UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439

PETER R. MARKSTEINER
CLERK OF COURT

CLERK'S OFFICE
202-275-8000

March 27, 2020

Guidance to Counsel on Serving Documents Outside of CM/ECF

The Clerk's Office has received an increase in questions concerning service of documents outside of the court's electronic filing system (CM/ECF) due to current public health guidance and restrictions that inhibit access to postal mail. The Clerk's Office offers the below guidance on how counsel may accomplish service outside of CM/ECF, which is most frequently required when serving pro se parties or confidential materials.

Under Federal Rule of Appellate Procedure 25(c)(2), parties may electronically serve each other outside of the court's electronic filing system "by sending it by other electronic means that the person to be served consented to in writing." Service through this method is complete on "sending, unless the party making service is notified that the paper was not received by the party served." Fed. R. App. P. 25(c)(4). **The court is not involved when parties agree in writing to provide service through alternate electronic means, such as through email.** Consistent with the court's November 1, 2019 notice, the filing party must include a proof of service noting the form of service.

On March 20, 2020, the Clerk's Office issued Modified Service Procedures for Pro Se Parties with specific procedures for how pro se parties can preemptively consent to electronic service.

If a person to be served does not consent to an alternate method of service, the Clerk's Office recommends two other options:

1. Designate someone in your office either remaining on-site or working remotely to handle the printing and mailing of all documents that cannot be served through CM/ECF.

2. File a motion to delay service of process. If granted, a corrected certificate of service will need to be filed once service is accomplished. Note that delaying service may impact responsive deadlines that are calculated from the date of service not filing. *See, e.g.,* Fed. Cir. R. 27(a); Fed. Cir. R. 31(a).