERAL RULE OF APPELLATE PROCEDURE 30

chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

(e) Reproduction of Exhibits.

Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party.* If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district-court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

(f) Appeal on the Original Record Without an Appendix.

The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

FEDERAL CIRCUIT RULE 30

Appendix to the Briefs

(a) Contents of Appendix; Time for Filing; Number of Copies; Multiple Volumes; Failure to File.

(1) **Contents.**

If the appendix is filed in two versions pursuant to Fed. Cir. R. 25.1(e)(1), the confidential version must include the protective order or excerpts of any statute imposing confidentiality first.

*Fed. Cir. R. 25(c)(1)(B) details the court's procedures for items, including exhibits as part of an appendix, that are unable to be filed electronically. Fed. Cir. R. 30(i) details requirements for electronic material that cannot be reproduced in written form as part of an appendix and outlines procedures for providing that material on electronic media.

FEDERAL CIRCUIT RULE 30

(A) In addition to the 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 or patent application, any patents or applications at issue on appeal in their entirety. Any other patents included in an appendix must be included in their entirety.

(B) Parts of the record must not be included in the appendix unless they are cited in the briefs. Parties must, however, include in the appendix sufficient surrounding record and transcript pages to provide context for a 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.

(C) 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; and

(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 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, except as 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

(vi) jury lists.

(F) Nothing in 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;

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

(iv) the notice of appeal.

(2) **Time for Filing.**

The appellant must serve and file 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.

(3) **Number of Copies.**

Six (6) paper copies of any appendix must be filed with the court in accordance with Federal Circuit Rule 25(c)(3). In appeals where all parties are represented by counsel, an additional paper copy of any appendix must be provided by the filer to principal counsel for the other parties within the same timeframe prescribed by Federal Circuit Rule 25(c)(3) unless principal counsel states that a paper copy need not be provided. No copies are required to be sent to counsel for amici curiae.

(4) **Appendix 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.*

(5) **Consequence of Failing to File an Appendix.**

If the appellant fails to file the appendix, the clerk of court is authorized to dismiss the case.

(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) 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.

*Ed. Note: Refer to the Practice Notes to Rule 30 (Appendix Volumes) for further explanation of this requirement.

(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 after service of appellant's designation, the appellee 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.

(2) **Pagination.**

(A) 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 or, if not prohibited by an outstanding protective order, a physical compilation of the material with the assigned page numbers shown.

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

(C) The pages of the designated material 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.

(3) **Extension of Time.**

The parties may extend the time to complete the designation without leave of the court; however, the designation and pagination must be completed before the appellant files its principal brief or the parties must move to extend the time to file the brief. If the designation cannot be timely completed due to a pending transcript request, an affidavit detailing what has been done to expedite transcription 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.

(5) **Preparation of Appendix.**

The appellant must prepare the appendix by selecting from the designated material only items required by these rules and pages specifically cited in the briefs of the parties, including the briefs of intervenors and amici. Pages not cited in the briefs — other than items required by these rules — must be omitted from the appendix. 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.

(1) **Arrangement of Appendix.**

Federal Rule of Appellate Procedure 30(d) governs the arrangement of the appendix, except the judgments, orders, agency actions, or other decisions appealed from and any opinions, memoranda, or findings and conclusions supporting them, including any rehearing opinions or orders, must be placed first in the appendix. Pursuant to Federal Circuit Rule 25.1(e)(1)(A), if the appendix must include an excerpt of a statute imposing confidentiality or a judicial or administrative protective order, the excerpt or order must appear before the first page and may be paginated with Roman numerals.*

(2) **Pagination.**

The page numbers in the appendix must be those assigned 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 and meet the font size requirements of Federal Rule of Appellate Procedure 32(a)(5).

*The table of contents must still appear before all contents. *See* Fed. R. App. P. 30(d).

Other marks must be redacted if necessary to avoid confusion. 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).

(3) **Printing.**

The court encourages the double-sided printing of the pages of the appendix, an appendix combined with a brief, and an addendum.

(d) Combined Brief and Appendix.

(1) When a brief and appendix are combined, the title on the cover must so indicate.

(2) If either the appendix agreed upon by the parties or the designated material comprises no more than 100 pages, it may be bound together with the appellant's or petitioner's principal brief as a combined brief 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 Unrepresented Party's Case.**

In cases involving only unrepresented appellants who have failed to participate in determining the contents of the appendix or have filed an inadequate appendix, the appellee may file an appendix containing material permitted by Federal Circuit Rule 30(a). Should the appellee file such an appendix, the appellants may then attach additional material permitted by Federal Circuit Rule 30(a) to any reply brief.

(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).

FEDERAL CIRCUIT RULE 30

(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.

(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)(2).

(f) Costs.

The costs of the table of page numbers or the copy of the physical compilation of the designated material in Federal Circuit Rule 30(b) 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.

(g) Appendices Containing Confidential or Sealed Material.

Federal Circuit Rule 25.1 applies to confidential or sealed material in appendices, exhibits, addenda, and attachments.

(h) Unrepresented Party's Informal Appendix.

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.

FEDERAL CIRCUIT RULE 30

(i) Electronic Appendix Material Unable to Be Produced in Paper.

When the record has been perpetuated in whole or in part in an electronic format and that portion of the record cannot be reproduced in a nonelectronic format, those portions of the record that would properly be included in the appendix if they were in documentary form will be considered supplementary appendix material.

(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)(3). 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

Notice of New References in Cross-Appellant's Reply Brief.

To expedite preparing the appendix, a cross-appellant will notify the appellant promptly on being served the appellant's reply brief whether the cross-appellant will file a reply brief and, if so, whether it will refer to pages not 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.

Testimony in the Appendix.

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

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.

Inclusion of Patents in the Appendix.

