

Missed Deadlines

In Copyright Claims Board proceedings, you must meet various deadlines and comply with rules and orders. If you stop participating, including by missing a deadline or failing to comply with a requirement without a legitimate reason, the CCB may eventually enter a determination against you or dismiss your claims.



Chapter at a Glance

- **What Happens When a Claimant Does Not Serve a Respondent**
- **Failure to Prosecute: Claimant Stops Participating**
- **Default: Respondent Stops Participating**
- **Multiple Missed Deadlines**

Why You Need This Information

If anyone stops participating in a proceeding, the CCB will begin a multistep process that may ultimately result in the CCB dismissing their claims (if they are a claimant or counterclaimant) or entering a **determination** against them (if they are a respondent or counterclaim respondent). This chapter provides an overview of that process.

HOW DID YOU GET HERE?

All parties must meet deadlines and comply with CCB rules and orders. You may have questions about what happens when someone fails to participate, such as when a party misses deadlines, does not attend a scheduled conference or hearing, or fails to comply with CCB orders.

HOW DO I KNOW WHAT DEADLINES OR REQUIREMENTS APPLY TO ME?

Once a proceeding enters the active phase, the CCB will set a schedule for the proceeding. This schedule will be detailed in a CCB order and contain key deadlines—for instance, attend a conference, file a document in eCCB, or exchange materials with the other parties. Throughout your proceeding, the CCB may issue orders through [eCCB](#) that set additional deadlines or requirements.

To avoid the missed deadline procedures, request a schedule change as soon as you can if you need more time for a deadline or know you won't be able to attend a scheduled conference or hearing.

WHAT HAPPENS NEXT?

If you miss a deadline or fail to comply with a CCB requirement, then a multistep process will begin, typically giving you an opportunity to fix the issue. If you don't fix (sometimes called “**cure**”) the issue without a legitimate reason, then the CCB may dismiss your claims or enter a determination against you.

What Happens When a Claimant Doesn't Serve the Respondent

A claimant must successfully serve (the process of formally notifying) at least one respondent for the proceeding to move forward.

The claim is against one respondent: If the claimant fails to serve that respondent, then the proceeding will be dismissed.

The claim is against multiple respondents: If the claimant doesn't serve at least one respondent, then the result will depend on whether the respondent(s) the claimant failed to serve were **necessary parties**.

- If the claimant fails to serve a respondent who **is a necessary party**, then the CCB will dismiss the entire proceeding **without prejudice**. The claimant can try again at the CCB or in federal court.
- If the claimant fails to serve a respondent who **isn't a necessary party**, then the CCB will just dismiss *that* respondent from the proceeding. The proceeding will move forward against the other respondents.

You can learn more about necessary parties in the [Other Issues](#) chapter and more about service in the [Service](#) chapter of this handbook.

Failure to Prosecute: When a Claimant or Counterclaimant Stops Participating

When a claimant or counterclaimant stops participating in a CCB proceeding, for instance by missing deadlines or other requirements, it's called a failure to prosecute. When this happens, a multistep process begins to give the claimant or counterclaimant a chance to re-engage in the proceeding. This could result in the CCB dismissing the claim or counterclaim with prejudice.

Examples

- not showing up to a conference
- missing a deadline to provide discovery responses
- failing to follow other CCB orders

Accordingly, it's important to meet every deadline in the scheduling order and comply with every CCB requirement. If you need more time for a deadline or know you won't be able to attend a scheduled conference or hearing, request a schedule change as soon as you can.

If you miss a deadline, you will typically be sent a notice giving you thirty days to respond and take actions to fix the issue. Take this notice and any follow-up notices seriously. If you can't fix the issue right away, you may inform the CCB that you wish to continue with the proceeding and request an extension of the missed deadline, but the decision is up to the CCB. If you appropriately take action, the case will resume, typically with a new scheduling order. If you don't fix the issue or get more time to do so, the CCB will dismiss your claim or counterclaim **with prejudice**, meaning it will be as if you lost your case. This determination could even require you to pay the other side's attorneys' fees and costs up to a limit.

How It Works When a Claimant or Counterclaimant Stops Participating

If you're a claimant or counterclaimant and you've missed a deadline or other requirement without a legitimate reason, the CCB will send you a notice starting the "**failure to prosecute**" process, which could result in **dismissing** your claim or counterclaim.

NOTE: If you miss more than two deadlines without a legitimate reason, the CCB may dismiss your claims or counterclaims without going through this notice process.

