

In the United States Court of Federal Claims

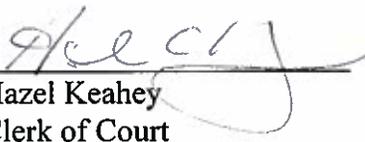
NOTICE OF PROPOSED AMENDMENTS TO RULES

Pursuant to 28 U.S.C. §§ 2071(b) and 2503(b), the United States Court of Federal Claims hereby provides notice that it proposes to amend its rules and invites public comment on the proposed amendments. This proposal affects (i) RCFC 3.1, 4, 5.5, 15, 26, 56, 59, 83.1, and 83.2; (ii) Vaccine Rules 2, 16, and 17; and (iii) Appendices A, C, and E. In addition, this proposal introduces a new Supplement to Appendix B (“Electronic Case Filing Procedure in Vaccine Act Cases”) and new Form 14 (“Order Implementing Fed. R. Evid. 502(d)). Text that is to be deleted is indicated by strikethrough; text that is to be added is highlighted in yellow.

Comments must be received by June 17, 2011, and must be addressed to:

Hazel Keahey
Clerk of Court
United States Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

Absent further notice, these amendments will take effect July 15, 2011.


Hazel Keahey
Clerk of Court

Issued: May 6, 2011

Proposed Amendment to RCFC 3.1

Rule 3.1. Transfers and Referrals

(a) Transfer From Another Court.

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- (4) ~~Amended Complaint; Copies.~~ Within 28 days after service of the notice of filing, the plaintiff must file an original and 7 copies of an amended complaint, conforming to the requirements of RCFC 5.5(d)(1) rules of this court and setting forth the claim or claims transferred.

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, _____.)

Rules Committee Notes

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2011 Amendment

RCFC 3.1(a)(4) has been amended to adopt the revised filing requirements of RCFC 5.5(d)(1) specifying that a plaintiff must file 2 copies of the complaint and, except a plaintiff appearing *pro se*, one copy of the complaint in electronic form using a disc in CD-ROM format when the complaint exceeds 20 pages.

Proposed Amendment to RCFC 4

Rule 4. Serving a Complaint on the United States

- (a) **Manner of Service.** To serve a complaint on the United States, the clerk must deliver **one copy** ~~5 copies~~ of the complaint to the Attorney General or to an agent designated by authority of the Attorney General **by hand delivery, mail, or sending it to an electronic address designated by the Attorney General** for this purpose.

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, _____.)

Rules Committee Notes

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2011 Amendment

RCFC 4(a) has been amended to permit service of a complaint on the United States by the clerk's delivery of one copy of the complaint (in lieu of the formerly required 5 copies) "by hand delivery, mail, or sending it to an electronic address designated by the Attorney General for this purpose."

Proposed Amendment to RCFC 5.5

Rule 5.5. Format of Filings and Required Information

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(d) Number of Copies.

(1) *Complaint.*

(A) ***Paper Form.*** Plaintiff must file an original and 2 7 copies of the complaint, attaching a completed cover sheet to the original (shown in Form 2 of the Appendix of Forms).

(B) ***Electronic Copy.*** If the complaint exceeds 20 pages and plaintiff is not appearing *pro se* pursuant to RCFC 83.1, plaintiff must also file one copy of the complaint in electronic form using a disc in CD-ROM format.

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(As revised and reissued May 1, 2002; as amended July 1, 2004; as renumbered Nov. 15, 2007; as amended Nov. 3, 2008, _____.)

Rules Committee Notes

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2011 Amendment

RCFC 5.5(d)(1)(A) has been amended by reducing the required number of copies of a complaint to be filed from an original and 7 copies to an original and 2 copies. Additionally, subparagraph (d)(1)(B) has been added to require a plaintiff, except a plaintiff appearing *pro se*, to also file one copy of the complaint in electronic form using a disc in CD-ROM format when the complaint exceeds 20 pages.

Proposed Amendment to RCFC 15

Rule 15. Amended and Supplemental Pleadings

(a) Amendments Before Trial.

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:

- (A) 21 days after service of the pleading; or
- (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under RCFC 12(b), (e), or (f), whichever is earlier.

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010, _____.)

Rules Committee Notes

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2011 Amendment

RCFC 15(a)(1)(A) has been amended to clarify that the 21-day time period runs from the date of service of the pleading.

Proposed Amendment to RCFC 26

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) Required Disclosures.

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(2) *Disclosure of Expert Testimony.*

(A) *In General.* In addition to the disclosures required by RCFC 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) *Witnesses Who Must Provide a Written Report.* Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party’s employee regularly involve giving expert testimony. The report must contain:

- (i) a complete statement of all opinions the witness will express and the basis and reasons for them;
- (ii) the facts or data or other information considered by the witness in forming them;
- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness’s qualifications, including a list of all publications authored in the previous 10 years;
- (v) a list of all other cases in which, during the previous 4

years, the witness testified as an expert at trial or by deposition; and

- (vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) *Witnesses Who Do Not Provide a Written Report.* Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

- (i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and
- (ii) a summary of the facts and opinions to which the witness is expected to testify.