Federal Circuit Rule 30(a)(1)(A)(iii) requires the appendix to include patents or patent applications that are the subject of the appeal. Prior art patents or other patents may only be included in the appendix as required by Federal Circuit Rule 30(b)(5).

FEDERAL RULE OF APPELLATE PROCEDURE 31

Serving and Filing Briefs

(a) Time to Serve and File a Brief.

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 21 days after service of the appellee's brief but a reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing.*

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

(b) Number of Copies.

Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.†

(c) Consequence of Failure to File.

If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.‡

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*This court has extended the deadlines to file an appellant's principal brief and an appellee's response brief to 60 days and 40 days, respectively. *See* Fed. Cir. R. 31(a)(1)(A)–(B); Fed. Cir. R. 31(a)(2). The deadline for a reply brief remains unchanged, though the court may permit later filing in the limited circumstance offered by Fed. Cir. R. 34(a)..

†The court requires fewer paper copies of briefs pursuant to Fed. Cir. R. 25(c)(3), as cross-referenced in Fed. Cir. R. 31(b).

‡The clerk of court is authorized to dismiss an appeal for an appellant's failure to file a principal brief.

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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 principal brief within sixty (60) days after docketing.

(B) In an appeal from an agency, the petitioner or appellant must serve and file its 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, that brief must be served and filed no later than the latest date on which the principal brief of any of 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 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 service

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See Fed. Cir. R. 31(d). The Practice Notes to Rule 26 (Benefit of Timely Extension Request) explain how this court views the relationship between an extension request and the filing of an appellant's principal brief as it relates to dismissal.

and file its principal brief within forty (40) days after service of the certified list or index.

(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

(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) **Brief Responding to Multiple Parties.**

A brief that responds to the briefs of multiple parties must be served and filed within the time prescribed after service of the last of those briefs. If one party timely files its brief and another party fails to file, then the deadline for any responsive brief will be calculated from the date of service of the filed brief or the date the unfiled brief 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, must be provided to the court in accordance with Federal Circuit Rule 25(c)(3). In appeals where all parties are represented by counsel, an additional paper copy of each brief must be provided by the filer to principal counsel for the other parties within the same timeframe prescribed by Federal Circuit Rule 25(c)(3) unless principal counsel states that a paper copy need not be provided. No copies are required to be sent to counsel for amici curiae, but counsel for amici curiae must send a copy to each party as required by this subsection.

(c) Certain Motions Suspend the Briefing Schedule.

When a motion is filed that, if granted, would terminate an appeal, cross-appeal, or consolidated appeal, the briefing 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.

FEDERAL CIRCUIT RULE 31

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

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

(e) Time for Filing Informal Brief.

The deadlines to serve and file informal briefs are the same as those for briefs that are not informal. See Federal Rule of Appellate Procedure 31(a)(1) and Federal Circuit Rule 31(a).

FEDERAL RULE OF APPELLATE PROCEDURE 32

Form of Briefs, Appendices, and Other Papers

(a) Form of a Brief.

(1) **Reproduction.**

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.*

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) **Cover.**

Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan.† The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court; ‡

(C) the title of the case (see Rule 12(a)); §

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*This court encourages the double-sided printing of appendices and addenda. If an appendix or addendum is bound with a brief, the brief must remain single-sided, but the appendix or addendum portion may be double-sided. *See* Fed. Cir. R. 30(c)(3); Fed. Cir. R. 32(d).

†Fed. R. App. P. 28.1(d) requires a yellow cover for an appellant's response and reply brief in a case involving a cross-appeal. As a practical matter, electronically filed versions of documents should not follow the cover color requirements of Fed. R. App. R 32(a)(2); only the paper copies should follow the cover color requirements.

‡This court encourages parties to include the name of the judge or individual who issued the decision appealed from in the nature of proceedings on the cover. *See* the Practice Notes to Rule 32 (Preferred Cover Content).

§This court requires the cover to contain the court's official caption, with limited exceptions, which

(continued on the next page)

FEDERAL RULE OF APPELLATE PROCEDURE 32

(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.*

(3) **Binding.**

The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.†

(4) **Paper Size, Line Spacing, and Margins.**

The brief must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.‡

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satisfies the title requirement of Fed. R. App. P. 32(a)(2)(C). *See* Fed. Cir. R. 32(a).

*Additional local requirements for material that must be included on the cover, or in the title, can be found in the following rules: Fed. Cir. R. 25(i)(2); Fed. Cir. R. 25.1(e)(1)(A)–(B); Fed. Cir. R. 27(c)(1); Fed. Cir. R. 30(d). The court prohibits the inclusion of certain words on the cover in specific circumstances under Fed. Cir. R. 30(a)(4) and Fed. Cir. R. 32(a).

†This court requires the binding to be placed on the left margin of the printed copies. Parties have the discretion to select a binding method so long as the binding method is "secure" so that the "bound copies will not loosen or fall apart," and the brief will "lie reasonably flat when open." *See* Fed. Cir. R. 32(h).

‡This court requires that page numbers appear centered in the bottom margin of all documents exceeding two pages in length. *See* Fed. Cir. R. 32(e). This court also permits the nonconfidential legend on pages with redactions required by Fed. Cir. R. 25.1(e)(1)(B) to appear in the margins of the page. *See* the Practice Notes to Rule 25.1 (Noting Redactions in the Nonconfidential Version).

FEDERAL RULE OF APPELLATE PROCEDURE 32

(5) **Typeface.**

Either a proportionally spaced or a monospaced face may be used.*

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10 1/2 characters per inch.

(6) **Type Styles.**

A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) **Length.**

(A) **Page Limitation.**

A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B).

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

(i) A principal brief is acceptable if it:

- contains no more than 13,000 words; or
- uses a monospaced face and contains no more than 1,300 lines of text.†

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).‡

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*This court applies the typeface requirements to footnotes as well. *See* the Practice Notes to Rule 32 (Footnotes).

