

In the United States Court of Federal Claims

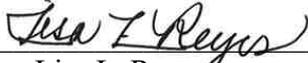
NOTICE OF PROPOSED AMENDMENTS TO RULES

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. The proposed amendments affect (i) RCFC 5.4, 25, 83.1, and 83.2; (ii) Vaccine Rules 10, 29, and 34; (iii) Supplement to Appendix B (“Electronic Case Filing Procedure in Vaccine Act Cases”); (iv) Appendix E (“Electronic Case Filing Procedure”); and Appendix H (“Procedure for Alternative Dispute Resolution”). All proposed changes are shown by strikethrough and yellow highlighting.

Comments must be received by June 26, 2020, 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, these amendments will take effect August 3, 2020.



Lisa L. Reyes
Clerk of Court

Issued: May 12, 2020

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Proposed Amendment of Rule 5.4

Rule 5.4. Contents and Length of a Brief or Memorandum

(a) Contents.

(1) ***In General.*** A brief or memorandum must be compact, concise, logically arranged, and free of burdensome, irrelevant, immaterial, and scandalous matter. The court may disregard a brief or memorandum that fails to comply with this rule.

(2) ***Initial Brief or Memorandum.*** Except in a brief or memorandum of 10 pages or fewer or in pretrial findings under Appendix A, the first brief or memorandum must contain the following items, arranged under proper headings and in the following order:

(A) a table of contents, including the specific contents of any appendix or appendices to the brief or memorandum, listing a description of every item or exhibit being reproduced in the appendix and the page number at which the item or exhibit appears;

(B) a table of cited constitutional provisions, treaties, statutes, regulations, and cases, giving the volume and page number of the edition where each may be found (using the United States Claims Court Reporter or the Federal Claims Reporter for all published United States Claims Court and United States Court of Federal Claims orders and opinions) and arranging the cases in alphabetical order;

(C) a concise statement of each question presented;

(D) a concise statement of the case, making reference to specific findings,

stipulations of fact, or other pertinent portions of the record and setting out verbatim the pertinent portions of the applicable constitutional provisions, treaties, statutes, regulations, and texts of all administrative decisions directly involved in the case (unless previously reproduced in or as an exhibit to the complaint);

(E) a clear statement of the argument, setting forth the points of fact and law being presented and the authorities relied upon;

(F) a concise conclusion, indicating the relief sought; and

(G) any appendix to the brief or memorandum, numbered consecutively within itself to enable the court to find and read the material more easily and, if set forth in a volume separate from the brief or memorandum, containing a table of contents with a description of every item or exhibit being reproduced and the page number at which the item or exhibit appears.

(3) ***Opposing Brief or Memorandum.*** An opposing or answering brief must conform to the requirements set forth in RCFC 5.4(a)(2), except that the items referred to in 5.4(a)(2)(C) and (D) need not be included unless the party is dissatisfied with the other side's presentation.

(4) ***Reply Brief or Memorandum.*** A reply brief or memorandum must conform to the requirements of RCFC 5.4(a)(3).

(5) ***Cross-Motions.***

(A) ***Initial Motion.*** Any cross-motion must:

(i) conform to the requirements of RCFC 5.4(a)(3);

(ii) be contained in the same document as the response to the original motion.

(B) **Response.** A response to a cross-motion must be contained in the same document as the reply to the original motion.

(b) Length.

(1) **Initial Brief or Memorandum.** Except by leave of the court on motion, a party's initial brief or memorandum must not exceed 40 pages (50 pages for a cross-movant), not including:

(A) the table of contents;

(B) the list of citations to constitutional provisions, treaties, statutes, regulations, and cases; and

(C) any appendix setting out the pertinent portion of any constitutional provisions, treaties, statutes, regulations, agency and board decisions, court decisions, excerpts from transcripts of testimony, and documentary exhibits.

(2) **Reply Brief or Memorandum.** Except by leave of the court on motion, a reply brief or memorandum must not exceed 20 pages (30 pages when a response to a motion is included).

(3) **Relying on a Previously Filed Brief or Memorandum.** A party must not incorporate a brief or memorandum by reference; the court will disregard any such incorporation. To rely upon a previously filed brief or memorandum, a party must:

(A) reproduce the brief or memorandum (or, when appropriate, the selected excerpts of such document) in an appendix;

(B) identify the total number of pages considered relevant in a footnote included on the first page of the brief or memorandum; and

(C) include the number of pages identified when calculating the maximum allowable pages set forth in RCFC 5.4(b)(1) and (2).