(D)(E) *Time to Disclose Expert Testimony.* A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order (see Appendix A ¶¶ 5 and 8), the disclosures must be made:

- (i) at least 70 days before the scheduled close of discovery; or
- (ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under RCFC 26(a)(2)(B) or (C), within 30 days after the other party’s disclosure.

Rule 26

~~(E)(D)~~ **Supplementing the Disclosure.** The parties must supplement these disclosures when required under RCFC 26(e).

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(b) **Discovery Scope and Limits.**

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(4) **Trial Preparation: Experts.**

(A) **Deposition of an Expert Who May Testify.** A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If RCFC 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) **Trial-Preparation Protection for Draft Reports or Disclosures.** RCFC 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under RCFC 26(a)(2), regardless of the form in which the draft is recorded.

(C) **Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses.** RCFC 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under RCFC 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

- (i) relate to compensation for the expert's study or testimony;
- (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
- (iii) identify assumptions that the party's attorney provided and that the expert relied on in

forming the opinions to be expressed.

~~(D)(B)~~ **Expert Employed Only for Trial Preparation.**

Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

- (i) as provided in RCFC 35(b); or
- (ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

~~(E)(C)~~ **Payment.** Unless manifest injustice would result, the court must require that the party seeking discovery:

- (i) pay the expert a reasonable fee for time spent in responding to discovery under RCFC 26(b)(4)(A) or ~~(D)(B)~~; and
- (ii) for discovery under ~~(D)(B)~~, also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

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(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008, _____.)

Rules Committee Notes

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2011 Amendment

RCFC 26 has been amended in accordance with the corresponding changes to FRCP 26 that became effective December 1, 2010.

Proposed Revised RCFC 56

Rule 56. Summary Judgment

- (a) **Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.
- (b) **Time to File a Motion.** Unless the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.
- (c) **Procedures.**
- (1) **Supporting Factual Positions.** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
 - (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
 - (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.
 - (2) **Objection That a Fact Is Not Supported by Admissible Evidence.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.
 - (3) **Materials Not Cited.** The court need consider only the cited materials, but it may consider other materials in the record.
 - (4) **Affidavits or Declarations.** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.
- (d) **When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
- (1) defer considering the motion or deny it;
 - (2) allow time to obtain affidavits or declarations or to take discovery; or
 - (3) issue any other appropriate order.
- (e) **Failing to Properly Support or Address a Fact.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by RCFC 56(c), the court may:
- (1) give an opportunity to properly support or address the fact;
 - (2) consider the fact undisputed for purposes of the motion;
 - (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
 - (4) issue any other appropriate order.
- (f) **Judgment Independent of the Motion.** After giving notice and a reasonable time to respond, the court may:
- (1) grant summary judgment for a nonmovant;
 - (2) grant the motion on grounds not raised by a party; or

- (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.
- (g) **Failing to Grant All the Requested Relief.** If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.
- (h) **Affidavit or Declaration Submitted in Bad Faith.** If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney’s fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

(As revised and reissued May 1, 2002; as amended June 20, 2006, Nov. 3, 2008; _____.)

Rules Committee Notes

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2011 Amendment

RCFC 56 has been rewritten in its entirety to reflect the corresponding revision of FRCP 56 that became effective December 1, 2010.

Proposed Amendment to RCFC 59

Rule 59. New Trial; Reconsideration; Altering or Amending a Judgment

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(b) Time to File a Motion for a New Trial or for Reconsideration and a Response.

- (1) A motion for a new trial or for reconsideration under RCFC 59(a)(1)(A) or (B) must be filed no later than 28 30 days after the entry of judgment.
- (2) A motion for a new trial or for reconsideration under RCFC 59(a)(1)(C) may be filed—and the payment of judgment stayed—at any time while the suit is pending, after review proceedings have been initiated, or within 2 years after the final disposition of the suit.
- ~~(3) A response to any motion under this rule may be filed only at the court's request and within the time specified by the court. The court may not rule in favor of a motion under this rule without first requesting a response to the motion.~~
- (c) **Relying on Affidavits.** When a motion for a new trial or for reconsideration is based on affidavits, they must be filed with the motion.
- (d) **New Trial on the Court's Initiative or for Reasons Not in the Motion.** No later than 28 30 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.
- (e) **Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment must be filed no later than 28 30 days after the entry

of the judgment.

- (f) **Response.** A response to any motion under this rule may be filed only at the court's request and within the time specified by the court. The court may not rule in favor of a motion under this rule without first requesting a response to the motion.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010, _____.)

Rules Committee Notes

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2011 Amendment

RCFC 59(f) has been added to clarify that the restriction included in former paragraph (b)(3) permitting the filing of a "response to any motion under this rule . . . only at the court's request" extends to all motions under the rule, thus applying not only to a motion for a new trial or for reconsideration (the subject of subdivision(b)) but also to a motion to alter or amend a judgment (the subject of subdivision (e)).

In addition, subdivision (b) has been amended to include reference to a motion for reconsideration in clarification of the intended scope of the subdivision.

Finally, the period for filing post-judgment motions has been corrected to read 28 days in accordance with the final version of FRCP 59 that was adopted on December 1, 2009.