†This court has enlarged the type-volume limitation for principal briefs to 14,000 words. *See* Fed. Cir. R. 32(b)(1).

‡As this court has enlarged the type-volume limitation for principal briefs, the limitation for reply briefs is similarly enlarged. *See* Fed. Cir. R. 32(b)(1).

FEDERAL RULE OF APPELLATE PROCEDURE 32

(b) Form of an Appendix.

An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.*

(2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 1/2 by 11 inches and need not lie reasonably flat when opened.†

(c) Form of Other Papers.

(1) **Motion.**

The form of a motion is governed by Rule 27(d).

(2) **Other Papers.**

Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.‡

(B) Rule 32(a)(7) does not apply.

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*The cover of a separately bound appendix filed pursuant to Fed. Cir. R. 30(e) must be red. *See* Fed. Cir. R. 30(e)(3). As a practical matter, electronically filed versions of documents should not follow the cover color requirements of Fed. R. App. R 32(a)(2); only the paper copies should follow the cover color requirements.

†See the Practice Notes to Rule 32 (Copies of Patent Documents) for this court's preference when compiling large patent documents in an appendix.

‡The paper copies of amicus briefs in support of a petition for rehearing or petition for hearing en banc are treated in the same manner as merits briefs in this court and shall have a green cover color. *See* Fed. R. App. P. 32(a).

FEDERAL RULE OF APPELLATE PROCEDURE 32

(d) Signature.

Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) Local Variation.

Every court of appeals must accept documents that comply with the form requirements of this rule and the length limits set by these rules. By local rule or order in a particular case, a court of appeals may accept documents that do not meet all the form requirements of this rule or the length limits set by these rules.

(f) Items Excluded from Length.

In computing any length limit, headings, footnotes, and quotations count toward the limit but the following items do not:

- cover page;
- disclosure statement;
- a table of contents;
- a table of citations;
- a statement regarding oral argument;
- addendum containing statutes, rules, or regulations;
- certificates of counsel;
- signature block;
- proof of service; and
- any item specifically excluded by these rules or by local rule.*

(g) Certificate of Compliance.

(1) **Briefs and Papers That Require a Certificate.**

A brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B) — and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), 35(b)(2)(A), or 40(b)(1) — must include a certificate by the attorney, or an unrepresented

*See Fed. R. App. P. 27(d)(2) and Fed. Cir. R. 32(b)(2) for additional excluded items.

FEDERAL RULE OF APPELLATE PROCEDURE 32

party, that the document complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words — or the number of lines of monospaced type — in the document.

(2) **Acceptable Form.**

Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.*

FEDERAL CIRCUIT RULE 32

Form of Briefs, Appendices, and Other Papers

(a) Cover.

(1) **Official Caption.**

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).

(2) **Prohibitions.**

"Nonconfidential" or "public" may not appear on the cover or first page of any filing unless there is a corresponding confidential version.

*See the Practice Notes to Rule 32 (Certificate of Compliance) providing that Federal Circuit Form 19 satisfies the requirements of Fed. R. App. P. 32(g).

FEDERAL CIRCUIT RULE 32

(3) **Appeals Involving Patents.**

When the language of a patent or patent application is at issue in the appeal, each party's principal brief must include the language of one or more exemplary patent claims illustrative of the issue(s) on the inside of the front cover (or immediately following the front cover if the language requires more space). The text of any reproduced claim may be single-spaced.

(b) 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 these rules, the following items do not count toward those limitations:

(A) certificate of interest;

(B) statement of related cases;

(C) any addendum;

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

(E) the cover page, the inside of the front cover, or text required to appear on the first page of a filing in lieu of a cover page; and

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

(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.

FEDERAL CIRCUIT RULE 32

(c) Informal Brief.

An informal principal brief should be typewritten, but block printing or, as a last resort, legible handwriting is permitted. An informal principal brief must not exceed thirty (30) pages of typewritten double-spaced text or its equivalent. An informal reply brief must not exceed fifteen (15) pages of typewritten double-spaced text or its equivalent. If prepared on the court's form, the form pages count against the total page limitation. 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.

The court encourages the double-sided printing of the pages of the appendix, an appendix combined with a brief, and an addendum.

(e) Pagination.

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.

(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.

(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.

Print Size of Briefs.

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.

PRACTICE NOTES TO RULE 32

Footnotes.

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

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.

Certificate of Compliance.

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.

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 RULE OF APPELLATE PROCEDURE 32.1

Citing Judicial Dispositions

(a) Citation Permitted.

A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as "unpublished," "not for publication," "non-precedential," "not precedent," or the like; and

(ii) issued on or after January 1, 2007.

(b) Copies Required.

If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

FEDERAL CIRCUIT RULE 32.1

Citing Judicial Dispositions

(a) Nonprecedential Disposition.

A nonprecedential disposition must bear a legend designating it as nonprecedential. A precedential disposition 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.

FEDERAL CIRCUIT RULE 32.1

(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.

(e) Request to Make an Opinion or Order Precedential.

Within sixty (60) days after the court issues a nonprecedential opinion or order, any person may request through motion filed in the case that the opinion or order be reissued as precedential. The request will be considered by the panel that rendered the disposition. The motion must identify any case that person knows to be pending that would be determined or affected by reissuance as precedential. Parties to pending cases having a stake in the outcome of a decision 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." 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 available through the court's website at http://www.cafc.uscourts.gov/email-subscriptions.

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.

FEDERAL RULE OF APPELLATE PROCEDURE 33

Appeal Conferences

The court may direct the attorneys — and, when appropriate, the parties — to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

FEDERAL CIRCUIT RULE 33

Appeal Conferences

(a) Settlement Discussion.

Parties are encouraged to discuss settlement and to attempt settlement prior to the conclusion of merits briefing. To the extent possible and without divulging confidential information, parties should also apprise the court of ongoing settlement discussions.

