

Proposed Amendments to Rule 5

Rule 5 is amended as follows:

Rule 5. Serving and Filing Pleadings and Other Papers

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(d) Filing.

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(2) How Filing is Made – In General. A paper is filed by delivering it :

(A) to the clerk, by:

(i) delivering or sending it to the Clerk of the Court, United States Court of International Trade, One Federal Plaza, New York, New York 10278-0001; or

(ii) by delivering it 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

(iii) by electronic filing as provided by Rule **5(h)**; ~~5(i)~~; or

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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(e)**, ~~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 ~~must~~ **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 **must** ~~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(f),5(g)**, and the person served is an attorney, the statement **must** ~~shall~~ identify the name of the party represented by the attorney served.

PRACTICE COMMENT: Rule **5(d)5(e)** of the Federal Rules of Civil Procedure provides that “the clerk **must** ~~shall~~ not refuse to **file a** ~~accept for filing any paper presented for that purpose solely because it is not presented in the proper form prescribed as required by these rules or by any local rules or practices.”~~ By contrast, **USCIT** 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(d),5(e)**, which has no counterpart within the Federal Rules of Civil Procedure.

PRACTICE COMMENT: Rule **5(g)(h)** applies a “one-day lag rule” to a submission containing confidential or business proprietary information. Practitioners should note that this rule does not act to extend any deadline set forth in these rules or by court order. 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 of bracketing of confidential or business proprietary information. This rule does not excuse those filings from other requirements, such as those in Rule 81(h), applicable to a submission containing confidential information. It also requires that all confidential information be contained in brackets.

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.

(As amended, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Nov. 29, 1995, eff. Mar. 31, 1996; Nov. 14, 1997, eff. Jan. 1, 1998; May 27, 1998, eff. Sept. 1, 1998; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Sept. 28, 2004, eff. Jan. 1, 2005; Nov. 29, 2005, eff. Jan. 1, 2006; Nov. 25, 2008, eff. Jan. 1, 2009; _____, **2009**, eff. _____, **2010**.)

Advisory Committee Note

The changes made to CIT Rule 5 are technical and stylistic only.