Proposed Amendment to RCFC 83.1

Rule 83.1. Attorneys

(a) Eligibility to Practice.

(1) *In General.* An attorney is eligible to practice before this court if the attorney:

(A) is a member in good standing of the bar of the highest court of any U.S. state, territory, or possession or the District of Columbia; and

(B) is a member in good standing of the bar of this court; or

~~(C)~~(B) was a member in good standing of the bar of this court's predecessor, the United States Court of Claims.

(2) *Pro Hac Vice.* An attorney may participate *pro hac vice* in any proceeding before this court if:

(A) the attorney is admitted to practice before the highest court of any U.S. state, territory, or possession or the District of Columbia; and

(B) the attorney of record for any party has requested and is present for such participation and has received the court's approval.

(3) *Pro Se Litigants.* An individual who is not an attorney may represent oneself or a member of one's immediate family, but may not represent a corporation, an entity, or any other person in any proceeding before this court. The terms counsel, attorney, and attorney of record include such individuals appearing *pro se*.

(b) Admission to Practice.

(1) *Qualifications.* Any person of good moral character who is a member in good standing of the bar of the highest court of any U.S. state, territory, or possession or the District of Columbia may be admitted to practice before this court.

(2) *Procedures.*

(A) *In General.* An attorney may be admitted to practice before this court by oral motion or by verified application.

(i) *By Oral Motion in an Admissions Proceeding.* A member of the bar of this court may make an oral motion to admit an applicant to the bar during the monthly attorney admissions proceeding held at the Howard T. Markey National Courts Building, 717 Madison Place, NW, Washington, DC 20005, at the times posted on the court's website at www.uscfc.uscourts.gov (generally 10:00 a.m. on Thursday of the first full week in every month). Motions will be heard in a courtroom posted in the lobby of the courthouse on the day of the proceeding. Applicants for admission must appear in the clerk's office no later than 9:30 a.m. to:

(I) pay the admission fee set forth in RCFC 83.1(b)(4);

(II) complete a "Form for Admission via Motion in Open Court" (available on the court's website); and

(III) present a certificate of the clerk of the highest court of any U.S. state, territory, or possession or the District of

Columbia which has been issued within 30 days and states that the applicant is a member in good standing of the bar of such court.

Applicants who for special reasons are unable to appear for admission on one of the posted dates should contact the clerk's office to make alternate arrangements.

- (ii) ***By Oral Motion in a Proceeding Outside Washington, DC.*** A member of the bar of this court may make an oral motion to admit an applicant to the bar during a court proceeding before any judge of this court so long as the applicant:
 - (I) provides the judge with a completed copy of a verified application for admission (see Appendix of Forms, Form 1); or
 - (II) advises the judge of the applicant's qualifications as set forth in RCFC 83.1(b)(1), and represents that the applicant will promptly apply to the clerk for admission by verified application as provided in RCFC 83.1(b)(2)(a)(iii).
- (iii) ***By Verified Application.*** An attorney may seek admission to practice before this court without appearing in person by presenting the clerk with a verified application for admission (see Appendix of

Forms, Form 1) along with the following documentation:

- (I) a certificate of the clerk of the highest court of any U.S. state, territory, or possession or the District of Columbia which has been issued within 30 days and states that the applicant is a member in good standing of the bar of such court;
- (II) two letters or signed statements of members of the bar of this court or of the Supreme Court of the United States, not related to the applicant, affirming that the applicant is personally known to them, that the applicant possesses all of the qualifications required for admission to the bar of this court, that they have examined the application, and that the applicant's personal and professional character and standing are good; and
- (III) an oath in the form prescribed in RCFC 83.1(b)(3) signed by the applicant and administered by an officer authorized to administer oaths in the U.S. state, territory, or possession or the District of Columbia where the oath is given, or as permitted

by 28 U.S.C. § 1746.

- (3) **Oath.** An applicant for admission to practice before this court must take the following oath, to be administered by the presiding judge or by the clerk:
- I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and that I will conduct myself in an upright manner as an attorney of this court.
- (4) **Fee.** Unless the applicant is employed by this court or is an attorney representing the United States before this court, the applicant must pay the admission fee in accordance with the fee schedule posted on the court's website at www.uscfc.uscourts.gov. The admission fee includes \$100.00 above the amount prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1926(a). The clerk will deposit this additional sum in a fund to be used by the court for the benefit of the members of the bench and the bar in the administration of justice.
- (5) **Notice to the Court.** An attorney admitted to the bar of this court must provide the clerk with timely notice of:
- (A) any change in the attorney's address; and
- (B) any change in the status of the attorney's membership in the bar of the jurisdiction upon which the attorney's admission to the bar of this court was based.
- (6)(5) **Foreign Attorneys.**
- (A) **In General.** Any person qualified to practice in the highest court of any foreign state may be specially admitted to practice before this court but only for purposes limited to a particular case; such person may not serve as the attorney of record.
- (B) **Procedures.** A member of the bar

of this court must file with the clerk a written motion to admit the applicant at least 7 days prior to the court's consideration of the motion. In the case of such an admission, an oath and fee are not required.