ISSUING THE NOTICE

The CCB may issue a failure to prosecute notice on its own or at the request of another party. The CCB is only aware of deadlines pertaining to items filed on eCCB. If there is a deadline missed that does not relate to an item filed on eCCB, the best way to alert the CCB is to file a request to issue a missed deadline notice on eCCB. To file a request for the CCB to issue a notice, select the appropriate form on eCCB.

The CCB will send issued notices to you through eCCB, by mail, and at any email address of yours known to the CCB based on prior filings or communications. If you still haven't responded to the issued notice after fifteen days, the CCB will issue a reminder that you only have fifteen of your thirty days left to respond. Note that this isn't an extension of the time to respond to the first notice; it's just a reminder to respond (so you still just have thirty days from the first notice).

CONTENT OF THE NOTICE

The notice will give you *thirty* days to respond and do what you were supposed to do by the missed deadline. The notice will explain that your failure to participate in the proceeding could result in the CCB issuing a determination dismissing your claims or counterclaims.

ACTING ON A NOTICE

Once a notice has been issued, three situations can then happen:

1. You fix the issue by doing (or legitimately trying to do) what you were supposed to do. For example, you serve the discovery you were supposed to and let the CCB know about it or you file the documents that you were previously ordered to file.
2. You do not fix the issue but submit a response, through the eCCB form, that you intend to re-engage with the proceeding but need more time.
3. You fail to meaningfully respond to the notice.

Situation 1: You fix the issue: The proceeding will then resume. The CCB will issue a new schedule to account for the delay, if necessary. If you don't want your claim or counterclaim dismissed, act quickly to respond to the notice and fix the issue by meeting the missed requirement.

Situation 2: You inform the CCB that you want to re-engage with the proceeding but need more time to fix the issue: The CCB may, but does not have to, give the additional time. This could depend on the type of deadline missed, why you need more time, how much longer you need, and whether you have missed deadlines in the past. The CCB will either give additional time or deny the request for more time and will dismiss the claim or counterclaim if the issue is not fixed within thirty days. The CCB will deny a request that makes no sense or does not address the issues.

Situation 3: You fail to meaningfully respond to the notice: If you don't fix the issue and don't meaningfully respond (for example, your response makes no sense or does not address the issues) to the notice within thirty days from the date of the notice, the CCB will issue a determination dismissing your claim or counterclaim with prejudice. The CCB could also require you to pay the other participants' attorneys' fees and costs, if appropriate, although such an amount is capped at \$5,000 if the other side is represented by counsel and \$2,500 if they are not.

CHALLENGING A DISMISSAL

Unless you have already filed a challenge in federal court (see the Challenging a Determination section [below](#) for the limited circumstances in which you can challenge a dismissal in federal court), you have thirty days from the date of the determination to request that it be **vacated** by the CCB. Your written request should provide the reasons why the determination should be vacated and must be limited to twelve pages, meet the CCB's [formatting requirements](#), and be uploaded to eCCB.

If you are on the receiving end of any request that a dismissal determination be vacated, you can submit a response to the request within thirty days. Your written response must be limited to twelve pages, meet the CCB's [formatting requirements](#), and be uploaded to eCCB.

The CCB will only vacate a determination dismissing the claim or counterclaim if it would be in the **interests of justice**, meaning the CCB will use its discretion based upon fairness considerations in a particular situation.

Default: When a Respondent or Counterclaim Respondent Stops Participating

When a respondent or counterclaim respondent stops participating in a CCB proceeding by missing deadlines or other requirements, it's called a **default**. This could result in the CCB entering a default determination against them. When this happens, a multistep process begins to give the respondent or counterclaim respondent a chance to re-engage in the proceeding. The process for default determinations has more steps than the failure to prosecute procedure and results in a substantive determination from the CCB.

Examples

- not showing up to a conference
- missing a deadline to provide discovery responses
- failing to file a response to a claim
- failing to follow other CCB orders

Accordingly, it's important to meet every deadline in the scheduling order and comply with every CCB requirement. If you need more time for a deadline or know you won't be able to attend a scheduled conference or hearing, request a schedule change as soon as you can.

If you miss a deadline, you will typically be sent a notice, giving you *thirty* days to respond and take action. Take this notice and any follow-up notices seriously. If you can't fix the issue right away, you may inform the CCB that you wish to continue with the proceeding and request an extension of the missed deadline, but the decision is up to the CCB. If you appropriately take action, the case will resume, typically with a new scheduling order. If you don't fix the issue or get more time to fix the issue, the CCB will continue with the default process. Finally, if the CCB issues a default determination on the claims or counterclaims against you, it will be as if you lost the case. This determination could even require you to pay the other side's attorneys' fees and costs, up to a limit.

