

The Life of an Appeal

The life of an appeal in the United States Court of Appeals for the Federal Circuit consists of seven steps.

Preliminary Matters

A party wishing to appeal to the Federal Circuit must do so by filing a Notice of Appeal or Petition for Review, whichever is applicable. Preliminary matters are those items that set the stage of the case. As such, it is important that the Entry of Appearance, the Certificate of Interest, and the Docketing Statement are timely filed. In cases on appeal from an administrative agency, the filing of the Certified List is an integral date to be aware of as the deadline for the Appellant/Petitioner's opening brief is calculated from the date of service of the certified list.

Formal Briefing

The schedule for filing briefs in a case is outlined in Fed. Cir. R. 31. Once the briefs have been filed, the appellant or petitioner must file a joint appendix. Certain briefs such as amicus, intervenor, or supplemental briefs may require leave of court to file.

Motions

Motions are not required to be filed in order for the case to progress through the court. A motion, however, is required to be filed to request permission to or to take an action that is otherwise not allowed by the rules. For example, a party may file a Motion for an Extension of Time to file its opening brief, or a Motion to Strike portions of another party's brief. Parties seeking immediate or extraordinary relief from the Federal Circuit may file a motion with the court at any time.

Calendaring

Once briefing has been completed, the appeal is ready to be assigned to an argument calendar. In cases where the parties are represented by counsel, counsel for each party will be given an opportunity to argue their case before a panel of judges. In cases where the parties are not represented by counsel, a panel will decide the case on the briefs. NOTE: Counsel should promptly notify the court of any oral argument scheduling conflicts.

Oral Argument

Oral argument is normally held the first full week of each month. As a courtesy, the court posts the oral argument calendar for the year on the court's website. Once a case is argued, or is submitted on the briefs, the court will decide the appeal and issue an opinion or an order.

Rehearing

A rehearing, like a motion, is not required. A party who has an issue decided against it may petition the court for rehearing by the panel or rehearing en banc.

Mandate

The mandate makes the judgment of the court final, taxes costs related to the appeal (if required), and releases the court's jurisdiction of the case. The mandate will normally issue following the decision of the case or the denial of rehearing, whichever is later

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