(c) **Attorney of Record.**

- (1) **In General.** A party may have only one attorney of record in a case at any one time and, with the exception of a *pro se* litigant appearing under RCFC 83.1(a)(3), must be represented by an attorney (not a firm) admitted to practice before this court. Any attorney assisting the attorney of record must be designated "of counsel."
- (2) **Signing Filings.** All filings must be signed in the attorney of record's name. Any attorney who is admitted to practice before this court may sign a filing in the attorney of record's name by adding the following after the name of the attorney of record: "by [the signing attorney's full name]." Such authorization to sign filings does not relieve the attorney of record from the provisions of RCFC 11.
- (3) **Entering an Appearance.**
- (A) **By Parties Other Than the United States.** The attorney of record for any party other than the United States must include on the initial pleading or paper the attorney's name, address, telephone number, and facsimile number.
- (B) **By the United States.** After service of the complaint, the attorney of record for the United States must promptly file with the clerk and serve on all other parties a notice of appearance setting forth the attorney's name, address, telephone number, and facsimile number.
- (C) **Changes in Contact Information.** An attorney of record must

promptly file with the clerk and serve on all other parties a notice of any change in the attorney's contact information.

(4) Substituting Counsel.

(A) By Parties Other Than the United States.

(i) In General. Any party other than the United States may seek leave of the court to substitute its attorney of record at any time by filing a motion signed by the party or by the newly designated attorney along with an affidavit of appointment by such attorney.

(I) With the Consent of the Previous Attorney.

If the previous attorney's consent is annexed to or indicated in the motion, the clerk will automatically enter the substitution on the docket.

(II) Without the Consent of the Previous Attorney.

If the motion is filed without the consent of the previous attorney, the previous attorney must be served with the motion and will have 14 days to show cause why the motion should not be allowed.

(ii) Death of the Previous Attorney. In the event of the death of the attorney of record, the party must promptly notify the court and move to substitute another attorney admitted to practice before this court.

(B) By the United States. The United States may substitute its attorney of record at any time by filing with the clerk and serving on all other parties a notice of appearance of the new attorney.

(5) Withdrawing Counsel. An attorney of record for a party other than the United States may not withdraw the attorney's appearance except by leave of the court on motion and after notice is served on the attorney's client.

(d) Honorary Bar Membership. Upon nomination by the chief judge and with the approval of the other judges, the court may present an honorary membership in the bar of this court to a distinguished professional of the United States or of another nation who is knowledgeable in the affairs of law and government in his or her respective country. The candidate for honorary membership will be presented at the bar in person and will receive a certificate of honorary bar membership.

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, June 20, 2006, Nov. 3, 2008, Jan. 11, 2010, _____.)

Rules Committee Notes

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2011 Amendment

RCFC 83.1(a) has been amended to clarify that eligibility to practice before this court requires that an attorney be a member in good standing of the bar of the highest court of any U.S. state, territory, or possession or the District of Columbia as well as a member in good standing of this court's own bar.

In addition, subdivision (b) has been amended by adding a new paragraph (5) requiring an attorney admitted to practice before this court to provide the clerk with timely notice of any change in the attorney's address and any change in the status of the attorney's membership in the bar of the jurisdiction upon which the attorney's admission to the bar of this court was based. To

accommodate the addition of new paragraph (5), former paragraph (5) (“Foreign Attorneys”) has been renumbered as paragraph (6).

Proposed Amendment to RCFC 83.2

Rule 83.2 Attorney Discipline

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(g) Initiating Disciplinary Proceedings.

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(3) *Appointing Investigatory Counsel.*

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(C) *Outside Counsel.* In addition to, or as an alternative to, the procedure described in subparagraphs (A) and (B), in the event the court staff attorney or other appropriate court personnel is recused, at any stage of a proceeding the standing panel may appoint outside counsel to investigate and/or prosecute allegations of misconduct under this rule.

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(h) Proceedings Before the Standing Panel.

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(5) *Conducting a Hearing in a Contested Matter.*

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(E) *Cross-Examining Witnesses.*

The attorney subject to the proceeding must be afforded an opportunity to cross-examine any witnesses called before by the standing panel and to introduce evidence in defense or mitigation.

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, July 13, 2009, _____.)

Rules Committee Notes

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2011 Amendment

RCFC 83.2(g)(3) has been expanded to include a subparagraph (C) authorizing the

standing panel “in the event the court staff attorney or other appropriate court personnel is recused” to appoint outside counsel to investigate and/or prosecute allegations of misconduct.

In addition, subparagraph (h)(5)(E) has been clarified by changing the phrase “witnesses called by the standing panel” to read “witnesses called before the standing panel.”

Proposed Amendment to Appendix B

APPENDIX B VACCINE RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

Rule 2. Commencing an Action.

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(b) Method of Filing; Filing Fee.

- (1) **Paper Form.** Petitioner must forward an original and 2 copies of the petition, along with the required filing fee, by mail or other delivery, to:

Clerk
United States Court of Federal
Claims
717 Madison Place, NW
Washington, DC 20005.

A copy of the applicable schedule of fees may be found on the court's website at www.uscfc.uscourts.gov or may be obtained by contacting the clerk's office.

