

**OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

A. DIRECTORY OF THE CLERK'S OFFICE

1. Main Office - San Francisco

| Mailing Address (U.S. Postal Service) | Overnight Courier Services (Federal Express, Airborne, DHL, etc.) | Location (Street Address) |
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| Office of the Clerk U.S. Court of Appeals Post Office Box 193939 San Francisco, CA 94119-3939 | Office of the Clerk U.S. Court of Appeals 95 Seventh Street San Francisco, CA 94103-1526 | Office of the Clerk U.S. Court of Appeals 95 Seventh Street San Francisco, California |

Telephone Numbers

| | |
|---|----------------|
| General Information | (415) 556-9800 |
| Attorney Admissions, Forms | (415) 556-9800 |
| Attorney Admissions, Information/Admission Status | (415) 556-9373 |
| Administrative Agency, Tax Court, Original Proceedings and Criminal Appeals | (415) 556-9740 |
| Civil Appeals | (415) 556-9730 |
| Criminal Justice Act Vouchers | (415) 556-9771 |

2. **Branch Offices - Pasadena and Seattle** (Branch Offices are authorized to accept limited emergency filings only. See, Circuit Rule 27-3 All other filings must be submitted to the main office in San Francisco.)

Pasadena, California

Office of the Clerk
U.S. Court of Appeals
125 South Grand Avenue
Pasadena, CA 91105-1652
Main Telephone: (626) 229-7250

Seattle, Washington

Office of the Clerk Main Telephone: (206) 553-2937
U.S. Court of Appeals Extensions of Time: (206) 553-0191
811 U.S. Courthouse
1010 Fifth Avenue
Seattle, WA 98104-1195

B. IMPORTANT PUBLICATIONS WITH PROCEDURAL INFORMATION

Various documents are available which, in total, should provide a thorough explanation of the steps you must take to process your case. These documents include:

1. **The Federal Rules of Appellate Procedure (FRAP)**

Copies of FRAP may be obtained through the U.S. Government Printing Office. Also, they are usually available through federal government bookstores. Title 28 of the United States Code Annotated also contains the text of the rules. The rules are also included with the Rules of the United States Court of Appeals for the Ninth Circuit. See also, www.ca9.uscourts.gov.

2. **The Rules of the United States Court of Appeals for the Ninth Circuit (Circuit Rules)**

The Circuit Rules, which augment FRAP, govern practice before the court. Copies of the Circuit Rules are available from the Clerk's Offices in San Francisco, Pasadena and Seattle and on the website, referenced above. The Federal Rules of Appellate Procedure have been included with the Circuit Rules. Send a written request with self-addressed return mailing label.

Counsel should study both FRAP and Circuit Rules carefully. Clerk's Office personnel should not be called upon to answer questions that can be answered by reference to the above-listed documents.

C. ADMISSION TO THE BAR OF THE NINTH CIRCUIT

An attorney must be admitted to the bar of the court before filing documents or participating in oral argument on behalf of a client. The prerequisites for admission may be found at FRAP 46(a) and at Circuit Rule 46-1.

Admission may be accomplished by mail or in open court. Admission in open court is discouraged and is infrequent. Admission by mail is accomplished by sending a written request marked “**Attn: Attorney Admission Form Request**” to our mailing address listed in the Clerk’s Office Directory on Page 1. Forms may also be obtained from the Pasadena and Seattle offices. Once completed, the forms must be returned to the Clerk’s Office in San Francisco for processing. After an application is processed, counsel will be mailed a certificate of admission.

D. NOTICES OF CHANGE OF ADDRESS

It is essential that counsel pursuing a case in this court keep the Clerk of Court advised of all changes in their address(es). A form can be found on the Court’s website, under Downloads - Form and Documents. To be effective, a notice of change of address must include:

1. a brief caption of the case,
2. the U.S. Court of Appeals docket number,
3. any new telephone number(s),
4. the name of the party being represented, and
5. the new address.

Failure to include the required information may result in important case papers being served at the wrong address.

Note: A notice of change of address of counsel who is admitted to practice before the bar of this court but who is not representing a party at the time of change need not be submitted.

E. MOTIONS PRACTICE

FRAP Rules 27 and 32(c)(1), and Circuit Rule 27 set forth the provisions for filing motions. In addition, the following practices apply:

1. Practice, Generally

- (a) If you request return of a conformed copy of your motion, enclose an extra copy of the motion and a self-addressed stamped envelope.
- (b) Oral argument on written motions is heard only in limited circumstances and as directed by the court.
- (c) Motions as well as any other documents presented to the court need not be notarized or certified.
- (d) A "Notice of Motion" is not required.
- (e) Deficiencies in the form of motions or oppositions to motions may cause: action to be delayed; denial of your motion; or your opposition to be ignored.
- (f) Motions may be supported by affidavit or declaration.
- (g) Each motion shall contain a clear statement of the relief sought. A proposed order form is not necessary.

2. Motions for Extensions of Time to File the Trial Transcript

FRAP 11(b)(1)(B) and Circuit Rule 11-1.1 provide that the court reporter must file any motions for extensions of time to file the transcript. Therefore, *it is imperative that the appellant immediately provide the court reporter with the U.S. Court of Appeals docket number assigned to the appeal*. Otherwise, the court reporter cannot effectively communicate with the court. If the reporter fails to move for an extension of time, appellant is required to file a Circuit Rule 11-1.2 notice.

