

Proposed Amendments to Rule 5

Rule 5 is amended as follows:

Rule 5. ~~[Service]~~**Serving** and Filing~~[of]~~ Pleadings and Other Papers

(a) Service: When Required. ~~[]~~

Unless ~~[otherwise prescribed by]~~ these rules **provide otherwise**, or by order of the court, ~~[every pleading]~~**all pleadings** and other ~~[paper shall]~~**papers must** be served ~~[upon each of the parties].~~

~~(b) Making Service.~~

~~(1) Service under these rules on a party]~~**on every party:**

(b) Service: How Made.

(1) *Serving an Attorney.* If a party is represented by an attorney~~[is]~~, **service under this rule must be** 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)~~***in General. A paper is served under this rule by:***

(A) handing it to the person;

~~(iii)~~**B** leaving it:

(i) 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)~~**ii** 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]~~**who resides** there;

~~(B)C) [Mailing a copy]~~**mailing it** to the **person's** last known address ~~[of the person served. Service by mail]~~**– in which event service** is complete ~~[on]~~**upon** mailing;

~~(C)D) [Delivering a copy]~~**delivering it** by overnight delivery service to the last known address of the person served~~[. Service]~~ **– in which event 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]~~**that** 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)E) [If the person served has no known address,]~~ leaving ~~[a copy]~~**it** 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]~~ **if the person has no known address;**

(F) sending it by electronic means **if the person consented in writing – in which event service** is complete ~~[on transmission; service by other consented means]~~**upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or**

(G) delivering it by any other means by which the person consented in writing – in which event service is complete when the person making service delivers ~~[the copy]~~**it** 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]~~

(3) Using Court Facilities: A party may use the court's transmission facilities~~[-~~

~~—————(3) Service by electronic means]~~ **to make service** under Rule 5(b)(2)

(F).~~([E] is not effective if the party making service learns that the attempted service did not reach the person to be served.~~

~~—————(c) Same:]~~

(c) Serving Numerous Defendants.

(1) In [any] **General. If an** action ~~[in which there are]~~**involves an** unusually large ~~[numbers]~~**number** of defendants, the court **may**, ~~[upon]~~**on** motion or **on** 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]:~~

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, ~~[or matter constituting an]~~avoidance, or affirmative defense ~~[contained therein shall]~~**in those pleadings and replies to them will** be ~~[deemed to be]~~**treated as** denied or avoided by all other parties~~[,]; and[that the]~~

(C) filing[of] any such pleading and [service thereof upon]serving

it on the plaintiff ~~[constitute due]~~ **constitutes** notice of ~~[it to]~~ the **pleading on all** parties.

(2) Notifying Parties. A copy of every **such** order ~~[shall]~~ **must** be served ~~[upon]~~ **on** the parties ~~[in such manner and form]~~ as the court directs.

(d) Filing~~[: When]~~.

(1) Required Filings; Certificate of Service.~~{~~

~~————— All papers]~~ **Any paper that is** required to be served ~~[upon]~~ **– together with** a ~~[party shall]~~ **certificate of service – must** be filed ~~[with the court]~~ immediately after service, unless otherwise prescribed by these rules~~[,]~~ or by order of the court~~[, but]~~. **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 **tangible things or** to permit entry ~~[upon]~~ **on** 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]

(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 ~~delivery~~ 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(i); or

**(B) to the judge to whom an action is assigned, or a matter
referred, if that judge agrees to accept it for filing. The judge must
then note the filing date on the paper and promptly send it to the
clerk.**

(3) *Electronic Filing, Signing, or Verification.* As ~~may be~~ provided for
in these rules or by **court** order ~~of~~, the court ~~,~~ **may allow** papers ~~may~~ **to** be
filed, signed, or verified by electronic means that are consistent with **any**
technical standards ~~, if any, that~~ **established by** the Judicial Conference of the
United States ~~establishes~~. **Any rule or order requiring electronic filing
must allow reasonable exceptions. A paper filed electronically in
compliance with these rules is a written paper for purposes of these rules.**

(4) *Completion of Filing.* 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~~
will 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.

—————}]

(5) Receipt and Acceptance by the Clerk: Upon receipt, the clerk ~~[shall]~~**will**, 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]~~**will** not accept for filing any paper ~~[which]~~**that** 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]~~**must** be at the direction of the chief judge. In assigned actions, rejection by the clerk ~~[shall]~~**must** 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.

~~(ff)~~**e** 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]~~**must** be by certified or registered mail, return receipt requested, properly addressed to the clerk of the court, with the proper postage affixed.

~~(g)~~**f** Proof of Service.

Unless **these rules** otherwise ~~[prescribed by these rules]~~**prescribe**, or by **court** order~~[of the court]~~, papers presented for filing ~~[shall]~~**must** 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]~~**must** require proof to be filed promptly thereafter.

~~(h)g) Filings Containing **Confidential or** 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]~~**Any** paper containing **confidential or** business proprietary information ~~[shall]~~**must** identify that information by enclosing it in brackets. A party ~~[shall]~~**must** file and serve ~~[a]~~**such** paper in accordance with any deadline established by these rules or by **court** order ~~[of the court]~~. A non-confidential version in which the **confidential or** business proprietary information is deleted ~~[shall]~~**must** accompany a confidential version of a paper. However, when the original paper includes the statement “Bracketing of **{Confidential} {Business Proprietary} Information** ~~[n]~~**Not Final for One Business Day after Date of Filing**” on the cover of every document containing **confidential or** business proprietary information and on each page containing **confidential or** 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 **confidential or** business proprietary information in the action.

(~~f~~h) 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: Rule (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 [~~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 of bracketing of confidential or business proprietary information. ~~In making special provisions for filings in an action brought under 28 U.S.C. § 1581(c), t~~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. **It also requires that all confidential information be contained in brackets.** (Revised 4/4/05 / /08).

(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; , 2008, eff. , 2009.)

Advisory Committee Note

The language of Rule 5 has been amended to incorporate parallel changes to the style and terminology of any corresponding provisions in the amended Fed. R. Civ. P. Rule 5. The CIT Rule 5, however, maintains its specific and unique filing requirements as set

out in subdivision 5(d). As the Fed. R. Civ. P. Advisory Committee Notes explain, former Rule 5(b)(2)(D) (and former CIT Rule 5(e)) literally could be read to provide that a local rule may authorize use of the court's transmission facilities to make service by non-electronic means. The amendment to CIT Rule 5(b)(3) echoes the Fed. R. Civ. P. correction by restoring the intended meaning that court transmission facilities can be used only for service by electronic means.

Rule 5 was previously amended in 1998 to add subdivision (h), which allows one extra day for parties in cases arising under 28 U.S.C. § 1581(c) to file the redacted non-confidential (public) versions of their documents and, if necessary, to re-file confidential versions with corrected bracketing. The purpose of the amendment was to provide greater assurance in antidumping and countervailing duty cases, where the submission of such material is standard, that business proprietary information ("BPI") is not released inadvertently by the tribunal or the parties. Experience indicates that this rule has been useful in achieving this purpose. As reflected in Rule 81(h)(1), there are several other types of cases in which confidential information may be relied on. Rule 5(h) has therefore been amended to extend its coverage to other actions in which business proprietary or confidential information is cited. Furthermore, Rule 5(h) is now renumbered as Rule 5(g).