- (2) **Electronic Copy.** If the petition exceeds 20 pages and petitioner is not appearing *pro se* pursuant to Vaccine Rule 14, petitioner must also file one copy of the petition in electronic form using a disc in CD-ROM format.

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(As revised and reissued May 1, 2002; as amended Sept. 15, 2003, Aug. 2, 2005, July 13, 2009, _____.)

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Rule 16. Caption of Filings

- (a) **In General.** All filings, including the petition, must be captioned with the court's name, the case title and docket number, and the name of the assigned special master. (The petition should leave blank the spaces for the special master's name and the docket

number.) See Appendix of Forms, Form 7.

- (b) **Petitions Filed on Behalf of a Minor.** If the petition is filed on behalf of a minor, the caption may include only the minor's initials.

(As revised and reissued May 1, 2002; as amended July 13, 2009, _____.)

Rule 17. Serving and Filing Papers After the Petition

(a) Serving a Document.

- (1) **In General.** A copy of every document filed with the clerk must be served on opposing counsel or the opposing unrepresented party.
- (2) **Certificate of Service.** A certificate of service in accordance with RCFC 5.3 must be appended to the original document and any copies thereof.

(b) Filing a Document.

- (1) **In General.** All pleadings and other papers required under the Vaccine Rules or by order of the special master or the court must be ~~filed with the clerk at the address provided in Vaccine Rule 2.~~ All matters should be brought to the attention of the special master or the court through formal filings with the clerk rather than through correspondence.
- (2) **How Filing Is Made—In General.** A paper is filed by delivering it to the clerk at the address provided in Vaccine Rule 2.
- (3) **Electronic Filing.** The court requires filing by electronic means, subject to reasonable exceptions, as provided in

Vaccine Rules 2, 16, and 17

the Supplement to these rules. A paper filed electronically in compliance with the Supplement to the Vaccine Rules is a written paper for purposes of these rules.

(4)(2) Filing Defined.

- (A) **Paper Form.** A document in paper form is filed when it is received and marked filed by the clerk, not when mailed.
 - (B) **Electronic Form.** A document in electronic form is filed on the date stated in the “Notice of Electronic Filing.”
- (c) **Date.** Each filing must bear on the signature page the date on which it is signed.
- (d) **Number of Copies.** Except in an electronic case under the Supplement to these rules, a party must file an original and 2 copies of each paper filed with the clerk, although except that for a filing of 50 pages or more, an original and 1 copy will suffice.

(As revised and reissued May 1, 2002; as amended July 13, 2009, _____.)

Proposed Supplement to Appendix B

SUPPLEMENT TO APPENDIX B ELECTRONIC CASE FILING PROCEDURE IN VACCINE ACT CASES

I. INTRODUCTION

1. In General. This Supplement sets forth the procedures governing electronic filings in Vaccine Act cases. A Case Management/Electronic Case Files (CM/ECF) User Manual is available on the court's website—<http://www.usfc.uscourts.gov>.

2. Definitions. For purposes of this Supplement, the following definitions apply:

- (a) "ECF System" means the court's system for electronic case filing;
- (b) "ECF case" means any Vaccine Act case designated by the court as an electronic case in the ECF System;
- (c) "Filing User" means a member of the court's bar to whom the court has issued a log-in and password to file documents electronically in the ECF System;
- (d) "filing" means any document that is filed electronically in the ECF System; and
- (e) "court" means the assigned judge or special master.

II. ELECTRONIC CASE DESIGNATION AND NOTICE

3. Scope.

- (a) **Newly Filed Cases.** All newly filed Vaccine Act cases will be designated ECF cases except for cases involving *pro se* litigants.
- (b) **Converted Cases.** The court may convert a pending non-ECF case to an electronic case at any time.

4. Notice to Counsel. The clerk will notify counsel that a Vaccine Act case has been designated an ECF case by filing a "Notice of

Designation." All ECF cases will be listed on the court's website.

III. ACCESS TO ECF SYSTEM; RESPONSIBILITY OF FILING USERS; EXEMPTION FROM USE

5. Eligibility. An attorney admitted to the bar of this court may register as a Filing User by completing the form provided by the clerk, a copy of which is available on the court's website. By registering as a Filing User, an attorney consents to electronic service of all filings.

6. Log-in and Password.

- (a) **Notification.** Once registered, a Filing User will be notified of his or her user log-in and password.
- (b) **Security.** A Filing User must protect the security of his or her password and immediately notify the clerk if it appears to have been compromised.
- (c) **Use.** No Filing User or other person may knowingly permit or cause a Filing User's log-in and password to be used by anyone other than an authorized agent of the Filing User. Any Filing User or other person may be subject to sanctions for failure to comply with this provision.

7. Exemption From Filing Electronically. By filing an appropriate motion, an individual not registered as a Filing User may, for good cause, seek to be exempted from filing documents electronically in an ECF case.

