

Dispositive Motion Practice in the Court of Federal Claims

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Common Dispositive Motions in the CFC

RCFC 12(b): Motion to Dismiss

12(b)(1): Lack of subject matter jurisdiction

12(b)(6): Failure to state a claim upon which relief can be granted

RCFC 12(c): Motion for Judgment on the Pleadings

RCFC 56: Motion for Summary Judgment

RCFC 52.1(c): Motion for Judgment on the Administrative Record

RCFC 52(c): Motion for Judgment on Partial Findings

Strategic Considerations

Motions to Dismiss/Motions for Judgment on the Pleadings

Motions for Summary Judgment or Partial Summary Judgment

Motions for Judgment on the Administrative Record

Cross-motions [RCFC 7.2(c); RCFC 5.4(a)(5) & 5.4(b)]

Motions for Judgment on Partial Findings

Logistical Requirements

RCFC 5.4(a)(2) – Content requirements for initial brief (> 10 pages)

Table of contents (including of appendix)

Table of authorities

“[C]oncise statement of each question presented”

“[C]oncise statement of the case”

“[C]lear statement of the argument”

“[C]oncise conclusion”

Appendix, numbered consecutively (if separate, with table of contents)

Logistical Requirements (continued)

RCFC 5.4(b)(1) – Length (except for tables and appendices)

40 pages for initial briefs, 20 pages for replies

50 pages for cross-motion; 30 pages for response to cross-motion

RCFC 5.5 – Format

8 ½ x 11, one-inch margins on each side.

Text “double spaced”

Quoted and indented material & footnotes, “single spaced”

All pages numbered, including appendices.

Logistical Requirements (continued)

Timing for dispositive motions

RCFC 56(b) – any time until 30 days after the close of discovery

RCFC 12(b) – with the responsive pleading

RCFC 12(c) – after pleadings closed, “but early enough not to delay trial”

RCFC 7.2(b) – Timing for later briefs

Responses within 28 days

Replies within 14 days

Response/reply to cross-motion within 28 days

Considerations in Drafting Motions

Opening the brief

Presenting facts

Choosing and using authority

Footnotes

Page length / brevity



Oral Argument



Preparation

Demonstratives / visual aids

Presentation during argument

Telephonic / video arguments