

In the United States Court of Federal Claims

NOTICE OF PROPOSED AMENDMENT 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 amendment. The proposed amendment introduces new RCFC 77.3 (“Chief Judge Vacancy”), which will require the renumbering of current RCFC 77.3 (“Withdrawing, Disposing of, and Unsealing Papers and Exhibits”). All proposed changes are shown by yellow highlighting.

Comments must be received by January 14, 2019, and addressed to:

Lisa L. Reyes
Clerk of Court
United States Court of Federal Claims
717 Madison Place, NW
Washington, DC 20439

Absent further notice, this amendment will take effect later in 2019.


Lisa L. Reyes
Clerk of Court

Issued: November 13, 2018

Proposed New Rule 77.3

Rule 77.3 Chief Judge Vacancy

(a) In General. To ensure continuity of court operations when a vacancy arises in the chief judge's position and the President has not yet exercised the authority to designate a successor under 28 U.S.C. § 171(b), the powers and duties assigned to the chief judge will be exercised on a temporary, emergency basis as follows:

- (1)** by the judge in regular active service who is senior in commission of those judges who:
 - (A)** are 69 years of age or less;
 - (B)** have served for one year or more as a judge; and
 - (C)** have not served previously as chief judge;
- (2)** in the event that no judge meets the age qualification set forth in paragraph (a)(1) above, by the youngest judge in regular active service who:
 - (A)** is 70 years of age or more;
 - (B)** has served for one year or more as a judge; and
 - (C)** has not served previously as chief judge; or
- (3)** in the event that no judge in regular active service has served for one year or more, by the judge in regular active service who:
 - (A)** is senior in commission; and
 - (B)** has not served previously as chief judge.

(b) Scope. The authority granted by this rule expires immediately upon the President's designation of a chief judge pursuant to 28 U.S.C. § 171(b).

(Added _____, 2019.)

Rules Committee Notes 2019 Adoption

In accordance with 28 U.S.C. § 171(b), the President has the authority to designate one of the active judges of the court who is less than 70

years of age to serve as chief judge. The statute does not, however, address who is to perform the duties of the chief judge when a vacancy arises in that office and the President has not yet exercised the authority to appoint a new chief judge under 28 U.S.C. § 171(b). RCFC 77.3 has been adopted to address these concerns by following, with appropriate modifications, the order of precedence for the designation of a chief judge that is applicable to the district courts as prescribed by 28 U.S.C. § 136(a)(1), (2).

Renumbered Rule 77.4

Rule 77.4. Withdrawing, Disposing of, and Unsealing Papers and Exhibits

(a) Withdrawing Papers and Exhibits.

(1) **In General.** A paper or exhibit filed with the court may not be withdrawn from the office or custody of the clerk except by order of the court, but such an order should be entered only in extraordinary circumstances. Any withdrawal of a paper or exhibit pursuant to a court order must be recorded through an appropriate docket entry.

(2) **During Trial.** The court reporter engaged to transcribe a trial proceeding may temporarily withdraw any paper or exhibit for use during that proceeding. All papers and exhibits admitted into evidence or designated to accompany the transcript of the proceeding must remain in the reporter's custody until the transcript is filed with the clerk.

(b) **Disposing of Physical Exhibits.** All trial exhibits, including models, diagrams, depositions, transcripts, briefs, tables, and charts, will be destroyed or otherwise disposed of by the clerk unless they are removed from the clerk's custody by the party who produced them either:

- (1) within 60 days after the entry of final judgment by this court; or
- (2) in the event of an appeal, within 90 days after the receipt and filing of a mandate or other process or certificate showing a final disposition of the case by the appellate court.

(c) **Unsealing Papers and Exhibits.** Unless otherwise required by statute or order and absent a timely objection by any party, the clerk, upon notice to the parties, may unseal any paper or exhibit filed under seal either:

- (1) 5 years after the entry of final judgment by this court; or
- (2) in the event of an appeal, 5 years after the receipt and filing of a mandate or other process or certificate showing disposition

of the case by the appellate court.

(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008, July 13, 2009; as renumbered _____, 2019.)

Committee Notes

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2019 Amendment

RCFC 77.4 formerly appeared in these rules as RCFC 77.3 and has been renumbered to accommodate the logical placement of new RCFC 77.3 ("Chief Judge Vacancy"), adopted August 1, 2019.