IV. FILING REQUIREMENTS

8. Filings.

- (a) **Initial Filings.**
 - (i) **The Petition.** The filing of a Vaccine Act petition, limited to the requirements of Vaccine Rule 2(c)(1), and the payment of the initial filing fee must be accomplished in the traditional manner in accordance with Vaccine Rule 2(b) rather than electronically. No medical records or other documents may be filed with the petition.
 - (ii) **Required Attachments.** Once a case has been designated an ECF case, the petitioner must electronically file as promptly as possible the medical records and other documents (including affidavits) pertaining to the petition as set forth in Vaccine Rule 2(c)(2). (See paragraph 11 of this Supplement, discussing the alternative method of filing voluminous medical records via CD-ROM.)
- (b) **Subsequent Filings.** Once a case has been designated an ECF case, all subsequent filings must be made electronically, except as provided in this Supplement or by leave of the court in exceptional circumstances that prevent a Filing User from filing electronically.
- (c) **Exhibits and Attachments.** Unless otherwise ordered by the court, when filing an exhibit or attachment, a Filing User:
 - (i) must file the exhibit or attachment electronically along with the main document under one entry number;
 - (ii) must include the exhibit or attachment in its entirety; and
 - (iii) may seek leave to file a memorandum or brief, generally in advance of the evidentiary

hearing, to direct the court's attention to the most relevant portion of the exhibit or attachment.

9. Size Limitations.

- (a) **In General.** A single filing may be divided into multiple Adobe PDF files.
- (b) **Number of Files.** Counsel must endeavor to minimize the total number of Adobe PDF files that constitute a single filing.
- (c) **Size of Files.**
 - (i) Unless otherwise ordered by the court, each Adobe PDF file must not exceed the size limitations established by the court.
 - (ii) Current size limitations are posted on the court's website or may be obtained by calling the clerk's office.
- (d) **Exceeding Size Limitations.** For files that exceed size limitations, the Filing User may:
 - (i) use a disc in CD-ROM format; or
 - (ii) seek leave of the court to file in some other electronic format.

10. Dividing Medical Records into Multiple PDF Files.

- (a) **Contents and Pagination of Files.** Each file should contain one exhibit and each exhibit should be independently paginated (handwritten pagination prior to scanning is sufficient).
- (b) **Labeling and Identifying Files.** Each file should:
 - (i) be consecutively numbered or lettered as an exhibit;
 - (ii) be labeled according to its source or subject matter; and
 - (iii) include a brief written description of the records it contains.

For example, the first PDF file might contain prenatal records and be labeled “Petitioner’s Exhibit 1—Prenatal Records, Dr. Smith”; the second PDF file might contain birth records and be labeled “Petitioner’s Exhibit 2—Birth Records, Smalltown Hospital”; the third and fourth PDF files might contain pediatric records of different physicians and be labeled “Petitioner’s Exhibit 3—Pediatric Records, Dr. John” and “Petitioner’s Exhibit 4—Pediatric Records, Dr. Jack.”

11. CD-ROM Filings.

- (a) **In General.** Filing documents on a CD-ROM is accomplished by:
 - (i) electronically filing a “Notice of Intent to File” containing:
 - (A) an index of the exhibits included on the disc;
 - (B) a statement certifying that the contents of the disc have been scanned using anti-virus software with up-to-date anti-virus definitions; and
 - (C) a certificate stating when copies of the disc were mailed or delivered to the clerk’s office;
 - (ii) providing the clerk’s office with two copies of the disc along with a printed copy of the “Notice of Intent to File”; and
 - (iii) serving one copy of the disc on opposing counsel.
- (b) **Date of Filing.** The CD-ROM is deemed filed on the date it is received in the clerk’s office.
- (c) **Striking a Notice of Intent to File.** If the CD-ROM is not received in the clerk’s office within 5 days after the “Notice of Intent to File” is electronically docketed, the court may enter an order striking the

“Notice of Intent to File” from the docket.

- (d) **Designation of Files.** The name of each file on the disc should:
 - (i) begin with the letters “Ex” followed by the exhibit letter or number (e.g., 01, 02, . . . 09, 10);
 - (ii) include a brief description of the content of the exhibit and the six-digit docket number (e.g., 98-0000);
 - (iii) represent spaces with an underscore; and
 - (iv) contain “.pdf” as the file extension.

For example, the first PDF file on the disc might be labeled “EX01_University_Hospital_98-0000.pdf.”

- (e) **Format.** Before filing a CD-ROM, the Filing User should :
 - (i) “close” or finalize the disc so that additional material cannot be written onto the disc; and
 - (ii) scan the disc using appropriate anti-virus software after its creation and closure.
- (f) **Packaging and Labeling.** The Filing User should package the disc in a paper, plastic, or waxed paper envelope and label the package with:
 - (i) the case caption, including the case number;
 - (ii) the date of filing; and
 - (iii) the range of exhibits the disc contains (e.g., Exhibits 01-20).

V. FILING PROCEDURES

12. Notice of Filing; Service.

- (a) **Notifying Filing Users.** At the time a document is filed, the ECF System automatically generates a “Notice of Electronic Filing” and automatically e-mails the notice to all case

- participants who are Filing Users.
- (b) **Notifying Individuals Other Than Filing Users.** The clerk will serve the “Notice of Electronic Filing” (but not the underlying filing) on case participants who are not Filing Users by e-mail, hand delivery, facsimile, or first-class postage-prepaid mail.
 - (c) **Service.** The transmission of the “Notice of Electronic Filing” satisfies the service requirement of RCFC 5 and the proof of service requirement of RCFC 5.3.

