

§ 1.734

(ii) The facts to which they have agreed to stipulate; and

(iii) The disputed facts or legal issues of which they can agree to a joint statement.

(4) Two days before the status conference, each party also shall submit to Commission staff a separate statement which shall include, as appropriate, the party's statement of the disputed facts and legal issues presented by the complaint proceeding and any additional discovery that the party seeks. A complainant that wishes to reply to a defendant's affirmative defense shall do so in its pre-status-conference filing. To the extent that this filing contains statements replying to an affirmative defense, the complainant shall include, and/or serve with the statement, the witness information and documents required in § 1.726(g)(3)-(4). A defendant that intends to rely on expert evidence shall include its expert statement in its pre-status conference filing. (See § 1.729(i)(4)(ii).)

[53 FR 11855, Apr. 11, 1988. Redesignated and amended at 58 FR 25573, Apr. 27, 1993; 63 FR 1039, Jan. 7, 1998; 63 FR 41449, Aug. 4, 1998]

§ 1.734 Specifications as to pleadings, briefs, and other documents; subscription.

(a) All papers filed in any formal complaint proceeding must be drawn in conformity with the requirements of §§ 1.49 and 1.50.

(b) All averments of claims or defenses in complaints and answers shall be made in numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth.

(c) The original of all pleadings and other submissions filed by any party shall be signed by the party, or by the party's attorney. The signing party shall include in the document his or her address, telephone number, facsimile number and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required by rule or statute, pleadings need not be verified.

47 CFR Ch. I (10-1-09 Edition)

The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed solely for purposes of delay or for any other improper purpose.

(d) All proposed orders shall be submitted both as hard copies and on computer disk formatted to be compatible with the Commission's computer system and using the Commission's current wordprocessing software. Each disk should be submitted in "read only" mode. Each disk should be clearly labelled with the party's name, proceeding, type of pleading, and date of submission. Each disk should be accompanied by a cover letter. Parties who have submitted copies of tariffs or reports with their hard copies need not include such tariffs or reports on the disk. Upon showing of good cause, the Commission may waive the requirements of this paragraph.

[53 FR 11855, Apr. 11, 1988. Redesignated at 58 FR 25573, Apr. 27, 1993, as amended at 63 FR 1040, Jan. 7, 1998]

§ 1.735 Copies; service; separate filings against multiple defendants.

(a) Complaints may generally be brought against only one named carrier; such actions may not be brought against multiple defendants unless the defendant carriers are commonly owned or controlled, are alleged to have acted in concert, are alleged to be jointly liable to complainant, or the complaint concerns common questions of law or fact. Complaints may, however, be consolidated by the Commission for disposition.

(b) The complainant shall file an original copy of the complaint, accompanied by the correct fee, in accordance with part 1, subpart G (see § 1.1106) and, on the same day:

(1) File three copies of the complaint with the Office of the Commission Secretary;

(2) Serve two copies on the Market Disputes Resolution Division, Enforcement Bureau;

(3) If the complaint is filed against a carrier concerning matters within the responsibility of the International Bureau (see §0.261 of this chapter), serve a copy on the Chief, Policy Division, International Bureau; and

(4) If a complaint is addressed against multiple defendants, pay a separate fee, in accordance with part 1, subpart G (see §1.1106), and file three copies of the complaint with the Office of the Commission Secretary for each additional defendant.

(c) Generally, a separate file is set up for each defendant. An original plus two copies shall be filed of all pleadings and documents, other than the complaint, for each file number assigned.

(d) The complainant shall serve the complaint by hand delivery on either the named defendant or one of the named defendant's registered agents for service of process on the same date that the complaint is filed with the Commission in accordance with the requirements of paragraph (b) of this section.

(e) Upon receipt of the complaint by the Commission, the Commission shall promptly send, by facsimile transmission to each defendant named in the complaint, notice of the filing of the complaint. The Commission shall send, by regular U.S. mail delivery, to each defendant named in the complaint, a copy of the complaint. The Commission shall additionally send, by regular U.S. mail to all parties, a schedule detailing the date the answer will be due and the date, time and location of the initial status conference.

(f) All subsequent pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents or other written submissions, shall be served by the filing party on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or by facsimile transmission followed by regular U.S. mail delivery, together with a proof of such service in accordance with the re-

quirements of §1.47(g). Service is deemed effective as follows:

(1) Service by hand delivery that is delivered to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day;

(2) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service such as, or comparable to, the US Postal Service Express Mail, United Parcel Service or Federal Express; or

(3) Service by facsimile transmission that is fully transmitted to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by facsimile transmission that is fully transmitted to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day.

(g) *Supplemental complaint proceedings.* Supplemental complaints filed pursuant to section 1.722 shall conform to the requirements set out in this section, except that the complainant need not submit a filing fee, and the complainant may effect service pursuant to paragraph (f) of this section rather than paragraph (d) of this section numerals.

[53 FR 11855, Apr. 11, 1988. Redesignated and amended at 58 FR 25573, 25574, Apr. 27, 1993, as amended at 63 FR 1040, Jan. 7, 1998; 64 FR 60726, Nov. 8, 1999; 66 FR 16617, Mar. 27, 2001; 67 FR 13223, Mar. 21, 2002; 69 FR 41130, July 7, 2004]

§ 1.736 Complaints filed pursuant to 47 U.S.C. 271(d)(6)(B).

(a) Where a complaint is filed pursuant to 47 U.S.C. 271(d)(6)(B), parties shall indicate whether they are willing to waive the ninety-day resolution deadline contained in 47 U.S.C. 271(d)(6)(B) in the following manner:

(1) The complainant shall so indicate in both the complaint itself and in the Formal Complaint Intake Form, and