(c) Citations.

(1) **In General.** All citations must follow the formats in the most recent edition of *The Bluebook: A Uniform System of Citation*.

(2) **Citation by Document Number.**

(A) References to documents filed in the court's electronic filing system must follow one of the citation formats established by the court.

(B) Citation formats are posted on the court's website or may be obtained by calling the clerk's office.

(As revised and reissued May 1, 2002; as renumbered Nov. 15, 2007; as amended Nov. 3, 2008; _____, 2020.)

Rules Committee Notes

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2020 Amendment

RCFC 5.4(c) has been added to address citation formats.

Proposed Amendment of Rule 25

Rule 25. Substitution of Parties

(a) Death.

(1) ***Substitution if the Claim is Not Extinguished.*** If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by the decedent must be dismissed.

(2) ***Continuation Among the Remaining Parties.*** After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) ***Service.*** A motion to substitute, together with a notice of hearing, must be served on the parties as provided in RCFC 5. A statement noting death must be served on the parties and a successor or representative of the deceased party in the same manner.

(b) **Incompetency.** If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in RCFC 25(a)(3).

(c) **Transfer of Interest.** If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in RCFC 25(a)(3).

(d) **Public Officers; Death or Separation from Office.** An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, [redacted], 2020.)

Rules Committee Notes 2002 Revision

Rules Committee Notes
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2020 Amendment

RCFC 25(a)(3) has been amended to eliminate the inadvertent implication that a statement noting death need not be served on nonparties such as successors or representatives of the deceased party.

Proposed Amendment of Rule 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;
 - (B) is a member in good standing of the bar of this court; or
 - (C) 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 such participation, either orally or by written motion, will be 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 20439, 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 check in with appear in the clerk's office no later than 30 minutes before the start of the proceeding. At least one week in advance of the proceeding, applicants must submit electronically the following 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 the last 30 days and states that the applicant is a member in

good standing of the bar of such court; and

(III) payment of the admission fee set forth in RCFC 83.1(b)(4);

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).~~

(ii) **By Verified Application.** An attorney may seek admission to practice before this court without appearing in person by submitting electronically presenting the clerk with a verified application for admission (see Appendix of Forms, Form 1) along with the following documentation:

(I) a verified application for admission (see Appendix of Forms, Form 1);

(II) 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 the last 30 days and states that the applicant is a member in good standing of the bar of such court;

(III) 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

(IV) 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; and

(V) payment of the admission fee set forth in RCFC 83.1(b)(4).

(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 notify the clerk within 30 days 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 is based. If the clerk receives notice that, for reasons not listed in RCFC 83.2, an attorney has withdrawn, resigned, or retired from such jurisdiction, failed to renew his or her admission to such jurisdiction, or is otherwise ineligible to practice law in such jurisdiction, the clerk will strike the attorney's name from the roll of members of the bar of this court.

(6) **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.

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(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, June 20, 2006, Nov. 3, 2008, Jan. 11, 2010, July 15, 2011, July 1, 2019, , 2020.)

Rules Committee Notes

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2020 Amendment

RCFC 83.1(a)(2)(B) has been amended to clarify that the attorney of record for any party may request, either orally or by written motion, that an attorney be permitted to participate *pro hac vice*.

RCFC 83.1(b) has been amended to reflect that applications for admission to practice before the court are submitted electronically. Item (b)(2)(A)(ii) ("By Oral Motion in a Proceeding Outside Washington, DC") has also been deleted as unnecessary.

In addition, RCFC 83.1(b)(5) has been amended to require that attorneys notify the clerk within 30 days of any change in the attorney's address and of 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 is based.

Finally, RCFC 83.1(b)(5)(B) has been expanded to authorize the clerk to automatically strike an attorney's name from the roll of members of the bar of this court if the clerk receives notice that, for reasons not listed in RCFC 83.2, the attorney has become ineligible to practice law in the jurisdiction upon which the attorney's admission to the bar of this court is based.