How It Works When a Respondent or Counterclaim Respondent Stops Participating

If you're a respondent or counterclaim respondent and you've missed a deadline or other requirement without a legitimate reason, the CCB can send you a notice starting the "default" process, which could eventually result in the CCB issuing a determination against you.

NOTE: If you miss more than two deadlines without a legitimate reason, the CCB may begin the default process against you without going through this notice process.

ISSUING THE NOTICE

The CCB may issue a default notice on its own or at the request of another party. The CCB is only aware of deadlines pertaining to items filed on eCCB. If there is a deadline missed that does not relate to an item filed on eCCB, the best way to alert the CCB is to file this request. To file a request for the CCB to issue a notice, select the appropriate form on eCCB.

The CCB will send issued notices to you through eCCB, by mail, and at any email address of yours known to the CCB based on prior filings or communications.

If you still haven't responded to the issued notice after fifteen days, the CCB will issue a reminder that you only have fifteen of your thirty days left to respond.

CONTENT OF THE NOTICE

The notice will give you *thirty* days to respond and do what you were supposed to do by the missed deadline. The notice will explain that your failure to participate in the proceeding could result in the CCB issuing a default determination against you.

ACTING ON THE NOTICE

Once a notice has been issued, three situations can then happen:

1. You fix the issue by doing (or legitimately trying to do) what you were supposed to do. For example, you serve the discovery you were supposed to and let the CCB know about it or you file the documents you were previously ordered to.
2. You do not fix the issue but submit a response, through the eCCB form, that you intend to re-engage with the proceeding but need more time.
3. You fail to meaningfully respond to the notice.

Situation 1: You fix the issue: The proceeding will then resume. The CCB will issue a new schedule to account for the delay, if necessary. If you don't want a default determination to be issued against you, act quickly to respond to the notice and fix the issue by meeting the missed requirement.

Situation 2: You inform the CCB that you want to re-engage with the proceeding but need more time to fix the issue: The CCB may, but does not have to, give the additional time. This could depend on the type of deadline missed, why you need more time, how much longer you need, and whether you have missed deadlines in the past. The CCB will either give additional time or deny the request for more time and move on to the next step in the default process if the issue is not fixed within thirty days. The CCB will deny a request that makes no sense or does not address the issues.

Situation 3: You fail to meaningfully respond to the notice: If you don't fix the issue and don't meaningfully respond (for example, your response makes no sense or does not address the issues) to the notice within thirty days from the date of the notice, the CCB will start the next phase of the default process.

The Respondent Fails to Fix the Missed Requirement: What Happens Next

When a respondent or counterclaim respondent does not fix the issue, the CCB moves to the next phase of default proceedings. The CCB will require the claimant or counterclaimant to submit written direct testimony in support of their claim or counterclaim. The CCB requires these filings because, even if a respondent or counterclaim respondent does not properly participate, a claimant or counterclaimant still has to show that they have a valid claim and a right to relief.

These filings, including witness statements, documentary evidence, and party statements, have the same requirements as the **written direct testimony** parties have to file at the end of the discovery phase of a proceeding. The CCB will consider the submissions and may request additional evidence. What happens next depends on whether the CCB determines that the evidence is sufficient to support a finding against the respondent or counterclaim respondent.

The Claimant Fails to Support Their Claims: What Happens Next

If you're a claimant or counterclaimant and the CCB reviews your evidence and decides that it isn't sufficient to support a determination in your favor, then the CCB will prepare a proposed determination dismissing your claim or counterclaim without prejudice. You will then have an opportunity to explain why the claim or counterclaim shouldn't be dismissed. The CCB will provide this proposed determination to you in writing. You'll then be given thirty days from the notice of the proposed determination to submit a response if you choose to. Your response must be limited to seven pages, conform to the CCB's formatting requirements, and be uploaded to eCCB.

If the CCB agrees with you, it will change its proposed finding and find that you have supported a determination in your favor through a new proposed "default determination." If the CCB does not agree with you and determines that your evidence and arguments still aren't sufficient to support a finding in your favor, the CCB will dismiss your claim or counterclaim without prejudice. This means that the claim may be filed in the future before the CCB (perhaps when you have more evidence) or in federal court.