13. Effect of Filing and Transmission of Notice of Filing. A filing by a party under this Supplement, together with the transmission of the “Notice of Electronic Filing,” constitutes a filing under RCFC 5 and an entry on the docket kept by the clerk under RCFC 58 and 79.

14. Official Court Record. The official court record is the electronic recording of the document as stored by the court and the filing party is bound by the document as filed.

15. Date of Filing. Except for CD-ROM filings and in the case of a document first filed in paper form and subsequently converted to an ECF filing, a document filed in an ECF case is deemed filed on the date stated in the “Notice of Electronic Filing.”

16. Timeliness of Filing. Unless otherwise ordered by the court, a filing under this Supplement must be submitted before midnight local time in Washington, DC, to be considered timely filed on that date.

17. Date Stamp. Each filing must contain at the top of the first page a banner stating that it was “Electronically Filed on [date].”

VI. SIGNATURES AND RELATED MATTERS

18. Signature Defined. A Filing User’s log-in and password will serve as his or her signature on a filing for all purposes.

19. Signature Requirements.

- (a) **Electronic Signature.** Filings must include a signature block, in

compliance with RCFC 11(a), with the name of the Filing User under whose log-in and password the document is submitted along with an “s/[name of Filing User]” typed in the space where the signature would otherwise appear.

- (b) **Written Signature.** A Filing User may also satisfy the signature requirement by scanning a document containing his or her written signature.

- (c) **Noncompliance.** A filing that does not comply with this provision will be deemed in violation of RCFC 11 and may be stricken from the record.

20. Signatures of Multiple Parties. Documents requiring signatures of more than one party may be filed electronically:

- (a) by submitting a scanned document containing all necessary written signatures;
- (b) by representing the consent of the other parties on the document; or
- (c) in any other manner approved by the court.

VII. COURT ORDERS, JUDGMENTS, AND APPEALS

21. Filings by the Court. Any order, opinion, judgment, or other proceeding of the court in an ECF case will be filed in accordance with this Supplement.

22. Effect of Filing. A filing by the court under this Supplement:

- (a) is an entry on the docket kept by the clerk under RCFC 58 and 79; and
- (b) has the same force and effect as a paper copy entered on the docket in the traditional manner.

23. Notice of Filing; Service.

- (a) **Notifying the Parties.** Notice of a filing by the court will be accomplished by delivering to the parties a “Notice of Electronic

Filing” in the manner prescribed in paragraph 12(a) or (b).

- (b) **Service.** The transmission of the “Notice of Electronic Filing” satisfies the service requirement of RCFC 77(d).

24. Court-Ordered Deadlines. If an order or opinion specifies a due date for the filing of a document, that date will control over any other filing deadline listed on the docket for that document.

25. Notice of Appeal. A notice of appeal to the United States Court of Appeals for the Federal Circuit (i.e., a petition for review under 42 U.S.C. § 300aa-12(f)) must be accomplished in the traditional manner in accordance with the Vaccine Rules rather than electronically.

VIII. PRIVACY

26. Filings Protected Against Public Disclosure. Except as provided in Vaccine Rule 18, all ECF filings submitted in a Vaccine Act case are placed under seal pursuant to the requirement of 42 U.S.C. § 300aa-12(d)(4)(A) and therefore are accessible only to court personnel and counsel of record.

27. Personal Information. Because all ECF filings submitted by the parties in a Vaccine Act case are placed under seal, Filing Users need not redact personal identifiers and other sensitive information. Filing Users should file all documents, including medical records, in their original form.

IX. RETENTION AND TECHNICAL FAILURE

28. Retaining in Paper Form Documents Requiring More Than One Signature. A document requiring signatures of more than one party (e.g., an affidavit or a joint status report) must be maintained in paper form by the Filing User until three years after all periods for appeal expire. The court may request the Filing User to provide the original document for review.

29. Technical Failure of the ECF System.

- (a) **Relief by Motion.** If a filing is deemed untimely as the result of a technical failure of the ECF System, the Filing User may seek appropriate relief from the court.
- (b) **Deeming the Clerk’s Office Inaccessible.** If the ECF System is inaccessible for any significant period of time, the clerk will deem the clerk’s office inaccessible under RCFC 6.

Rules Committee Notes

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2011 Amendment

Rule 2. Subdivision (b) has been amended to adopt the revised filing requirements of RCFC 5.5(d)(1) specifying that a plaintiff must file 2 copies of the complaint and, except a plaintiff appearing *pro se*, an additional copy of the complaint in electronic form using a disc in CD-ROM format when the complaint exceeds 20 pages.

Rule 16. Subdivision (b) has been added to provide privacy protection in the caption of all petitions filed on behalf of a minor, consistent with the requirement of RCFC 5.2(a).

Rule 17. Subdivision (b) (“Filing a Document”) has been amended to reflect the court’s requirement of filing by electronic means in Vaccine Act cases, subject to reasonable exceptions.

