

Proposed ECF Amendment

Circuit Rule 25

Filing and Service

(a) Filing by Electronic Means. The court will accept for filing documents submitted, signed, or verified by electronic means that comply with procedures established by the court. Pursuant to Federal Rule of Appellate Procedure 25(a)(2)(D) and 25(c), the court has authorized the filing and service of documents by electronic means. Except as otherwise prescribed by Circuit rule or order of the court, all ~~in~~ cases will be assigned to the court's Case Management/Electronic Case Files (CM/ECF) system, ~~the~~ clerk is authorized to permit or to require a party to file by electronic means, and all documents must be filed electronically in accordance with procedures established by the court. The clerk also may require paper copies of any document filed electronically. Electronic transmission of a document to the CM/ECF system, together with the transmission of a Notice of Docket Activity from the court, constitute filing of the document under the Federal Rules of Appellate Procedure and the rules of this court, and constitute under FRAP 36 and 45(b) entry of the document on the docket maintained by the clerk. If the court requires a party to file a motion for leave to file, both the motion and document at issue should be submitted electronically. If leave is granted, the underlying document will remain on the docket; if leave is denied, the docket will so reflect.

(b) Registration for the CM/ECF System.

(1) Attorneys who appear before this court must register for the court's CM/ECF system in accordance with procedures established by the court. Every attorney representing a party or an amicus curiae in a case must individually enter an appearance and register for the court's CM/ECF system if the attorney wishes to file or to receive notice of filings in that case.

(2) At the discretion of the court, a party to a pending civil case who is not represented by an attorney may be permitted to register as an ECF filer solely for purposes of that case. A pro se party who desires to register as an ECF filer must file a motion in this court, describing the party's access to the internet and confirming the capacity to file and receive documents electronically on a regular basis. If a pro se party retains an attorney, the attorney must enter an appearance.

(3) ECF filers must agree to protect the security of their passwords and to notify the PACER Service Center and the clerk immediately if they learn that their password has been compromised. See Circuit Rule 32(a)(1). ECF filers may be sanctioned for failure to comply with this provision.

(b)(c) Exceptions to Requirement of Electronic Filing and Service.

(1) A party proceeding pro se must file documents in paper form with the clerk and must be served with documents in paper form, unless the pro se party has been permitted to register as an ECF filer for that case.

(2) Upon motion and a showing of good cause, the court may exempt a party from the electronic filing requirements and authorize filing by means other than use of the CM/ECF system.

(3) Case-initiating documents, including petitions for permission to appeal, petitions for review or notices of appeal from agency action, and petitions for writ of mandamus and other original proceedings in this court, must be filed in paper form. Upon the court's request, an ECF filer must promptly provide the clerk an electronic version of the filing.

(4) Any document containing material under seal, or containing material that a party is seeking to place under seal, may not be filed or served electronically unless the court orders otherwise. In cases that are sealed in their entirety, no documents may be filed or served electronically unless the court orders otherwise. Matters under seal are governed by Circuit Rule 47.1. Upon the court's request, an ECF filer must promptly provide the clerk an electronic version of any sealed filing.

(5) Exhibits, attachments, or appendix items that (i) exceed the size limitation set by the court; (ii) are not in a format that readily permits electronic filing, such as odd-sized documents; or (iii) are illegible when scanned into electronic format may be filed in paper form. Documents filed pursuant to this subsection must be served by an alternative method of service authorized by FRAP 25, and the filer must file electronically a notice of paper filing.

(d) Paper Copies of Electronic Filings. Except for documents listed in Circuit Rule 32(d) or unless the court directs otherwise, documents filed electronically are not to be submitted to the court in paper form. In those instances when paper copies of electronic filings are required, the filing of copies of non-emergency documents may be accomplished by First-Class Mail addressed to the clerk, or other class of mail that is at least as expeditious, postage prepaid, within two business days of the electronic filing, unless the court has ordered filing by hand or other means. The number of paper copies is governed by the rules pertaining to that document or by order in a particular case; the "original" is the electronic filing.