(b) Mediation.

Parties are encouraged to utilize the court's mediation program in order to facilitate settlement. The court may adopt mediation guidelines with respect to mediation of the cases pending before this court. Those guidelines are binding on the parties.

FEDERAL CIRCUIT RULE 33.1

[Reserved]

FEDERAL RULE OF APPELLATE PROCEDURE 34

Oral Argument

(a) In General.

(1) **Party's Statement.**

Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.*

(2) **Standards.**

Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement.

The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) Order and Contents of Argument.

The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals.

If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal

*This court does not have a local rule requiring the filing of a statement regarding oral argument.

must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) Nonappearance of a Party.

If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) Submission on Briefs.

The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal.

Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

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 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.

FEDERAL CIRCUIT RULE 34

(c) Visual Aids.

(1) **Visual Aids Used at a Trial or Administrative Hearing; Notice.**

If a party intends to display at oral argument a visual aid used at a trial or administrative hearing, the party must advise the court by letter no later than fourteen (14) days before argument.

(2) **Visual Aids Not Used at a Trial or Administrative Hearing; Notice.**

If a party intends to display at oral argument a visual aid that was not used at a trial or administrative hearing, the party must give notice to opposing counsel and notify the court by letter no later than twenty-one (21) days before 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 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.

(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 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 requesting scheduling conflicts, the parties must file a completed response on the form prescribed by the clerk of court, even if no scheduling conflicts exist. 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.

(4) **Delegation of Authority.**

The court may delegate to the clerk of court the authority to impose additional limitations on scheduling conflicts, including limiting counsel to a specified number of scheduling conflicts, and to accept or reject individual conflict dates for lack of good cause.

(e) Arguing Counsel.

(1) **Notice of Oral Argument; Required Response.**

The clerk of court will notify parties when a case has been scheduled for argument. Each party 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.

(2) **Limitation on the Number of Arguing Counsel.**

Absent leave of court requested at least seven (7) days before argument, no more than two (2) counsel may argue on behalf of each side and no more than one (1) counsel may argue on behalf of each party or on behalf of parties represented by the same counsel or by counsel from the same firm.

FEDERAL CIRCUIT RULE 34

(3) **Copies at Oral Argument.**

In a case scheduled for oral argument, all arguing counsel must have a copy of each brief and appendix in the case, including those filed by other parties, close at hand during the argument, in a form (paper or electronic) allowing speedy access to its contents.

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, D.C., but the court may sit elsewhere pursuant to Federal Circuit Rule 47.1. The Notice of Oral Argument is usually issued within four months after all briefs and the appendix are filed. Counsel are advised of the scheduled date of hearing approximately six weeks before the session.

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.

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.

PRACTICE NOTES TO RULE 34

Conduct of Oral Argument.

Guidelines for the conduct of oral argument are available on the court's website, www.cafc.uscourts.gov, 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, 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.

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

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).

PRACTICE NOTES TO RULE 34

Paper Copies at Oral Argument.

Parties are encouraged to bring paper copies of each brief and appendix to oral argument.

FEDERAL RULE OF APPELLATE PROCEDURE 35

En Banc Determination

(a) When Hearing or Rehearing En Banc May Be Ordered.

A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

(b) Petition for Hearing or Rehearing En Banc.

A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision

FEDERAL RULE OF APPELLATE PROCEDURE 35

conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.*

(2) Except by the court's permission:

(A) a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and

(B) a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.

(3) For purposes of the limits in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.†

(c) Time for Petition for Hearing or Rehearing En Banc.

A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.‡

(d) Number of Copies.

The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.§

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*Fed. Cir. R. 35(e) lists all local content requirements for a petition for hearing en banc, petition for rehearing en banc, and combined petition for panel rehearing and rehearing en banc.

†This court does not permit the separate filing of a petition for panel rehearing and petition for rehearing en banc. Any party requesting both must do so through filing a single combined petition. *See* Fed. Cir. R. 32(d).

‡This court affords parties more time to file a petition for panel rehearing under Fed. Cir. R. 40(d). Any petition for rehearing en banc or combined petition must be filed within this court's enlarged deadline. *See* Fed. Cir. R. 35(j).

§The number of paper copies required by this court for a petition for hearing en banc, petition for rehearing en banc, combined petition for panel rehearing and rehearing en banc, or related response can be found under Fed. Cir. R. 25(c)(3), as cross-referenced by Fed. Cir. R. 35(c) and Fed. Cir. R. 35(h)(1)–(2).

FEDERAL RULE OF APPELLATE PROCEDURE 35

(e) Response.

No response may be filed to a petition for an en banc consideration unless the court orders a response. The length limits in Rule 35(b)(2) apply to a response.*

(f) Call for a Vote.

A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

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 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 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

*Any ordered response must adhere to Fed. Cir. R. 35(e)(2).

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

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

(c) Paper Copies.

Paper copies of petitions for hearing or rehearing en banc, combined petitions, or related responses must be filed with the court in accordance with Federal Circuit Rule 25(c)(3).

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

If a party chooses to file both a petition for panel rehearing 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. 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) **Required Contents.**

The required contents for a petition for hearing en banc, petition for rehearing en banc, and combined petition are as follows:

(A) a white cover or first sheet as prescribed in Federal Rule of Appellate Procedure 32(c)(2)(A);

(B) the certificate of interest 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 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);

(G) the argument;

(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) **Response.**

If the court requests a response, which must not exceed 3,900 words if prepared electronically or fifteen (15) pages otherwise, the required contents are as follows:

(A) a white cover or first sheet as prescribed in Federal Rule of Appellate Procedure 32(c)(2)(A);

(B) the certificate of interest 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 in response;

(F) 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) Copies of Briefs in Cases to be Heard or Reheard En Banc.

Paper copies of 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)(3), 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.

(1) **Leave.**

The brief must be accompanied by a motion for leave to file.