Proposed Amendment of Rule 83.2

Rule 83.2. Attorney Discipline

* * *

(c) **Grounds for Discipline.** An attorney admitted to practice before this court, including an attorney admitted for the purpose of a particular proceeding pursuant to RCFC 83.1(a)(2) ~~or (b)(5)~~, may be disciplined under this rule on any of the following grounds:

- (1) the conviction by another court of a serious crime as defined in RCFC 83.2(b)(1) and (2);
- (2) an act, ~~or omission,~~ or impairment that results in the attorney's disbarment or suspension by another court;
- (3) disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending;
- (4) failure to comply with the terms of this rule, including failure to notify the court in accordance with RCFC 83.2(e); or
- (5) any conduct before the court that is unbecoming a member of the bar of this court.

* * *

(g) **Referrals, Investigations, and Disciplinary Proceedings.**

* * *

(7) **Presumed Discipline.** Unless the standing panel concludes that a different discipline may be appropriate, the following discipline is presumed to apply and should be identified in the show cause order:

- (A) **For Conviction by Another Court of a Serious Crime.** Disbarment is the presumed discipline for the conviction by another court of a serious crime.
- (B) **For Disbarment or Suspension by Another Court.** Reciprocal disbarment or suspension is the presumed discipline for an act, ~~or omission,~~ or impairment that results

in an attorney's disbarment or suspension by another court.

(C) **For Disbarment on Consent or Resignation From the Bar of Another Court.** Reciprocal disbarment is the presumed discipline for an attorney's disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending.

(D) **For Conduct Unbecoming a Member of the Bar of this Court.** There is no presumed discipline for conduct that is unbecoming a member of the bar of this court; the standing panel will determine the appropriate discipline.

(8) **Responding to a Show Cause Order.** Unless otherwise ordered, an attorney must file any response to a show cause order within 30 days after service of the order. Any request for a hearing must be included in the response.

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, July 13, 2009, July 15, 2011, Aug. 3, 2015, Aug. 1, 2017, _____, 2020.)

Rules Committee Notes

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2020 Amendment

RCFC 83.2(c)(2) and RCFC 83.2(g)(7)(B) have been amended to clarify that suspensions and disbarments on the basis of impairment are grounds for reciprocal discipline in this court.

Proposed Amendment of Appendix B Vaccine Rules of the United States Court of Federal Claims

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TITLE II. PROCEEDINGS BEFORE THE SPECIAL MASTER

* * *

Rule 10. Decision of the Special Master

- (a) **In General.** Pursuant to 42 U.S.C. § 300aa-12(d)(3)(A), the special master will issue a decision on the petition with respect to whether an award of compensation is to be made and, if so, the amount thereof.
- (b) **Timing.** The special master must issue a decision on the petition within 240 days after the date the petition was filed, exclusive of any ~~all~~ periods of: ~~suspension pursuant to Vaccine Rule 9.~~
- (1) remand; or
 - (2) suspension pursuant to Vaccine Rule 9.

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(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, July 13, 2009, _____, 2020.)

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TITLE III. JUDGMENT AND FURTHER PROCEEDINGS

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Rule 13. Attorney's Fees and Costs

- (a) **In General.** Any request for attorney's fees and costs pursuant to 42 U.S.C. § 300aa-15(e) must be filed no later than 180 days after the entry of judgment or the filing of an order concluding proceedings under Vaccine Rule 10(d)(3) or 29.
- (b) **Decision on the Motion.** Except for a request for fees and costs arising under Vaccine Rule 34(b), the clerk will forward the fee request

to the special master for a decision thereon. The decision of the special master on the fee request—including a request for interim fees—constitutes a separate decision for purposes of Vaccine Rules 11, 18, and 23.

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

* * *

TITLE V. REVIEW OF A DECISION OF THE SPECIAL MASTER

* * *

Rule 29. Withdrawing a Petition.

- (a) **Notice to Petitioner.** ~~If the assigned judge fails to enter judgment within 420 days after the date the petition was filed, exclusive of any periods of remand or suspension pursuant to Vaccine Rule 9, the~~ The assigned judge must file a notice to petitioner pursuant to 42 U.S.C. § 300aa-12(g)(2) if:
- (1) no notice was issued pursuant to 42 U.S.C. § 300aa-12(g)(1); and
 - (2) the assigned judge fails to enter judgment within 420 days after the date the petition was filed, exclusive of any periods of:
 - (A) remand; or
 - (B) suspension pursuant to Vaccine Rule 9.

* * *

(As revised and reissued May 1, 2002; as amended July 13, 2009, _____, 2020.)

