

# UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

## REVISED PROTOCOLS FOR IN-PERSON ARGUMENTS

(August 12, 2021)

Starting with the September 2021 court sitting, the United States Court of Appeals for the Federal Circuit will resume in-person argument. This document sets forth Protocols that will govern appearances for that sitting and 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 <http://www.cafc.uscourts.gov/covid-19-information>.

### 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.
- 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.
- Fully vaccinated individuals must wear masks in accordance with current guidance from the U.S. Centers for Disease Control and Prevention (CDC). Individuals are considered fully vaccinated for purposes of these Protocols 14 days after receiving their second dose in a two-dose series vaccine or 14 days after receiving a single-dose vaccine.

- Individuals who are not fully vaccinated must wear masks and observe physical distancing in accordance with current guidance from the CDC.
- Fully vaccinated individuals shall not 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, or
  - Currently have symptoms consistent with COVID-19, 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.
- Individuals who are not fully vaccinated shall not 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 14 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 courtroom, counsel and attendees will be required to attest to the fact that they are fully vaccinated or have received a negative COVID-19 test administered within the prior 48 hours (polymerase chain reaction [PCR] tests preferred). Such process will be done by completing [Form 33C \(Health and Safety Certification for In-Person Argument\)](#) on the day of argument and presenting the form to the courtroom deputy upon entry into the courtroom. Such forms shall not be filed with the court ahead of time. Arguing counsel who would prefer not to complete this process may elect instead to appear remotely on [Form 33A \(Certification of Compliance with Revised Protocols for In-Person Argument\)](#).
- 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**

- Starting with the September 2021 arguing session on August 30, 2021, all oral arguments will be scheduled by the court to be in-person. [Administrative Order 2021-10 \(June 22, 2021\)](#). However, the court recognizes that some remote appearances during this transition period 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 seeking leave to appear remotely must complete [Form 33B \(Motion for Leave to Appear Remotely at Argument\)](#) and declare under penalty of perjury that counsel's travel to, and physical presence at, argument would place counsel or a person in counsel's household at an unacceptable risk of developing serious health complications from COVID-19. No other proof or evidence in support of the motion is needed.
- 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.

- Counsel who have been permitted to appear remotely must do so through videoconferencing unless the court directs otherwise. Before the scheduled argument, counsel will be responsible for securing adequate equipment and an adequate telecommunication connection to appear through videoconference. Counsel must also attend an orientation and equipment test session with court staff before the sitting at the time designated by the Clerk's Office. The Clerk's Office may disallow appearance by videoconference if court staff cannot confirm ahead of time that counsel is sufficiently able to appear by videoconferencing. In such a situation, counsel will be permitted to appear by audio teleconference.

### **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 202-275-8049. 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. Form 33B may not be used for filing this motion.
- 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 202-275-8049 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.