(2) **Timeliness.**

Any brief and motion for leave must be filed within fourteen (14) days 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 and motion must be filed within fourteen (14) days 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) **Paper Copies.**

Paper copies of the brief must be provided to the court in accordance with Federal Circuit Rule 25(c)(3).

(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)(3).

(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.

(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 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 the date it was mailed. The clerk of court may return an untimely petition for hearing or rehearing en banc.

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 RULE OF APPELLATE PROCEDURE 36

Entry of Judgment; Notice

(a) Entry.

A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and enter the judgment:

(1) after receiving the court's opinion — but if settlement of the judgment's form is required, after final settlement; or

(2) if a judgment is rendered without an opinion, as the court instructs.*

(b) Notice.

On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion — or the judgment, if no opinion was written — and a notice of the date when the judgment was entered.

FEDERAL CIRCUIT RULE 36

Entry of Judgment

(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:

(1) the judgment, decision, or order of the trial court appealed from is based on findings that are not clearly erroneous;

(2) the evidence supporting the jury's verdict is sufficient;

(3) the record supports summary judgment, directed verdict, or judgment on the pleadings;

*This court does not prepare separate judgment for dispositive orders issued without an opinion; instead this court's dispositive order also serves as the judgment. *See* Fed. Cir. R. 36(b).

FEDERAL CIRCUIT RULE 36

(4) the decision of an administrative agency warrants affirmance under the standard of review in the statute authorizing the petition for review; or

(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.

FEDERAL RULE OF APPELLATE PROCEDURE 37

Interest on Judgment

(a) When the Court Affirms.

Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered.

(b) When the Court Reverses.

If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest.

FEDERAL RULE OF APPELLATE PROCEDURE 38

Frivolous Appeal

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

PRACTICE NOTES TO RULE 38

Warning Against Filing or Proceeding with a Frivolous Appeal or Petition.

The court's early decision in *Asberry v. United States*, 692 F.2d. 1378 (Fed. Cir. 1982), established the policy of enforcing this rule vigorously. Since then, many precedential opinions have included sanctions under the rule. Damages, double costs, and attorney fees, singly or in varying combinations, have been imposed on counsel, parties, and unrepresented petitioners for pursuing frivolous appeals.

Challenging a Frivolous Appeal.

If an appellee or respondent considers an appeal or petition frivolous, the appellee or respondent must file a separate motion with that allegation. The assertion that an appeal is frivolous must be accompanied by citation to the opposing brief or the record below with clear argument as to why those citations establish that the appeal is frivolous. A party whose case has been challenged as frivolous is expected to respond or to request dismissal of the case.

Motions for Sanctions.

Motions for sanctions under this rule are filed in accordance with the requirements of Federal Rule of Appellate Procedure and Federal Circuit Rule 27.

FEDERAL RULE OF APPELLATE PROCEDURE 39

Costs

(a) Against Whom Assessed.

The following rules apply unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

FEDERAL RULE OF APPELLATE PROCEDURE 39

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) Costs For and Against the United States.

Costs for or against the United States, its agency, or officer will be assessed under Rule 39(a) only if authorized by law.

(c) Costs of Copies.

Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.*

(d) Bill of Costs: Objections; Insertion in Mandate.

(1) A party who wants costs taxed must — within 14 days after entry of judgment — file with the circuit clerk and serve an itemized and verified bill of costs.

(2) Objections must be filed within 14 days after service of the bill of costs, unless the court extends the time.

(3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must — upon the circuit clerk's request — add the statement of costs, or any amendment of it, to the mandate.

(e) Costs on Appeal Taxable in the District Court.

The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a bond or other security to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal.

*Fed. Cir. R. 39(c) outlines this court's process for setting cost taxation rates.

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; 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 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 Rules 25(c)(3), 30(a)(3), and 31(b).

(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.

(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.

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 is unrepresented. The court is not involved in collection matters.

Costs in a Case Involving a Claim Under the Uniformed Services Employment and Reemployment Rights Act of 1994.

No costs are taxed 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 RULE OF APPELLATE PROCEDURE 40

Petition for Panel Rehearing

(a) Time to File; Contents; Response; Action by the Court if Granted.

(1) **Time.**

Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment.* But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:

(A) the United States;

(B) a United States agency;

(C) a United States officer or employee sued in an official capacity; or

(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf — including all instances in which the United States represents that person when the court of appeals' judgment is entered or files that petition for that person.

(2) **Contents.**

The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.†

*This court has extended the time to file a petition for rehearing in cases not involving the federal government from 14 days to 30 days. *See* Fed. Cir. R. 40(d).

†Fed. Cir. R. 40(a) lists all local content requirements for a petition for panel rehearing. The content requirements for a combined petition for panel rehearing and rehearing en banc can be found under Fed. Cir. R. 35(e).

FEDERAL RULE OF APPELLATE PROCEDURE 40

(3) **Response.**

Unless the court requests, no response to a petition for panel rehearing is permitted. Ordinarily, rehearing will not be granted in the absence of such a request. If a response is requested, the requirements of Rule 40(b) apply to the response.*

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

If a petition for panel rehearing is granted, the court may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

(b) Form of Petition; Length.

The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes.† Except by the court's permission:

(1) a petition for panel rehearing produced using a computer must not exceed 3,900 words; and

(2) a handwritten or typewritten petition for panel rehearing must not exceed 15 pages.

*Any ordered response must adhere to Fed. Cir. R. 40(c).

†This court's paper copy requirements for a petition for panel rehearing can be found under Fed. Cir. R. 25(c)(3), as cross-referenced in Fed Cir. R. 40(e)(1)–(2) and Fed. Cir. R. 40(g).

FEDERAL CIRCUIT RULE 40

Petition for Panel Rehearing

(a) Contents of Petition for Panel Rehearing.

