

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

RULES OF PRACTICE



PROPOSED AMENDMENTS

JANUARY 2023

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EDITOR'S NOTES

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

All rules or relevant subsections with proposed amendments for which the court is currently seeking public comment are included in these materials. Rules without any amendments are omitted (omitted language within a subsection is denoted by * * *).

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

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SUMMARY OF PROPOSED AMENDMENTS

The court is proposing the following amendments to the Federal Circuit Rules of Practices (FCR) and corresponding Practice Notes:

1. **Fed. Cir. R. 26:** codifying the day after Thanksgiving as an official court holiday.
2. **Fed. Cir. R. 30:** requiring service of a paper copy of appendix on opposing principal counsel unless counsel deems it unnecessary.
3. **Fed. Cir. R. 31:** requiring service of a paper copy of each brief on opposing counsel unless counsel deems it unnecessary.
4. **Fed. Cir. R. 33:** eliminating settlement negotiation certification requirement; adding language encouraging use of mediation program and apprising court of ongoing settlement discussions; merging mediation provision of Fed. Cir. R. 33.1 into 33; adding Practice Note originally proposed for Fed. Cir. R. 33.1 to 33 instead.
5. **Fed. Cir. R. 33.1:** deleting the rule and merging mediation language into Fed. Cir. R. 33 and docketing statement language into Fed. Cir. R. 47.6.
6. **Fed. Cir. R. 34:** requiring arguing counsel to have copies of each brief and appendix close at hand at oral argument; adding Practice Note encouraging parties to have paper copies at oral argument.
7. **Fed. Cir. R. 39:** adjusting citations to rules for copies taxable in the bill of costs.
8. **Fed. Cir. R. 42:** adding Practice Note regarding use of new court form to satisfy requirements for FRAP 42(b)
9. **Fed. Cir. R. 47.5:** adding Practice Note regarding use of new court form to satisfy requirement for notice of related case information, which relates to a new provision proposed during the court's September 2022 public comment period.
10. **Fed. Cir. R. 47.6:** creating new rule requiring filing of the docketing statement (moving the location of the original proposal from September 2022 to Fed. Cir. R. 47.6 instead of 33.1(b)); adding practice note originally proposed for Fed. Cir. R. 33.1 to 47.6 instead.

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" also means 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. ~~Such an order will be posted~~The clerk of court will publicly post any order issued in accordance with this provision.

* * *

FEDERAL CIRCUIT RULE 30**Appendix to the Briefs****(a) Contents of Appendix; Time for Filing; Number of Copies; Multiple Volumes; Failure to File.**

* * *

(3) Number of Copies.

Six (6) paper copies of ~~the~~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.

* * *

FEDERAL CIRCUIT RULE 31**Serving and Filing Briefs****(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.

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

~~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.~~

(1) ~~Timing.~~

~~When all parties are represented by counsel, within seven (7) days after the first two briefs in an appeal or the first three briefs in a cross appeal are served and filed, the parties through counsel must discuss settlement in appeals under 28 U.S.C. §§ 1292(c)(1)–(2); 1295(a)(1); 1295(a)(4)(A)–(B) [with respect to inter partes proceedings only]; 1295(a)(4)(C) [with respect to civil actions under 35 U.S.C. § 146 only]; and 1295(a)(6).~~

(2) ~~Compliance.~~

~~No later than the time for filing the appendix under Federal Circuit Rule 30(a)(2), the parties must file either of the following:~~

- ~~(A) a joint statement of compliance with this rule indicating that settlement discussions have been conducted; or~~
- ~~(B) an agreement that the proceeding be dismissed under Federal Rule of Appellate Procedure 42(b).~~

(b) ~~Other Settlement Discussions~~ Mediation.

~~This rule does not preclude the parties from discussing settlement or agreeing to dismiss the proceedings at other times, including after oral argument but before decision.~~ 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**Mediation Guidelines****(a) — Guidelines.**

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

(b) — Docketing Statement.

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

FEDERAL CIRCUIT RULE 34**Oral Argument****(e) Arguing Counsel.**

* * *

(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**Paper Copies at Oral Argument.**

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

FEDERAL CIRCUIT RULE 39**Costs****(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).

PRACTICE NOTES TO RULE 42**Settlement Stipulation 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).

PRACTICE NOTES TO RULE 47.5**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.

[Reserved]

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.