The Claimant Supports Their Claims: What Happens Next

If the CCB decides that the claimant's or counterclaimant's evidence is sufficient to support a determination in their favor, the CCB will prepare a proposed default determination. This proposed

default determination may include a damages award against the respondent or counterclaim respondent. If the respondent who defaulted raised any counterclaims in the proceeding, the proposed default determination will also dismiss the respondent's counterclaims.

The CCB will provide the proposed default determination to the respondent or counterclaim respondent. The proposed default determination will be accompanied by a notice that explains the significance of a default determination, including the responsibility for paying any damages awarded.

If you're a respondent or counterclaim respondent, you'll have thirty days from the date of the proposed default determination notice to submit evidence or other information in opposition to the proposed default determination. These filings, including witness statements, documentary evidence, and party statements, have the same requirements as the written direct testimony parties have to file at the end of the discovery phase of a proceeding.

If you're a claimant or counterclaimant *and the respondent or counterclaim respondent submits evidence or other information in response to the proposed default determination*, then you'll have an opportunity to respond. Your response must be uploaded to eCCB within *twenty-one* days of the respondent's or counterclaim respondent's submission. These filings have the same requirements as the response within written direct testimony that parties have to file at the end of the discovery phase of a proceeding.

If the respondent or counterclaim respondent has submitted evidence or other information, the CCB will consider all the information it has received from the parties and may hold a hearing. The CCB will either keep its proposed default determination as-is or modify it. When a respondent or counterclaim respondent has submitted evidence or other information, the resulting determination will be considered a "final determination."

If you need more time, let the CCB know. The CCB will consider that request and either provide you more time to submit your written response testimony or move forward with the default process. Whether or not the CCB grants requests for more time is within the CCB's discretion and depends on a number of factors, as discussed above.

Finally, if the respondent does not respond to the proposed default determination (or asks for more time and the CCB denies that request), the CCB will issue the proposed default determination as a final determination.

Challenging a Determination

You can challenge a final determination, issued when both the claimant and respondent provides evidence and information, in federal district court or through the CCB's reconsideration, review, and appeal process.

A default determination can only be challenged in federal district court in limited circumstances. Unless you have already filed an appeal in federal court to challenge this determination, you have thirty days from the date of the determination to request that the determination be vacated by the CCB. Your written request should provide the reasons why the determination should be vacated and must be limited to twelve pages, meet the CCB's [formatting requirements](#), and be uploaded to eCCB.

If you're a claimant or counterclaimant and a respondent or counterclaim respondent has requested that a default determination be vacated, you can submit a response to the respondent or counterclaim respondent's request within thirty days. Your written response must be limited to twelve pages, meet the eCCB's [formatting requirements](#), and be uploaded to eCCB.

Multiple Missed Deadlines

If you miss more than two deadlines without a legitimate reason, the CCB may dismiss your claims or counterclaims or begin the default process without going through the notice process described above warning you to fix the issue. Therefore, you shouldn't view the failure to proceed and default notice processes as ways to get automatic extensions of deadlines. You should ask for extensions in advance using the instructions above. Not asking for extensions in advance could result in a dismissal or determination being entered against you.

Don't see your situation in this chapter? Get in touch! Email asktheboard@ccb.gov.

Glossary

- **Cure:** To fix or correct an issue or error.
- **Default:** A determination that can be issued against a respondent or counterclaim respondent if they miss deadlines and fail to participate in their defense.
- **Determination:** The CCB's ruling regarding who actually wins the case, with any awards, and with the CCB's reasons for its findings.
- **Dismissing:** An act of the CCB that ends the case.
- **Failure to prosecute:** When a claimant or counterclaimant stops participating in a CCB proceeding. This may occur if a claimant or counterclaimant misses deadlines or fails to meet other requirements.
- **Interests of justice:** Considerations of fairness in a particular situation.
- **Necessary party:** A person or entity that absolutely needs to be included as a party in the proceeding because their interests will be directly affected by the outcome of the proceeding, or whose absence might create a substantial risk that an existing party would incur multiple or inconsistent obligations.
- **Vacated:** To set aside or cancel a prior decision.
- **With prejudice:** The claim cannot be filed again.
- **Without prejudice:** The claim can be filed again in the future.
- **Written direct testimony:** The combination of witness statements, evidence, and a document containing an explanation of why the party thinks it should win the case submitted to the CCB by a claimant or counterclaimant to help the CCB make its decision.