

# UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

## REVISED PROTOCOLS FOR IN-PERSON ARGUMENTS

(June 13, 2022)

Starting with the September 2021 court sitting, the United States Court of Appeals for the Federal Circuit resumed in-person argument. This document sets forth Protocols that will govern appearances for future sittings until further notice. See [Administrative Order 2021-10 \(June 22, 2021\)](#). These Protocols reflect the court's strong preference for in-person argument, based on the court's experience of its distinctive value, and the court's concern for the health and safety of the court and its staff, the bar, and the public. Because of the evolving public-health guidance concerning the COVID-19 pandemic, the court may modify these Protocols as needed. The current version and any updates will be posted online at <https://cafc.uscourts.gov/home/the-court/notices-announcements/covid-19-information-page/>.

### In General

- Only arguing counsel and no more than one attendee whose presence is necessary to assist or supervise arguing counsel (e.g., a client, lawyer sitting second chair, or paralegal) are permitted access to the National Courts Building and the courtroom. **All counsel are advised that the court will not entertain any motions to expand access to attend argument beyond arguing counsel and the one necessary attendee.**
- Counsel and attendees may access only the main lobby, the public elevators, the courtroom designated for argument, and the lobby area and restrooms immediately outside of the designated courtroom. Following security screening in the main lobby, counsel and attendees must report directly to the assigned courtroom (instead of the usual practice of checking in with the Clerk's Office). Once arriving at the courtroom, counsel must check in with court staff. Counsel and associated attendee must sit together and only in the areas of the courtroom designated by court staff.

- Regardless of vaccination status, all counsel and attendees must wear masks and observe physical distancing while on the premises. **Counsel and attendees must use only N-95, KN-95, or KF-94 masks within the National Courts Building.**
- Regardless of vaccination status, no counsel or attendee may enter the National Courts Building if they:
  - Tested positive for COVID-19 within the previous 14 days,
  - Are currently awaiting the results of a COVID-19 test,
  - Have been directed to either isolate or self-quarantine by any physician, hospital, or health agency,
  - Have had symptoms consistent with COVID-19 within the previous 14 days, such as a temperature in excess of 100.4 degrees Fahrenheit, chills, cough, shortness of breath or difficulty breathing, unusual fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion, nausea or vomiting, or diarrhea,
  - Have traveled internationally within the previous 7 days, or
  - Within the previous 14 days, have had known close contact (as defined by guidance provided by the CDC) with a person who has been diagnosed with COVID-19.
- **To enter the National Courts Building and the courtrooms, counsel and attendees will be required to present documentation of one of the following in either paper or digital format:**
  - **A negative polymerase chain reaction [PCR] COVID-19 test result administered within the prior 72 hours of oral argument. The PCR test must have been administered after completion of any commercial travel to the Washington, D.C area for argument.**
  - **A negative rapid antigen test result administered within the prior 24 hours of oral argument and supervised in real-time by a telehealth service affiliated with the manufacturer of the test. The test must have been administered after completion of any commercial travel to the Washington, D.C. area for argument.**

- **A positive test result from one of the above forms of testing from a sample taken during the past 90 days along with a signed letter from a licensed healthcare provider or a public health official that states you have been cleared for travel according to the [CDC's current international travel guidance](#).**
- Arguing counsel must certify in advance of the sitting that they have read, understand, and will comply with these Protocols and that they are responsible for ensuring that an attendee has read and will comply with the Protocols while in the National Courts Building. Counsel's certification must be made on the form prescribed by the court ([Form 33A Certification of Compliance with Revised Protocols for In-Person Argument](#)) and filed electronically along with the [Response to Notice of Argument](#) or as otherwise directed by the Clerk's Office.

### **Motions for Leave to Appear Remotely**

- All oral arguments will be scheduled by the court to be in person. However, the court recognizes that some remote appearances may be warranted because of COVID-19-related medical risk to certain arguing counsel or members of arguing counsel's household.
- Within 14 days of the notice of calendaring, arguing counsel may file a motion for leave to present oral argument remotely. Arguing counsel must show good cause related to a COVID-19 associated medical risk to arguing counsel or a member of arguing counsel's household to appear remotely. The motion shall include a declaration under penalty of perjury addressing the two issues central to a good cause showing. Specifically, the declaration must (1) identify with specificity the medical risks underlying the request and (2) state the precautionary steps that arguing counsel has been taking to avoid potential exposure to COVID-19 because of the identified medical risk, such as generally avoiding personal and business travel.
- If counsel's motion requires the disclosure of personal medical information, counsel is authorized, without the need for additional leave of court, to file under seal a separate confidential and nonconfidential version of the motion and accompanying declaration pursuant to Federal Circuit Rule 25.1.

- The permitting of one arguing counsel in a case to appear remotely because of COVID-19-related medical reasons does not excuse other arguing counsel in the case from having to appear in person.

### **Intervening Events that Prevent In-Person Appearance**

- The court understands that certain intervening events may prevent arguing counsel from being able to comply with these Protocols on the day of argument for COVID-19-related reasons.
- Counsel experiencing any COVID-19-related symptoms or who are required to quarantine should advise the Clerk's Office as soon as possible by calling 202-275-8035 (or 202-275-8049 for notification outside of normal operating hours). Counsel must also promptly file a motion seeking leave to appear remotely at argument. If counsel's motion requires the disclosure of personal medical information, counsel is authorized, without the need for additional leave of court, to file a separate confidential and nonconfidential version of the motion pursuant to Federal Circuit Rule 25.1.
- Out of respect for the time and resources expended by the court and the parties in preparation for oral argument, every attempt will be made to go forward with the argument as scheduled.
- The court will not adjust argument solely because a counsel attendee is unable to enter the National Courts Building.

### **Notification of Potential Exposure**

- Counsel must notify the Clerk's Office by calling 202-275-8035 (or 202-275-8049 for notification outside of normal operating hours) if counsel or counsel's attendee has exhibited symptoms or tested positive for COVID-19 within five days after being in the National Courts Building.