



U.S. Department of Justice

Civil Division

Washington, DC 20530

To: Meredith Miller
Chair, Law Clerk Alumni Committee,
U.S. Court of Federal Claims Advisory Council

From: Daniel S. Herzfeld
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U.S. Department of Justice

Date: July 13, 2015

RE: Electronic Filings By Filing Users in *Pro Se* Cases Before the United States Court of Federal Claims

This memorandum proposes that the United States Court of Federal Claims amend the Rules of the United States Court of Federal Claims (RCFC) to permit Filing Users (as defined in RCFC, App. E, ¶ 2(c)) to file documents electronically in *pro se* cases before the Court. Filing Users would continue to serve documents to *pro se* litigants consistent with RCFC 5 and RCFC 5.3. Permitting Filing Users to file documents electronically (but serve *pro se* litigants through RCFC 5 and RCFC 5.3), will lead to efficiencies and save judicial resources without adversely impacting a *pro se* litigant's ability to access our justice system. Filing Users will no longer have to (1) print out multiple copies to file with the Court and (2) await confirmation that a paper filing has, in fact, been filed. The Court will no longer have to expend resources in scanning in paper filings from Filing Users, but will be assured that a *pro se* litigant is served consistent with the service requirements of RCFC 5 and proof of service requirements of RCFC 5.3.

The Filing Users most affected by this rule will be attorneys from the United States Department of Justice. The following four individuals head the United States Department of Justice sections or divisions that regularly practice before the Court: (1) Robert Kirschman, Jr., Director, National Courts Section, Commercial Litigation Branch, Civil Division; (2) John Fargo, Director, Intellectual Property Staff, Commercial Litigation Branch, Civil Division; (3) Ed Passarelli, Deputy Chief, Natural Resources Section, Environment and Natural Resources Division; and (4) David Pincus, Chief, Court of Federal Claims Section, Civil Trial Sections, Tax Division. Each has reviewed and concurred with the proposed rule changes below.

This memorandum provides suggested language to amend RCFC, Appendix E. Additionally, after the proposed amendment to the rules, included below are two examples taken from local court rules of other courts that permit represented parties to file documents electronically but continue to require service of paper copies to *pro se* litigants by other methods.

Proposed Amendment to RCFC, Appendix E (“Electronic Case Filing Procedure”)

II. ELECTRONIC CASE DESIGNATION AND NOTICE

3. Scope.

- (a) **Newly Filed Cases.** All newly filed cases will be designated ECF cases **except for cases involving *pro se* litigants.**

III. ACCESS TO ECF SYSTEM; RESPONSIBILITY OF FILING USERS; EXEMPTION FROM USE

7. **Exemption From Filing Electronically.** By filing an appropriate motion, an individual not registered as a Filing User may, for good cause, seek to be exempted from filing documents electronically in an ECF case. **A *pro se* litigant not registered as a Filing User automatically shall be exempted from filing documents electronically in an ECF case.**

V. FILING PROCEDURES

12. Notice of Filing; Service.

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- (c) **Service.** The transmission of the “Notice of Electronic Filing” satisfies the service requirement of RCFC 5 and proof of service requirement of RCFC 5.3, **except that a Filing User or *pro se* litigant (RCFC 83.1(a)(3)) must meet the service requirement of RCFC 5 and proof of service requirement of RCFC 5.3 when filing a document in an ECF case with a *pro se* litigant who is not a Filing User.**

VI. SIGNATURES AND RELATED MATTERS

19. Signature Requirements

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- (b) **Written Signature.** A Filing User may also satisfy the signature requirement by scanning a document containing his or her written signature. **The proof of service signature requirement in an ECF case with a *pro se* litigant may also be satisfied by scanning the signature of a Filing User or any person acting under the attorney of record’s direction consistent with RCFC 5.3.**

VII. COURT ORDERS, JUDGMENTS, AND APPEALS

23. Notice of Filing; Service.

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- (b) **Service.** The transmission of the “Notice of Electronic Filing” satisfies the service requirement of RCFC 77(d), **except in an ECF case involving a *pro se* litigant who is not a Filing User.**

United States Court of Appeals for the Federal Circuit (Fed. Cir.)

Administrative Order Regarding Electronic Case Filing

(http://www.cafc.uscourts.gov/images/stories/Final_ECF_Administrative_Order_5-17-12.pdf)

ECF-6. Service of Documents by Electronic Means

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(C) **Parties Not Represented.** Parties not represented by counsel and other parties who are not registered for electronic service through CM/ECF must be served with a paper copy of any document filed electronically through alternate means of service set forth in Rule 25.

ECF-8. Exceptions to Requirements for Electronic Filing and Service

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(A) **Pro Se Parties.** A party proceeding pro se must file documents with the court in paper form pursuant to the Federal Rules of Appellate Procedure, the Federal Circuit Rules of Practice, and the Federal Circuit's Guide for Pro Se Petitioners and Appellants. The clerk will convert paper filings into PDF and file them in the ECF system. The version scanned or converted by the clerk will constitute the appeal record of the court as reflected on its docket.

A party proceeding pro se must serve documents in paper form on opposing parties unless the parties have agreed in writing to electronic service between themselves.

Counsel must serve all documents to pro se parties in paper form unless the parties have agreed in writing to electronic service between themselves.

The court will serve all court-issued documents to pro se parties in paper form using conventional methods.

United States District Court for the District of Columbia (D.D.C.)– Local Civil Rule 5.4 (<http://www.dcd.uscourts.gov/dcd/sites/dcd/files/LocalRulesNov2014.pdf>)

(d) SERVICE

- (1) Electronically filing a document operates to effect service of the document on *pro se* parties who have obtained CM/ECF passwords and on all counsel. *Pro se* parties who have not obtained CM/ECF passwords must serve and be served as otherwise provided in F.R.Civ.P. 5(b).
- (2) The requirement of a certificate of service or other proof of service is satisfied by the automatic notice of filing sent by the CM/ECF software to *pro se* parties who have obtained CM/ECF passwords and to counsel. A separate certificate of service or other proof of service showing that a paper copy was served on a party is required when that party does not receive electronic notification of filings.

(e) EXCEPTIONS TO REQUIREMENT OF ELECTRONIC FILING

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- (2) A party appearing *pro se* shall file with the Clerk and serve documents in paper form and must be served with documents in paper form, unless the *pro se* party has obtained a CM/ECF password.