

Rule 5. Service and Filing of Pleadings and Other Papers

(a) Service: When Required. Unless otherwise prescribed by these rules, or by order of the court, every pleading and other paper shall be served upon each of the parties.

(b) Making Service.

(1) Service under these rules on a party represented by an attorney is made on the attorney unless the court orders service on the party.

(2) Service under Rule 5(a) is made by:

(A) Delivering a copy to the person served by:

(i) handing it to the person;

(ii) leaving it at the person's office with a clerk or other person in charge, or if no one is in charge leaving it in a conspicuous place in the office; or

(iii) if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there;

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing;

(C) Delivering a copy by overnight delivery service to the last known address of the person served. Service is complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by such service for overnight delivery. "Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery. "Overnight delivery service" does not include any service provided by the U.S. Postal Service (including express, priority or other expedited service), which is to be considered "mail" under subparagraph (B);

(D) If the person served has no known address, leaving a copy with the clerk of the court; or

(E) Delivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. As authorized by rule or order of the court, a party may make service under this subparagraph (E) through the court's transmission facilities.

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(3) Service by electronic means under Rule 5(b)(2)(E) is not effective if the party making service learns that the attempted service did not reach the person to be served.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties, and that the filing of any such pleading and service thereof upon the plaintiff constitute due notice of it to the parties. A copy of every order shall be served upon the parties in such manner and form as the court directs.

(d) Filing: When Required. All papers required to be served upon a party shall be filed with the court immediately after service, unless otherwise prescribed by these rules, or by order of the court, but disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: (i) depositions, (ii) interrogatories, (iii) requests for documents or to permit entry upon land, and (iv) requests for admission.

(e) Filing: With the Court Defined. The filing of papers with the court shall be made by filing them with the clerk of the court, except that the judge to whom an action is assigned, or a matter is referred, may permit papers pertaining thereto to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Filing with the clerk of the court shall be made by delivery or by mailing to: The Clerk of the Court, United States Court of International Trade, One Federal Plaza, New York, New York 10278-0001; by delivery to the clerk at places other than New York City when the papers pertain to an action being tried or heard at that place; or by electronic filing as provided by Rule 5(i). As may be provided for in these rules or by order of the court, papers may be filed, signed or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes.

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Filing is completed when received, except that a paper mailed by certified or registered mail properly addressed to the clerk of the court, with the proper postage affixed and return receipt requested, shall be deemed filed as of the date of mailing. A paper filed by electronic means in compliance with this provision constitutes a written paper for purposes of applying these rules.

Upon receipt, the clerk shall, as appropriate, date-stamp or otherwise record the date that any paper is submitted for filing, whether or not that paper is accepted for filing. In unassigned actions, the clerk shall not accept for filing any paper which does not comply with the rules of the court unless such noncompliance is purely a matter of form. If the rejection of the paper may have jurisdictional consequences, that rejection shall be at the direction of the chief judge. In assigned actions, rejection by the clerk shall be at the direction of the judge to whom the action is assigned.

A party aggrieved by the clerk's refusal to accept a paper for filing may move to compel acceptance. If a paper initially rejected by the clerk later is accepted for filing, the date on which the paper initially was stamped shall be considered the date of filing, although the date may be subject to amendment pursuant to this rule.

(f) Filing of Summons and Complaint by Mail. When an action is commenced by the filing of a summons only, or the concurrent filing of a summons and complaint, and the filing is made by mail as prescribed by these rules, the mailing shall be by certified or registered mail, return receipt requested, properly addressed to the clerk of the court, with the proper postage affixed.

(g) Proof of Service. Unless otherwise prescribed by these rules, or by order of the court, papers presented for filing shall contain an acknowledgment of service by the person served, or proof of service in the form of a statement of the date and manner of service and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the paper filed. The clerk may, for good cause shown, permit papers to be filed without acknowledgment or proof of service but shall require proof to be filed promptly thereafter.

(h) Filings Containing Business Proprietary Information in an Action Described in 28 U.S.C §1581(c). In an action described in 28 U.S.C. §1581(c), a paper containing business proprietary information shall identify that information by enclosing it in brackets. A party shall file and serve a paper in accordance with any deadline established by these rules or by order of the court. A non-confidential version in which the business proprietary information is deleted shall accompany a confidential version of a paper. However, when the original paper includes the statement “Bracketing of Business Proprietary Information not Final for One Business Day after Date of Filing” on the cover of every document containing business proprietary information and on each page containing business proprietary information, then a party may file and serve the non-confidential version within one day of the filing of that paper, together with a complete revision of the original filing, if necessary, that is identical to the original in all respects except for any bracketing corrections. When the original states that the bracketing is not final for one business day after the date of filing, recipients of the paper may not, until the bracketing is finalized, disclose the contents of the paper to anyone not authorized to receive business proprietary information in the action.

(i) Electronic Filing. Papers include both tangible documents as well as any electronically generated medium according to technical specifications that may be adopted by the court. Papers that contain confidential or business proprietary information may not be electronically filed unless the specifications adopted by the court specifically authorize and provide for filing such information electronically.

PRACTICE COMMENT: When the clerk concludes that exigencies so require, he may permit a pleading or paper to be filed by facsimile transmission or similar process. Service by such process may be made with the consent of the party to be served. Certified or registered mail, return receipt requested, must be used, as prescribed in Rule 5(f), when an action is commenced by the filing of a summons only, or the concurrent filing of a summons and complaint, and the filing is made by mail.

PRACTICE COMMENT: When a party is represented in an action by more than one attorney of record, the party shall designate only one attorney of record to serve, file and receive service of pleadings and other papers on behalf of the party.

PRACTICE COMMENT: When service is to be made upon a party represented by an attorney, service shall be made upon the attorney of record, unless otherwise ordered by the court.

PRACTICE COMMENT: When proof of service is made in the form of a statement, as prescribed in Rule 5(g), and the person served is an attorney, the statement shall identify the name of the party represented by the attorney served.

PRACTICE COMMENT: Rule 5(e) of the Federal Rules of Civil Procedure provides that “the clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.” By contrast, Rule 5 contains no such limitation. Instead, the responsibilities and limitations of the Clerk of the United States Court of International Trade with respect to the acceptance or rejection of a paper submitted for filing are contained in Rule 5(e), which has no counterpart within the Federal Rules of Civil Procedure.

PRACTICE COMMENT: Rule(h) applies a “one day lag rule” to a submission containing business proprietary information. Practitioners should note that this rule does not act to extend any deadline set forth in these rules or by order of the court. Its only effect on the timing of a submission is to provide one day for a party to prepare a non-confidential version of its submission and to prepare any correction in the bracketing of business proprietary information. In making special provision for filings in an action brought under 28 U.S.C. §1581(c), this rule likewise does not excuse those filings from other requirements, such as those in Rule 81(h), applicable to a submission containing confidential information.

PRACTICE COMMENT: Included among, but not limited to, the kinds of papers the clerk may refuse to accept for filing are a reply to a response to a non-dispositive motion without leave of court; a pleading that is not accompanied by the appropriate filing fee; discovery documents presented contrary to Rule 5(d); papers that are not signed as required by Rule 11; papers presented by an attorney who is not the attorney of record; and papers presented after the running of periods prescribed by the rules or orders of the court.

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