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Rule 34. Attorney’s Fees and Costs Following Review

(a) In General. Except as provided in subdivision (b) of this rule, any request for attorney’s fees and costs following review by an assigned judge must be filed in accordance with Vaccine Rule 13.

(b) Additional Fees and Costs. Following review by an assigned judge of a special master’s decision on attorney’s fees and costs under Vaccine Rule 13, a request for any additional fees and costs relating to such review **will** be decided by: ~~the assigned judge or by the special master on remand.~~

(1) the special master if the case is on remand; or

(2) the assigned judge if the case is not on remand, although the assigned judge may remand the case to the special master for consideration of such motion.

(As revised and reissued May 1, 2002; as amended July 13, 2009, _____, 2020.)

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Rules Committee Notes

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2020 Amendment

Rule 10. Subdivision (b) has been amended to exclude all periods of remand, as well as all periods of suspension, from the 240-day calculation.

Rule 29. Subdivision (a) has been amended to clarify that if the assigned judge fails to enter judgment within 420 days after the date the petition was filed, the assigned judge must issue a notice to petitioner only if a 240-day notice pursuant to 42 U.S.C. § 300aa-12(g)(1) was not issued by the special master.

Rule 34. Subdivision (b) has been amended to clarify that the assigned judge will decide a motion for additional fees under this rule unless the case is on remand or is remanded to the special master.

Proposed Amendment of 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—www.uscfc.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~~ an individual to whom the court has granted access ~~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."

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

5. **Access.** ~~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.

(a) **Applications.** Applications for access to file documents electronically in the ECF System are submitted through PACER (Public Access to Court Electronic Records) at www.pacer.gov, and will be granted to:

- (i) an attorney who is admitted to the bar of this court; and
- (ii) an individual who is not represented by an attorney only if allowed or so required by court order.

6. **Log-in and Password.**

(b) **Notification.** ~~Once registered, a Filing User will be notified of his or her user log-in and~~ The court will notify a Filing User when access to the ECF System has been granted.

~~(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.

6. ~~(e)~~ **Use of Electronic Filing Account.** No Filing User or other person may knowingly permit or cause a Filing User's ~~log-in~~ login 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 and the payment of the initial filing fee may be accomplished in accordance with Vaccine Rule 2(b)(2).

(ii) **Required Attachments.** The petition must be accompanied by 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 a portable storage disc or drive (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. Technical Requirements ~~Size Limitations~~.

(a) Format.

(i) **In General.** Electronically filed documents must be:

(A) converted to Portable Document Format (PDF); and

(B) text searchable.

The ECF system will not accept PDF documents containing tracking tags, embedded system commands, password protections, access restrictions, or other security features, special tags, or dynamic features.

(ii) Scanned Documents.

(A) Electronically filed documents should not be scanned prior to filing unless the original documents are unavailable in electronic form.

(B) A Filing User is responsible for ensuring the accuracy and readability of a scanned document.

(b) Size Limitations.

(i) **In General.** A single filing may be divided into multiple ~~Adobe~~ PDF files.

(ii) **Number of Files.** Counsel must endeavor to limit the total number of ~~Adobe~~ PDF files that constitute a single filing, particularly when filing appendices and administrative records.

(iii) Size of Files.

(A) Unless otherwise ordered by the court, each ~~Adobe~~ PDF file must not exceed the size ~~limitation~~ ~~limitations~~ established by the court.

(B) The current ~~Current~~ size ~~limitation~~ ~~limitations~~ are posted on the court's website or may be obtained by calling the clerk's office.

(iv) Exceeding the Size Limitations. For files that exceed the size limitation~~limitations~~, the Filing User may:

- (A)** use a portable storage disc or drive~~disc in CD-ROM format~~; or
- (B)** seek leave of the court to file in some other electronic format.

(c) Events. Events are used in the ECF System for filing documents and creating docket entries on the docket sheet. A Filing User:

- (i)** must select an event or events for each filed document based on the purpose of the document or relief requested; and
- (ii)** should use the most specific event available rather than a more generic event.

(d) Linking Filings. An electronically filed document—such as a response or reply—that pertains to a motion or other filing must be linked properly in the ECF System to the filing to which it pertains.

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 (hand-written 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~~ Via Portable Storage Discs and Drives.