The required contents for a petition for panel rehearing are as follows:

(1) a white cover or first page as prescribed in Federal Rule of Appellate Procedure 32(c)(2)(A);

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

(3) the table of contents;

(4) the table of authorities;

(5) the points of law or fact overlooked or misapprehended by the court;

(6) the argument;

(7) an addendum containing a copy of the court's dispositive order, opinion, or judgment of affirmance without opinion; and

(8) 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.

(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) Response.

If the court requests a response, which must not exceed 3,900 words if prepared electronically or fifteen (15) pages otherwise, the required contents are as follows:

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

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

(3) the table of contents;

(4) the table of authorities;

(5) the argument;

(6) any addendum under Federal Circuit Rule 40(b); and

(7) a certificate of compliance that adheres to Federal Circuit Rule 32(g)(1).

(d) 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.

(e) Informal Petition for Panel Rehearing; Response.

(1) **Informal Petition.**

An 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 Response.**

If the court requests a response to an informal petition for panel rehearing, or if the court requests an unrepresented party to respond to a formal petition for panel rehearing, 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)(3).

(f) 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.

(1) **Leave.**

The brief must be accompanied by a motion for leave to file.

(2) **Timeliness.**

Any brief and motion for leave must be filed within fourteen (14) days 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 and motion for leave to file the brief must be filed within fourteen (14) days 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) **Paper Copies.**

Paper copies of the brief must be provided to the court in accordance with Federal Circuit Rule 25(c)(3).

(g) Paper Copies.

Paper copies of petitions for panel rehearing or responses to petitions for panel rehearing must be provided to the court in accordance with Federal Circuit Rule 25(c)(3).

PRACTICE NOTES TO RULE 40

Timeliness.

A petition for panel rehearing is filed when the court receives it, not on the date 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 petitions 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 RULE OF APPELLATE PROCEDURE 41

Mandate: Contents; Issuance and Effective Date; Stay

(a) Contents.

Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) When Issued.

The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.*

(c) Effective Date.

The mandate is effective when issued.

(d) Staying the Mandate Pending a Petition for Certiorari.

(1) **Motion to Stay.**

A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the petition would present a substantial question and that there is good cause for a stay.

(2) **Duration of Stay; Extensions.**

The stay must not exceed 90 days, unless:

(A) the period is extended for good cause; or

(B) the party who obtained the stay notifies the circuit clerk in writing within the period of the stay:

(i) that the time for filing a petition has been extended, in which case the stay continues for the extended period; or

*The court does not issue mandates in original proceedings or in appeals transferred to other courts or agencies.

FEDERAL RULE OF APPELLATE PROCEDURE 41

(ii) that the petition has been filed, in which case the stay continues until the Supreme Court's final disposition.

(3) **Security.**

The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(4) **Issuance of Mandate.**

The court of appeals must issue the mandate immediately on receiving a copy of a Supreme Court order denying the petition, unless extraordinary circumstances exist.

FEDERAL CIRCUIT RULE 41

Issuance of Mandate

An order granting an unopposed motion to dismiss or remand a case will constitute the mandate.

PRACTICE NOTES 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 RULE OF APPELLATE PROCEDURE 42

Voluntary Dismissal

(a) Dismissal in the District Court.

Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) Dismissal in the Court of Appeals.

(1) **Stipulated Dismissal.** The circuit clerk must dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due.

(2) **Appellant's Motion to Dismiss.** An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

(3) **Other Relief.** A court order is required for any relief under Rule 42(b)(1) or (2) beyond the dismissal of an appeal—including approving a settlement, vacating an action of the district court or an administrative agency, or remanding the case to either of them.

(c) Court Approval.

This Rule 42 does not alter the legal requirements governing court approval of a settlement, payment, or other consideration.

(b) Criminal Cases.

A court may, by local rule, impose requirements to confirm that a defendant has consented to the dismissal of an appeal in a criminal case.*

*The court has not imposed a corresponding local rule.

PRACTICE NOTES TO RULE 42

Stipulation of Dismissal Form.

Using Federal Circuit Form 18 satisfies the requirements to stipulate to dismissal of an appeal under Federal Rule of Appellate Procedure 42(b)(1).

FEDERAL RULE OF APPELLATE PROCEDURE 43

Substitution of Parties

(a) Death of a Party.

(1) **After Notice of Appeal Is Filed.**

If a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct appropriate proceedings.

(2) **Before Notice of Appeal Is Filed — Potential Appellant.**

If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative — or, if there is no personal representative, the decedent's attorney of record — may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) **Before Notice of Appeal Is Filed — Potential Appellee.**

If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

FEDERAL RULE OF APPELLATE PROCEDURE 43

(b) Substitution for a Reason Other Than Death.

If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) Public Officer: Identification; Substitution.

(1) **Identification of Party.**

A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.

(2) **Automatic Substitution of Officeholder.**

When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

FEDERAL RULE OF APPELLATE PROCEDURE 44

Case Involving a Constitutional Question When the United States or the Relevant State is Not a Party

(a) Constitutional Challenge to Federal Statute.

If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) Constitutional Challenge to State Statute.

If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

PRACTICE NOTES TO RULE 44

Raising a Constitutional Question in a Brief or Motion.

Inclusion of a constitutional challenge in a brief or motion is insufficient to satisfy the written notice requirements of Federal Rule of Appellate Procedure 44. Parties must file a separate notice before the clerk of court will certify a matter to the Attorney General of the United States or the attorney general of a State.

FEDERAL RULE OF APPELLATE PROCEDURE 45

Clerk's Duties

(a) General Provisions.

(1) **Qualifications.**

The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) **When Court Is Open.**

The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.*

(b) Records.

(1) **The Docket.**

The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.