(e) Privacy Protection. Unless the court orders otherwise, parties must refrain from including or must redact the following personal data identifiers from documents filed with the court to the extent required by FRAP 25(a)(5):

- Social Security numbers. If an individual's Social Security number must be included, use the last four digits only.
- Financial account numbers. If financial account numbers are relevant, use the last four digits only.
- Names of minors. If the involvement of an individual known to be a minor must be mentioned, use the minor's initials only.
- Dates of birth. If an individual's date of birth must be included, use the year only.
- Home addresses. In criminal cases, if a home address must be included, use the city and state only.

The filer bears sole responsibility for ensuring a document complies with these requirements.

(e) (f) Service of Documents by Electronic Means. Registration for the court's CM/ECF system constitutes consent to electronic service of all documents as provided in these rules and the Federal Rules of Appellate Procedure. The Notice of Docket Activity that is generated by the court's CM/ECF system constitutes service of the filed document on all parties who have consented to electronic service. For any document that is not filed electronically and for any party who has not consented to electronic service, the document must be served by an alternative method of service, in accordance with the Federal Rules of Appellate Procedure and this court's rules. The Notice of Docket Activity generated by the court's CM/ECF system does not replace the certificate of service required by FRAP 25.

(d) (g) Non-Electronic Filing. When electronic filing is not utilized, a non-emergency paper may be filed at the United States court house after the regular hours of the clerk's office pursuant to procedures established by the clerk's office. In emergencies or other compelling circumstances, when electronic filing is not utilized, the clerk may authorize that papers be filed with the court through facsimile transmission. Except when specifically so permitted, such filing is not authorized.

See also Circuit Rule 32(a) (Electronic Signatures) and Circuit Rule 32(d) (Paper Copies of Electronic Filings).

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Circuit Rule 26

Computing and Extending Time

~~For the purpose of computing response and reply periods, all filed papers will be presumed to have been served by mail unless the certificate of service clearly indicates that service was made by hand or other means authorized by FRAP 25(c).~~

(a) Time of Electronic Filing. Except in the case of documents first filed in paper form and subsequently submitted electronically as required by Circuit Rule 25(c)(3), a document filed electronically is deemed filed on the date and at the time stated on the Notice of Docket Activity from the court. Unless a time for filing is specified by court order, filing must be completed before midnight Eastern Time to be considered timely filed that day.

(b) Technical Failures. An ECF filer whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

Proposed ECF Amendment

Circuit Rule 32

Form of Briefs, Appendices, and Other Papers

(a) Electronic Signatures.

(1) The ECF Filer. The filer log-in and password required to submit documents to the CM/ECF system serve as the filer's signature for all purposes under the Federal Rules of Appellate Procedure and the rules of this court. The name of the filer under whose log-in and password a document is submitted must be preceded by an "/s/" and typed in the space where the signature would otherwise appear, followed by the firm name, if any, and the attorney's or party's street address, telephone number, and e-mail address. No ECF filer or other person may knowingly permit or cause to permit a filer's log-in and password to be used by anyone other than an authorized agent of the ECF filer. See Circuit Rule 25(b)(3).

(2) Other Signatures. Documents requiring signatures of more than one party must be electronically filed either by: (i) submitting a scanned document containing all necessary signatures; (ii) representing the consent of the other parties on the document; or (iii) in any other manner approved by the court. Electronically represented signatures of all parties and ECF filers as described above are presumed to be valid signatures. If any party, counsel of record, or ECF filer objects to the representation of his or her signature on an electronic document as described above, he or she must, within 14 days of the filing, file a notice setting forth the basis of the objection.

(3) Retention Requirements. Documents that are electronically filed and require original signatures other than that of the filer must be maintained in paper form by the filer until issuance of the mandate (or entry of the final order, in a case in which no mandate will issue) or until such later date as the court prescribes. On request of the court, the filer must provide original documents for review.

(b) Format.

(1) Electronically Filed Documents. Before filing a document with the court, an ECF filer must verify its legibility and completeness. Documents created by the filer and filed electronically must be in Portable Document Format (PDF), which is generated from an original word-processing file and is text searchable. Appendix items and attachments to an electronically-filed document may be scanned if a word-processing version is not available. When a document has been filed electronically, the official record is the electronic document stored by the court, and the filing party is bound by the document as filed.