- (a) In General.** Filing documents on a portable storage disc or drive~~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 or drive;
 - (B)** a statement certifying that the contents of the disc or drive have been scanned using anti-virus software with up-to-date anti-virus definitions; and
 - (C)** a certificate stating when copies of the disc or drive were mailed or delivered to the clerk’s office;
 - (ii)** providing the clerk’s office with two copies of the disc or drive along with a printed copy of the “Notice of Intent to File”; and
 - (iii)** serving one copy of the disc or drive on opposing counsel.
- (b) Date of Filing.** The disc or drive~~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 disc or drive~~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 or drive 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 or drive might be labeled “EX01_University_Hospital_98-0000.pdf.”
- (e) **Format.** Before filing a disc or drive CD-ROM, the Filing User should:
- (i) “close” or finalize the disc or drive so that additional material cannot be written onto the disc or drive; and
 - (ii) scan the disc or drive using appropriate anti-virus software after its creation and closure.
- (f) **Packaging and Labeling.** The Filing User should package the disc or drive 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 or drive contains (e.g., Exhibits 01-20).

V. FILING PROCEDURES

12. Notice of Filing; Service.

- (a) **Notifying the Parties.** 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 parties.
- (b) **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 filings on a portable storage disc or drive CD-ROM 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. The filing date of each ECF filing will appear at the top of the first page in an automatically generated banner stating the case number, the document number, and the date filed.

VI. SIGNATURES AND RELATED MATTERS

18. Signature Defined. A Filing User’s ~~log-~~inlogin 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-~~inlogin 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; or
- (b) by submitting a document containing an electronic signature for each party (“s/[name of party]”) and the filing attorney’s representation that the other parties have reviewed the document and consent to its filing.

VII. COURT ORDERS, AND 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).
- (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.

VIII. PRIVACY

25. Filings Protected Against Public Disclosure. Except as provided in Vaccine Rule 18, all ECF-filings submitted in a Vaccine Act case are ~~restricted 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.

26. Personal Information. Because all ECF filings submitted by the parties in a Vaccine Act case are ~~restricted 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, TECHNICAL FAILURE, AND-PUBLIC ACCESS, AND HYPERLINKS

27. 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.

28. 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.

29. Hyperlinks.

- (a) **Type.** Filings may contain the following types of hyperlinks:

(i) hyperlinks to other portions of the same document;

(ii) hyperlinks to documents already filed in the court's ECF System; and

(iii) hyperlinks to a location on the Internet that contains a source document for a citation.

(b) Cited Authority. Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document.

(c) Limitation. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document. If a party wishes to make any hyperlinked material part of the record, the party must include the material as an attachment to the filing.

(d) Disclaimer. The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The court accepts no responsibility for the availability or functionality of any hyperlink.

attorney only if allowed or so required by court order.

Paragraph 9 has been amended to include additional technical requirements related to document format, event selection, and linking filings.

In addition, paragraphs 9(b), 11 and 15 have been amended to substitute the phrase "a portable storage disc or drive" for all references to a CD-ROM.

Finally, new paragraph 29 has been added to address hyperlinks in filings.

Rules Committee Notes

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2020 Amendment

Paragraph 2(c) has been amended to define a Filing User as an individual, rather than as a member of the court's bar, to whom the court has granted access to file documents electronically in the ECF System.

Paragraph 5 has been amended to reflect that applications for access to file documents electronically in the ECF System are submitted through PACER and that access may be granted to an individual who is not represented by an

Proposed Amendment of 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—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").

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

- (a) "ECF System" means the court's system for electronic case filing;
- (b) "ECF case" means any case designated by the court as an electronic case in the ECF System;
- (c) "Filing User" means ~~a member of the court's bar~~ an individual to whom the court has granted access ~~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, where appropriate, the assigned special master.

II. ELECTRONIC CASE DESIGNATION AND NOTICE

3. Scope.

- (a) **Newly Filed Cases.** All newly filed 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 case has been designated an ECF case by filing a "Notice of Designation."

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

5. Access. 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.~~

(a) **Applications.** Applications for access to file documents electronically in the ECF System are submitted through PACER (Public Access to Court Electronic Records) at www.pacer.gov, and will be granted to:

- (i) an attorney who is admitted to the bar of this court; and
- (ii) an individual who is not represented by an attorney only if allowed or so required by court order.