2011 Adoption

Supplement to Vaccine Rules

The Supplement to the Vaccine Rules replaces former Office of Special Master’s General Order No. 13 (“Procedure for Electronic Case Filing in Vaccine Act Cases”), issued on January 2, 2008, and amended on October 16, 2008, and establishes electronic case filing as a mandatory procedure applicable to all newly filed Vaccine Act cases except for those cases involving *pro se* litigants.

Proposed Amendment to Appendix A

APPENDIX A CASE MANAGEMENT PROCEDURE

I. PURPOSE

1. These case management procedures are intended to promote cooperation among counsel, assist in the early identification of issues, minimize the cost and delay of litigation, and enhance the potential for settlement. (As used in this appendix, “counsel” shall be construed to include unrepresented parties.)

2. Uniformity of practice within the court also is an important goal of these procedures. For the purpose of promoting the efficient administration of justice, a judge may modify these procedures as appropriate, or the parties may suggest modification of these procedures to meet the needs of a particular case.

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III. JOINT PRELIMINARY STATUS REPORT

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5. If discovery is required, the Joint Preliminary Status Report shall set forth a proposed discovery plan, including proposed deadlines. The parties shall propose a deadline for fact discovery, for the disclosure of any experts’ reports, and for depositions or other discovery of experts. See RCFC 26(a)(2) concerning disclosure of experts and discovery planning. The parties may indicate in the Joint Preliminary Status Report whether they anticipate seeking a Fed. R. Evid. 502(d) court order incorporating a non-waiver agreement. A sample order implementing Fed. R. Evid. 502(d) is provided in Appendix of Forms, Form 14.

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Rules Committee Notes

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2011 Amendment

Paragraph 5, directing the inclusion in the Joint Preliminary Status Report of a plan addressing the parties’ anticipated discovery needs, has been expanded to include, at the parties’ option, an indication of their intention to seek a court order pursuant to Fed. R. Evid. 502(d) authorizing discovery to proceed on a voluntary basis without waiver of any claim of attorney-client privilege or work-product protection. A sample order implementing Fed. R. Evid. 502(d) is provided in Appendix of Forms, Form 14.

Proposed New Form 14

**FORM 14
ORDER IMPLEMENTING FED. R. EVID. 502(d)**

United States Court of Federal Claims

_____)	No. _____
_____ Plaintiff,)	Judge _____
_____ v.)	
THE UNITED STATES,)	
_____ Defendant.)	

ORDER

Pursuant to the agreement of the parties and the authority granted this court under Fed. R. Evid. 502(d), it is hereby ordered that a party's disclosure, in connection with this litigation, of any communication or information covered by the attorney-client privilege or entitled to work-product protection shall not constitute a waiver of such privilege or protection either in this litigation or in any other federal or state proceeding.

IT IS SO ORDERED.

Judge

Proposed Amendment to Appendix C

APPENDIX C PROCEDURE IN PROCUREMENT PROTEST CASES PURSUANT TO 28 U.S.C. § 1491(b)

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II. REQUIREMENT FOR PRE-FILING NOTIFICATION

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3. The pre-filing notice must include the following information:

(a) a statement consistent with the disclosure requirements called for in RCFC 7.1(a); and

(b) the following additional information:

(1)(a) the name of the procuring agency and the number of the solicitation in the contested procurement;

(2)(b) the name and telephone number of the contracting officer responsible for the procurement;

(3)(c) the name and telephone number of the principal agency attorney, if known, who represented the agency in any prior protest of the same procurement;

(4)(d) whether plaintiff contemplates requesting temporary or preliminary injunctive relief pursuant to RCFC 65;

(5)(e) whether plaintiff has discussed the need for temporary or preliminary injunctive relief with Department of Justice counsel and the response, if any;

(6)(f) whether the action was preceded by the filing of a protest before the Government Accountability Office (GAO) and if so, the "B-" number of the protest and whether a decision was issued; and

(7)(g) whether plaintiff contemplates the need for the court to enter a protective order.

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Rules Committee Notes

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2011 Amendment

The information that is to be provided as part of the pre-filing notice required under paragraph 3 has been expanded to include the disclosure statement regarding corporate relationships that must be filed pursuant to RCFC 7.1.

Proposed Amendment to Appendix E

APPENDIX E ELECTRONIC CASE FILING PROCEDURE

I. INTRODUCTION

1. **In General.** This Appendix sets forth the procedures governing electronic filings in the United States Court of Federal Claims. A Case Management/Electronic Case Files (CM/ECF) User Manual is available on the court's website—<http://www.uscfc.uscourts.gov>. For procedures governing electronic filings in Vaccine Act cases, see Appendix B to these rules ("Vaccine Rules of the United States Court of Federal Claims"), Supplement ("Electronic Case Filing Procedure in Vaccine Act Cases").

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Rules Committee Notes

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2011 Amendment

Paragraph 1 has been amended to include a cross reference to the separate procedures governing electronic filings in Vaccine Act cases set forth in the Supplement to Appendix B ("Vaccine Rules of the United States Court of Federal Claims").