(2) Exception for Oversized Documents. If an exhibit, attachment, or appendix item qualifies for an exception to the requirement of electronic filing and service under Circuit Rule 25(c)(5), the document may be filed in paper form.

(c) Hyperlinks.

(1) Electronically filed documents may contain the following types of hyperlinks:

- Hyperlinks to other portions of the same document or to other documents filed in the case;
- Hyperlinks to documents that are part of the record on appeal or the record on review or enforcement of an agency order;
- Hyperlinks to authorities cited in the document.

(2) Hyperlinks do not replace standard citations to authority and parts of the record; standard citations must be provided in addition to any hyperlink. Hyperlinks are simply mechanisms for accessing material cited in a filed document and are not considered part of this court’s record. The court accepts no responsibility for the availability or functionality of any hyperlink and does not endorse any product, organization, or content at any hyperlinked site.

(d) Paper Copies of Electronic Filings.

(1) **In General.** Except for documents listed below or unless the court directs otherwise, documents filed electronically are not to be submitted to the court in paper form.

(2) **Motions.** In addition to filing electronically, paper copies must be filed with the court of the following motions, including any accompanying documents, and any responses thereto, and replies: dispositive motions (e.g., motions for summary disposition, motions to transfer or remand, and motions to dismiss except those seeking voluntary dismissal in civil cases and in criminal cases where the government is the appellant), procedural motions unless the motion states it is unopposed, motions for stay and emergency relief pursuant to Circuit Rules 8 and 18, motions to expedite, motions or applications under Circuit Rule 9, motions for leave to proceed in forma pauperis, motions for appointment of counsel, and motions to exceed the length limits. The number of paper copies is governed by Circuit Rule 27(b); the “original” is the electronic filing.

(3) **Other Documents.** Except as provided in Circuit Rule 25(c)(5), electronic filing is required for any portion of an appendix that is available in electronic format and fully text searchable. In addition to filing electronically, paper copies of the following documents must be filed with the court: briefs, appendices, memoranda of law and fact, responsive pleadings to petitions and replies thereto, letters pursuant to FRAP 28(j), proposed judgments in a National Labor Relations Board proceeding, petitions for panel rehearing and hearing or rehearing en banc, and responses to orders to show cause. The number of paper copies is governed by the rules pertaining to that document or by order in a particular case; the “original” is the electronic filing.

(4) **Time of Filing Paper Copies.** Unless the court has ordered filing by hand or other means, filing of paper copies of non-emergency documents may be accomplished by First-Class Mail addressed to the clerk, or other class of mail that is at least as expeditious, postage prepaid, within two business days of the electronic filing.

(a)(e) Form of Briefs. Except as provided below, the form of briefs is governed by FRAP 28.1 and 32(a).

(1) **Length of Briefs.** In calculating the number of words and lines that do not count toward the word and line limitations, the certificate required by Circuit Rule 28(a)(1), the glossary, and any addendum containing evidence in support of the claim of standing required by Circuit Rule 28(a)(7), may be excluded, in addition to the items listed in FRAP 32(a)(7)(B)(iii).

(2) **Length of Briefs for Intervenors.**

(A) **Page limitation.** A principal brief for an intervenor may not exceed 19 pages, and a reply brief 9 pages, unless it complies with Circuit Rule 32(a)(2)(B).

(B) **Type-volume limitation.**

(i) A principal brief is acceptable if:

- it contains no more than 8,750 words; or
- it uses a monospaced face and contains no more than 813 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Circuit Rule 32(a)(2)(B)(i).

(C) **Certificate.** If a type-volume limitation is used, the brief must contain the certificate of compliance required by FRAP 32(a)(7)(c).

(3) **Length of Briefs for Amici Curiae not Appointed by the Court.** See FRAP 29(d).

(b)(f) Pleading by Letter. Except as prescribed by FRAP 28(j), parties, other than pro se litigants proceeding in forma pauperis, may not plead by letter.

(c)(g) Nonconforming Papers. If the court receives any submission that does not conform substantially to the requirements of the FRAP or these rules, the clerk will promptly notify the person making the submission and direct that person to cure the defect or submit an appropriate motion. See FRAP 25(a)(4).

See also Circuit Rule 25 (Filing and Service) and Circuit Rule 28 (Briefs).