6. Log in and Password.

(b) **Notification.** ~~Once registered, a Filing User will be notified of his or her user log in and~~ The court will notify a Filing User when access to the ECF System has been granted.

~~(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.

6. (e) Use of Electronic Filing Account. No Filing User or other person may knowingly permit or cause a Filing User's ~~log in~~ login 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.** Initial papers, including the complaint, may be filed in paper or electronic form in accordance with RCFC 5.5.
- (b) **Subsequent Filings.** Once a case has been designated an ECF case, all subsequent filings must be made electronically, except as provided in this Appendix 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 only those excerpts of the referenced exhibit or attachment that are directly germane to the matter under consideration by the court;
 - (iii) must clearly and prominently identify the excerpted material; and
 - (iv) may seek leave to file additional excerpts or the complete document.

9. Technical Requirements ~~Size Limitations.~~

(a) Format.

- (i) **In General.** Electronically filed documents must be:

- (A) converted to Portable Document Format (PDF); and
- (B) text searchable.

The ECF system will not accept PDF documents containing tracking tags, embedded system commands, password protections, access restrictions or other security features, special tags, or dynamic features.

(ii) Scanned Documents.

- (A) Electronically filed documents should not be scanned prior to filing unless the original documents are unavailable in electronic form.

- (B) A Filing User is responsible for ensuring the accuracy and

readability of a scanned document.

(b) Size Limitations.

- (i) **In General.** A single filing may be divided into multiple Adobe-PDF files.

- (ii) **Number of Files.** Counsel must endeavor to limit the total number of Adobe-PDF files that constitute a single filing, particularly when filing appendices and administrative records.

(iii) Size of Files.

- (A) Unless otherwise ordered by the court, each Adobe-PDF file must not exceed the size limitation limitations established by the court.

- (B) The current Current size limitation is limitations are posted on the court's website or may be obtained by calling the clerk's office.

- (iv) **Exceeding the Size Limitation Limitations.** For files that exceed the size limitation limitations, the Filing User must seek appropriate relief from the court, which may, for example, authorize a filing in some other electronic format (e.g., a portable storage disc or drive CD-ROM) or in paper form.

- (c) **Events.** Events are used in the ECF System for filing documents and creating docket entries on the docket sheet. A Filing User:

- (i) must select an event or events for each filed document based on the purpose of the document or relief requested; and

- (ii) should use the most specific event available rather than a more generic event.

- (d) **Linking Filings.** An electronically filed document—such as a response or reply—that pertains to a motion or other filing must be linked properly in the ECF System to the filing to which it pertains.

- 10. **Courtesy Copies in Paper Form.** Unless otherwise ordered by the court, if a document,

including exhibits and attachments, exceeds 50 pages when printed, the Filing User must supply chambers with a courtesy copy of the document in paper form in accordance with RCFC 5.5(c). The court may order the parties to supply courtesy copies in paper form of any ECF filing.

11. Filing Under Seal. In all cases except cases filed under the National Vaccine Injury Compensation Program, a party:

- (a) must seek leave of the court to file documents electronically under seal; and
- (b) may not attach the documents to be filed under seal to the motion for leave but rather may file the documents electronically only after the motion is granted.

V. FILING PROCEDURES

12. Notice of Filing; Service.

- (a) **Notifying the Parties.** 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 parties.
- (b) **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 Appendix, 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 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 Appendix must be submitted before midnight local time in Washington, DC, to be considered timely filed on that date.

17. Date Stamp. The filing date of each ECF filing will appear at the top of the first page in an automatically generated banner stating the case number, the document number, and the date filed.

VI. SIGNATURES AND RELATED MATTERS

18. Signature Defined. A Filing User’s ~~log~~ ~~in~~login and password will serve as his or her signature on a filing for all purposes, including those under RCFC 11.

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~~login 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 submitting a document containing an electronic signature for each party (“s/[name of party]”) and the filing attorney’s representation that the other parties have reviewed the document and consent to its filing.

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 Appendix.

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

- (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).
- (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 must be filed in the traditional manner in accordance with the court’s rules or may be filed electronically in an ECF case.