(2) **Calendar.**

Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preference to appeals in

*Electronic filing remains available even on days when the clerk's office is closed to the public on a weekend or legal holiday. *See* Fed. R. App. P. 26(a)(6); Fed. Cir. R. 26(a)(2). Fed. Cir. R. 26(a)(3)–(4) explain how this court handles the inaccessibility of either the physical clerk's office or electronic filing when the clerk's office would otherwise be open.

FEDERAL RULE OF APPELLATE PROCEDURE 45

criminal cases and to other proceedings and appeals entitled to preference by law.

(3) **Other Records.**

The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

(c) Notice of an Order or Judgment.

Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) Custody of Records and Papers.

The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

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 motion for reconsideration must be filed within fourteen (14) days after issuance of the order of dismissal and must 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.

FEDERAL CIRCUIT RULE 45

(b) Release of Confidential or Sealed Materials.

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.

(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 a 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.

(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 RULE OF APPELLATE PROCEDURE 46

Attorneys

(a) Admission to the Bar.

(1) **Eligibility.**

An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).

(2) **Application.**

An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

"I, _____, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."*

(3) **Admission Procedures.**

On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.†

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*Form 21 is this court's local form for an application for admission to the bar.

†This court requires that fees be paid in advance. *See* Fed. Cir. R. 52(c).

FEDERAL RULE OF APPELLATE PROCEDURE 46

(b) Suspension or Disbarment.*

(1) **Standard.**

A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) **Procedure.**

The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) **Order.**

The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) Discipline.†

A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

*See this court's Attorney Discipline Rules for further information. *See* Fed. Cir. R. 46(f).

†See this court's Attorney Discipline Rules for further information. *See* Fed. Cir. R. 46(f).

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 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 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) Application, Submission, and Payment.

An attorney seeking admission to the bar of this court must electronically submit an application for admission in accordance with the court's Electronic Filing Procedures. After admission, the 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 or Contact Information.

An attorney admitted to the bar of this court must promptly update electronic filing account information to reflect any change of name or 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 RULE OF APPELLATE PROCEDURE 47

Local Rules by Courts of Appeals

(a) Local Rules.

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with — but not duplicative of — Acts of Congress and rules adopted under 28 U.S.C. §2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There Is No Controlling Law.

A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

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 47.1

Sessions and Places of Holding Court

(a) Sessions.

Sessions of the court will be held as the court announces.

(b) Places of Holding Court.

The court may hold sessions in any place named and permitted in 28 U.S.C. § 48.

FEDERAL CIRCUIT RULE 47.2

Panels

(a) Panels.

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) Representation Requirements.

A corporation, partnership, organization, or other legal entity must be represented by counsel before this court. An individual person may choose to be represented by counsel or to proceed without counsel but may not be represented by a non-member of the bar of this court.

(b) Appearance.

(1) **Counsel.**

Counsel retained prior to docketing must file an entry of appearance within fourteen (14) days after the court dockets 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.

(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) Substitution or Withdrawal of Counsel.

Principal counsel may not withdraw from representing a party without notice to the party and leave of the court. 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.

PRACTICE NOTES TO RULE 47.3

Appearance Form.

Using Federal Circuit Form 8A 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.

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.

FEDERAL CIRCUIT RULE 47.4

Certificate of Interest

(a) Purpose; Contents.

A certificate of interest is required to determine whether recusal by a judge is necessary or appropriate. The certificate 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.

(1) The full name of every entity represented in the case by the counsel filing the certificate.

(2) For each entity, the name of every real party in interest, if that entity is not the real party in interest.

(3) For each entity, that entity's parent corporation(s) 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, partners, and associates that have not entered an appearance in the appeal, and

(A) appeared for the entity in the lower tribunal; or

(B) are expected to appear for the entity in this court.

(5) An indication as to whether there are any related or prior cases, other than the originating case number(s), that meet the criteria under Federal Circuit Rule 47.5.

(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.

Each party, intervenor, amicus curiae, or movant must file a 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

FEDERAL CIRCUIT RULE 47.4

with each motion, petition, or related response, and in each principal brief and brief amicus curiae.

(c) Changes.

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

PRACTICE NOTES 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

Related Case Disclosure

(a) Statement of Related Cases.

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

(1) whether any other appeal in or from the same civil action or proceeding in the originating tribunal was previously before this or any other appellate court, stating the following:

(A) the title and number of that earlier appeal;

(B) the date of decision;

(C) the composition of the panel; and

(D) the citation of the opinion in the Federal Reporter.

(2) the title and number of any case known to counsel to be pending in this or any other tribunal that will directly affect or be directly affected by this court's decision in the pending case.

(b) Notice of Related Case Information.

At the same time a party files its first certificate of interest as required by Federal Circuit Rule 47.4(b), the party must also file a separate Notice of Related Case Information if there are related or prior cases that meet the criteria under Federal Circuit Rule 47.5(a). The notice must include the following information:

(1) A list of those cases, including title and number; and

(2) A non-duplicative list of the following information, which does not need to specifically identify the associated case:

(A) the names of all parties, past or present, involved in those cases; and

(B) the names of all law firms, partners, and associates that appeared in those cases.

PRACTICE NOTES 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 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.

Notice of Related Case Information Form.

Using Federal Circuit Form 9A satisfies the notice of related case information requirements under Federal Circuit Rule 47.5(b).

FEDERAL CIRCUIT RULE 47.6.

Docketing Statement

Except in cases involving unrepresented parties, each party must file a docketing statement on the form prescribed by the clerk of court within fourteen (14) days after the case is docketed, or thirty (30) days after the case is docketed if the United States or its officer or agency is a party. Filing this docketing statement satisfies the requirement for an appellant to file a statement of the issues under Federal Rule of Appellate Procedure 10(b)(3)(A).

PRACTICE NOTES TO RULE 47.6

Docketing Statement Form.

Using Federal Circuit Form 26 satisfies the docketing statement requirements under Federal Circuit Rule 47.6.

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 the form prescribed by this court.

