

## Proposed Amendments to Rule 5

Rule 5 is amended as follows:

### **Rule 5. Serving and Filing Pleadings and Other Papers**

(a) Service: When Required.

Unless these rules provide otherwise, or by order of the court, all pleadings and other papers must be served on every party: .

(b) Service: How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service in General. A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

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

(ii) if the person has no office or the office is closed, at the person's house or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address – in which event service is complete upon mailing;

(D) delivering it by overnight delivery service to the last known address of the person served – 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 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)~~(C);

(E) leaving it with the clerk of the court if the person has no known address;

(F) sending it **to a registered user by filing it with the court's electronic filing system or sending it by other electronic means that the person consented to in writing** ~~by electronic means~~ – in **either of** which ~~event~~ **events** service is complete upon **filing or sending** ~~transmission~~, but is not effective if the **filer or sender** ~~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 it to the agency designated to make delivery.

~~(3) Using Court Facilities. A party may use the courts transmission facilities to make service under Rule 5(b)(2) (F).~~

(c) Serving Numerous Defendants.

(1) In General. If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

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

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading on all parties.

(2) Notifying Parties. A copy of every such order must be served on the parties as the court directs.

(d) Filing.

(1) Required Filings; Certificate of Service.

**(A) Papers after the Complaint.** Any paper **after the complaint** that is required to be served — ~~together with a certificate of service~~ — must be filed **no later than a reasonable time** ~~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: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admissions.

**(B) Certificate of Service. No certificate of service is required when a paper is served by filing it with the court's electronic filing system. When a paper that is required to be served is served by other means:**

**(i) if the paper is filed, a certificate of service must be filed with it or within a reasonable time after service; and**

**(ii) if the paper is not filed, a certificate of service need not be filed unless filing is required by court order.**

(2) **Non-electronic Filing**. ~~How Filing is Made — In General~~ A paper **not filed electronically** 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); 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 **and** ; Signing, or Verification.

~~As provided for in these rules or by court order, the court may allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. 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.~~

**(A) By a Represented Person – Generally Required; Exceptions. A person represented by an attorney must file electronically, unless non–electronic filing is allowed by the court for good cause.**

**(B) By an Unrepresented Person – When Allowed or Required. A person not represented by an attorney:**

**(i) may file electronically only if allowed by court order; and**

**(ii) may be required to file electronically only by court order.**

**(C) Signing. A filing made through a person’s electronic–filing account and authorized by that person,**

**together with that person's name on a signature block, constitutes the person's signature.**

**(D) Same as a Written Paper. A paper filed electronically 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 will be filed as of the date of mailing.

(5) Receipt and Acceptance by the Clerk. On receipt, the clerk 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. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or practice.

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 will be considered the date of filing, although the date may be subject to amendment pursuant to this rule.

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

(f) Proof of Service. Unless these rules or court order otherwise prescribe, papers presented for filing 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 must require proof to be filed promptly thereafter.

(g) Filings Containing Confidential or Business Proprietary Information. Any paper containing confidential or business proprietary information must identify that information by enclosing it in brackets. A party must file and serve such paper in accordance with any deadline established by these rules or by court order. A non-confidential version in which the confidential or business proprietary information is deleted must accompany a confidential version of a paper. However, when the original paper includes the statement “Bracketing of {Confidential} Proprietary Information 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.

~~(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. Unless elsewhere exempted from electronic filing, all papers, including papers that contain confidential or business proprietary information, must be electronically filed in accordance with the specifications adopted by the court.~~

**PRACTICE COMMENT:** When a party is represented in an action by more than one attorney of record, the party must 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 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), and the person served is an attorney, the statement must identify the name of the party represented by the attorney served.

**PRACTICE COMMENT:** Rule 5(g) 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.#

**PRACTICE COMMENT:** The Court’s Administrative Order No. 02–01, *In re Electronic Filing Procedures*, provides additional specifications for filings.

**PRACTICE COMMENT:** USCIT Rule 80(h) provides the requirements for filing or serving physical exhibits or items.

**PRACTICE COMMENT:** Registration for electronic case filing is not consent to service “by any other means” of delivery under subparagraph (b)(2)(G).

**PRACTICE COMMENT:** The term “registered user” as used in these rules means any person that has registered to file documents electronically with 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; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 6, 2011, eff. Jan. 1, 2012; Dec. 4, 2012, eff. Jan. 1, 2013; May 20, 2014, eff. July 1, 2014; Dec. 22, 2014, eff. Jan. 28, 2015; June 5, 2015, eff. July 1, 2015; Sept. 21, 2016, eff. Oct. 3, 2016; Mar. 20, 2018, eff. Apr. 23, 2018; \_\_\_\_\_, eff. \_\_\_\_\_.)

### **Advisory Committee Note**

These amendments conform this rule to the current version of the Federal Rule of Civil Procedure except where the USCIT rule differed in a meaningful way.