VIII. PRIVACY

26. Personal Information.

- (a) **In General.** Filing Users are advised that any personal information in an ~~ECF~~ filing that is not otherwise protected will be ~~made~~ available over the Internet through PACER (~~Public Access to Court Electronic Records~~).
- (b) **Including Personal Information in a Filing.** In compliance with the E-Government Act of 2002, Filing Users should not include personal information in any ~~ECF~~ filing unless such inclusion is necessary and relevant to the filing.
- (c) **Excluding or Redacting Personal Information in a Filing.** The following personal identifiers should be excluded, or redacted when inclusion is necessary, from all ~~ECF~~ filings, unless otherwise ordered by the court:
 - (i) Social Security numbers—if an individual’s Social Security number must be included in a filing, only the last four digits of the number should be used;

- (ii) names of minor children—if the name of a minor child must be mentioned in a filing, only the initials of the child should be used;
- (iii) dates of birth—if an individual’s date of birth must be included in a filing, only the year should be used; and
- (iv) financial account numbers—if a financial account number is relevant to a filing, only the last four digits of the number should be used.

(d) **Using Caution When Including Other Sensitive Information.** Filing users should exercise caution when filing documents containing:

- (i) a personal identifying number, such as a driver’s license number;
- (ii) medical records;
- (iii) employment history;
- (iv) individual financial information; or
- (v) proprietary or trade secret information.

27. Deciding When to Include, Redact, or Exclude Personal Information. Counsel are strongly urged to discuss with all clients the use of personal information so that an informed decision about including, redacting, or excluding such information may be made.

28. Responsibility to Protect Personal Information. It is the sole responsibility of counsel and the parties to protect any personal information included in a filing; the clerk’s office will not review filings to ensure that personal information has been adequately protected.

IX. RETENTION, TECHNICAL FAILURE, AND PUBLIC ACCESS, AND HYPERLINKS

29. 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.

30. 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.

31. Reviewing ECF Filings. The public may review ECF filings in the clerk's office. A person may also access filings in the ECF System by obtaining a PACER log-in and password (see www.pacer.gov pacer.psc.uscourts.gov).

32. Hyperlinks.

(a) Type. Filings may contain the following types of hyperlinks:

- (i)** hyperlinks to other portions of the same document;
- (ii)** hyperlinks to documents already filed in the court's ECF System; and
- (iii)** hyperlinks to a location on the Internet that contains a source document for a citation.

(b) Cited Authority. Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document.

(c) Limitation. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document. If a party wishes to make any hyperlinked material part of the record, the party must include the material as an attachment to the filing.

(d) Disclaimer. The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The court accepts no responsibility for the availability or functionality of any hyperlink.

granted access to file documents electronically in the ECF System.

Paragraph 5 has been amended to reflect that applications for access to file documents electronically in the ECF System are submitted through PACER and that access may be granted to an individual who is not represented by an attorney only if allowed or so required by court order.

Paragraph 9 has been amended to include additional technical requirements related to document format, event selection, and linking filings. In addition, paragraph 9(b) has been amended to substitute the phrase "a portable storage disc or drive" for CD-ROM.

Finally, new paragraph 32 has been added to address hyperlinks in filings.

Rules Committee Notes

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2020 Amendment

Paragraph 2(c) has been amended to define a Filing User as an individual, rather than as a member of the court's bar, to whom the court has

Proposed Amendment of Appendix H ("Procedure for Alternative Dispute Resolution")

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3. Procedures. RCFC 16 and Appendix A, paragraphs 3, 4(f), and 4(i), set out the parties' obligations with respect to consideration of ADR. At any point in the litigation, however, the parties may notify the assigned judge of their desire to pursue ADR. There is no single format for ADR. Any procedures agreed to by the parties and adopted by the settlement judge or third-party neutral may be used. Certain basic ground rules will be observed, however, as follows:

(a) ADR is voluntary. A party's good-faith determination that ADR is not appropriate in a particular case should be respected by other parties and by the court.

(b) If the parties and the assigned judge agree that ADR would be beneficial, the assigned judge will issue an order directing the clerk of court as follows:

(1) to ~~refer~~~~assign~~ the case to ~~an~~ ADR judge who serves on the court's ADR Committee or to any other judge of the court upon the agreement of the parties and both judges; or

(2) to refer the case to a third-party neutral upon whom the parties have agreed, in which case the order will additionally provide contact information for the third-party neutral.

Rules Committee Notes

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2020 Amendment

Paragraph 3(b)(1) has been amended to provide that a case may be referred to any judge of the court—not only judges who serve on the court's ADR Committee—for the conduct of ADR proceedings.