FEDERAL CIRCUIT RULE 47.7

(2) **Other Applications.**

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, 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 NOTES 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.

Motions for Sanctions in the Form of Attorney Fees.

Motions for sanctions in the form of attorney fees are filed in accordance with the requirements of Federal Rule of Appellate Procedure and Federal Circuit Rule 27. Federal Circuit Rule 47.7 does not control the filing and review of such motions.

FEDERAL CIRCUIT RULE 47.8

In Camera Proceedings

On motion showing that the interest of justice requires it, the court may sit in camera, seal its record, or both.

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 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, Response and Reply; Separate Brief.

A petition or response must not exceed 5,200 words if produced electronically or twenty (20) pages otherwise. A reply must not exceed 2,600 words if produced electronically or ten (10) pages otherwise. A separate brief supporting a petition, response, or reply is not permitted.

(d) Service and Filing.

The Director must electronically file the petition with the clerk of court 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.

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 appearing will be deemed a respondent.

(g) Response; Appendix; Reply.

Within twenty-one (21) days after service of a petition, any respondent may file a response. The 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 a response, the Director may file a reply.

(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 47.11

Quorum

A quorum is a simple majority of a panel of the court or of the court en banc. In determining whether a quorum exists for en banc purposes, more than half of all circuit judges in regular active service, including recused or disqualified judges, must be eligible to participate in the en banc process. If a judge of a panel that has heard oral argument or taken under submission any appeal, petition, or motion is unable to continue with consideration of the matter because of death, illness, resignation, incapacity, or recusal, the remaining judges will determine the matter if they are in agreement and no remaining judge requests the designation of another judge. If the remaining judges are not in agreement or if any remaining judge requests the designation of another judge, the remaining judges will promptly advise the chief judge who will secure another judge to sit with the panel.

FEDERAL CIRCUIT RULE 47.12

[Reserved]

FEDERAL RULE OF APPELLATE PROCEDURE 48

Masters

(a) Appointment; Powers.

A court of appeals may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:

(1) regulating all aspects of a hearing;

(2) taking all appropriate action for the efficient performance of the master's duties under the order;

(3) requiring the production of evidence on all matters embraced in the reference; and

(4) administering oaths and examining witnesses and parties.

(b) Compensation.

If the master is not a judge or court employee, the court must determine the master's compensation and whether the cost is to be charged to any party.

FEDERAL CIRCUIT RULE 49

Seal of the Court

The clerk of court is the keeper of the seal, which is the means of authentication of all records and certificates issued from this court.

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 NOTES 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 51

Complaint of Judicial Misconduct or Disability

The procedures for processing a complaint of judicial misconduct or disability are pursuant to 28 U.S.C. § 351, et seq. The clerk of court will provide copies of these procedures on request.

FEDERAL CIRCUIT RULE 52

Fees

(a) 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 adopted by the court. No fees under this schedule may be charged to federal agencies or programs 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. 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.

(3) **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 Fee Schedule.

(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 Fee Schedule.

FEDERAL CIRCUIT RULE 52

(c) Fees to Be Paid in Advance.

Each notice of appeal, petition for review, application or 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 fee, 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 for Failing 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 USERRA notice within the allotted timeframe, the clerk of court is authorized to dismiss the proceeding.

(e) Fee Payment.

Electronic filers must pay all fees electronically as provided in the court's Electronic Filing Procedures. 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. Checks 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.

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 returned for insufficient funds are subject to collection, including an additional fee for insufficient funds as set by the court's Schedule of Fees. The clerk of court will not accept credit or debit card payments over the phone.

Docketing Fee and Costs in a Case Involving a Claim Under the Uniformed Services Employment and Reemployment Rights Act of 1994.

In a petition for review of a Merits Systems Protection Board decision, a petitioner is not required to pay the docketing fee 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 Federal Circuit Form 6B 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 involved a USERRA claim.

FEDERAL CIRCUIT RULE 53

Judicial Conference

There will be held, at a time and place designated by the chief judge, a conference to consider the business of the court and to advise means of improving the administration of justice. The chief judge presides at the conference. All members of the bar of the court may be members of the conference and may participate in its discussions and deliberations. Registrants must pay a fee to be applied to the payment of expenses of the conference.

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) staff of either court;

(3) members of the bars of either court;

(4) 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.

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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 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 clerk of court will maintain a miscellaneous attorney disciplinary matter docket and 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 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 will consist of three (3) judges, at least two (2) of whom must be 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 will be for one-, two-, and three-year terms, so that the members' terms are staggered. Thereafter, a member will be appointed for a three-year term. A member who has served on the Standing Panel for three years is not

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 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 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 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 is due within thirty (30) days. Any request for a hearing 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 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 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 will issue a final order in the matter. The order may direct the attorney or the clerk of court to send a copy of the order to all other courts and agencies before which an attorney is admitted. The 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 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 judges of the court in regular active service, or a majority of the 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 must be filed within thirty (30) days 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 must notify the clerk of court in writing within fourteen (14) days 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 clerk 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 clerk 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 clerk 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 clerk 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 is due within thirty (30) days to the clerk of court and should indicate the docket number of the matter. Any request for a hearing 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 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 will be conducted in accordance with Rule 8.

(e) Final Order and Further Review.

At the conclusion of a proceeding, the Standing Panel 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 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 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 is due within fourteen (14) days 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 is at the discretion of the panel, the panel 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 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 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 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 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 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 establishes that the conduct in fact

occurred and that the discipline was appropriate unless an attorney shows 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 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 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 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 clerk of court will refer an attorney's notification affidavit to the Standing Panel. Unless otherwise ordered, the clerk of court 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 clerk 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 clerk of court will refer an application for reinstatement to the Standing Panel. Any request for a hearing 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 will schedule a hearing. The Standing Panel will decide whether a hearing 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 will issue a final order. Further review 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 is 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 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 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 are effective July 1, 2020.