3. Motions for Extensions of Time to File Briefs

Oral Extensions: If good cause is shown, the clerk, or conference attorney in cases under the prehearing conference program, may grant an oral request for a single extension of no more than 14 days to file the opening, answering and reply briefs only. Such extensions may be applied for and granted or denied by telephone and the ruling shall be entered on the court docket. Requests for oral extension shall be directed to (415) 556-9768. Prior to making the request, counsel must notify opposing counsel that a request for an oral extension will be sought. The grant of an extension of time by telephone bars further requests by way of written motion unless the motion demonstrates extraordinary and compelling circumstances; the previous filing of a motion for an extension of time precludes a request under this section.

Counsel will also be requested to notify all other counsel immediately by letter to confirm the telephone extension of time and to advise counsel of the details of the extension. These letters must be filed with the clerk of court at the time of filing the brief.

Written Extensions: Requests for extensions of time of greater than 14 days may be granted only upon written motion supported by a showing of diligence and substantial need, as follows:

The motion shall be filed *at least seven (7) days* before the expiration of the time prescribed for filing the brief, and shall be accompanied by an affidavit stating:

- (a) when the brief is due;
- (b) when the brief was first due;
- (c) how many extensions have been previously granted;
- (d) whether previous requests for extension have been denied wholly or in part;
- (e) the length of the requested extension;
- (f) the reason an extension is necessary;
- (g) counsel's representation that counsel has exercised diligence and that the brief will be filed within the time requested; and
- (h) whether any other party separately represented objects to the request, or why the moving party has been unable to determine any such party's position.

Additional Extensions: A motion for an additional extension of time will be denied unless it is determined that extraordinary circumstances justify the requested extension.

Please refer to FRAP Rule 27, and Circuit Rule 31-2.3.

Note: Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed. FRAP 27(b).

4. **Motions for Bail Pending Appeal - Circuit Rule 9-1**

To ensure that the appeal is being pursued diligently, Circuit Rule 9 requires that the party seeking bail attach a certificate to the moving paper attesting that the appeal transcript has been ordered. If unable to obtain a transcript, the appellant shall state in an affidavit why the transcript has not been obtained. See, Circuit Rule 9-1.1. Circuit Rule 9 should be carefully reviewed to ensure proper form of motion.

5. **Emergency Motions - Circuit Rule 27-3**

All emergency motions must conform with the provisions of Circuit Rule 27-3. Motions for procedural relief do not fall within the category of motions contemplated by Circuit Rule 27-3.

Prior to filing an emergency motion, the moving party should contact the Motions Unit at 415-556-9890, in San Francisco. As with all filings, emergency motions should be filed with the Clerk in San Francisco. However, if action is needed on the same or next day and counsel has not been dilatory in seeking relief, an emergency motion may be filed in a divisional Court of Appeals clerk's office or, if such an office does not exist in the district from which the emergency arises, with an individual circuit judge. Counsel can obtain further information at the time notification is made to the Clerk; see, Circuit Rule 27-3(a). Counsel must also transmit a copy of the motion, by overnight mail delivery, to the Clerk in San Francisco. If it appears either that the same day/next day relief is not necessary, or that the motion can otherwise be processed through the motions unit, the moving party will be directed to file the motion in San Francisco.

When it is necessary to notify the court outside of standard office hours that an emergency motion will be filed, the movant should call (415) 556-9800. The line is regularly monitored by court staff.

6. **Other Procedural Motions**

A motion for substitution of counsel in a *criminal* case should include a statement as to whether present counsel is retained or appointed. Counsel shall continue to represent the defendant on appeal until counsel is relieved and replaced by substitute counsel or by the defendant pro se in accordance with Circuit Rule 4-1.

For motions to consolidate civil or criminal cases, please specifically note whether the cases arise from the same U.S. district court action. In addition, please note whether the cases were ever consolidated in the court below.

7. Preliminary Injunction Appeals

Expedited briefing schedule will be set in appeals from the denial or award of preliminary injunctive relief. The appeal will be submitted to a motions panel upon completion of briefing. Circuit Rule 3-3. Oral argument will be scheduled only as directed by the panel.

F. PREHEARING CONFERENCE PROGRAM

All civil cases in this court, with the exception of:

- (1) appeals or petitions in which the appellant/petitioner is proceeding without the assistance of counsel;
- (2) appeals filed under 28 U.S.C. §§ 2241, 2254 and 2255;
- (3) petitions for writ under 28 U.S.C. § 1651; and
- (4) petitions for review of Board of Immigration Appeals,

are subject to inclusion in the Prehearing Conference Program established by Circuit Rule 33-1. The primary purpose of the program is to encourage the settlement of cases before this court.

The represented appellant or petitioner in a civil case or administrative proceeding is required to file a Civil Appeals Docketing Statement along with the notice of appeal or petition for review. If the Civil Appeals Docketing Statement does not accompany the notice of appeal to the district court the untimely statement should be submitted directly to the Court of Appeals. The Docketing Statement form is available from the Clerk's office of this court or any district court in the Circuit. The Docketing Statement form is also included as an appendix to the Circuit Rules at pp. 190 and 191. Any other party to the appeal may file with this court a single-page response to the Docketing Statement within seven (7) days of the date of its service. The court will use the Docketing Statement and any response to determine whether to hold a prehearing conference in the case. Any party may request a conference by motion or preferably by stipulation.

If a conference is scheduled, counsel will receive notice of the date and time of the conference. Absent such notice, counsel should assume that the case has not been selected into the program and proceed with briefing as scheduled. Initial conferences are held by telephone, but subsequent conferences may be in person. Conferences will be conducted for the court by Conference Attorneys.

G. RECORD ON APPEAL

Circuit Rules 10 and 11 affect the procedural requirements for filing the record. These include the time schedule for designating the reporter's transcript, the form and content of the record and the time within which the formal record must be transmitted to the U.S. Court of Appeals.

1. Designating Reporter's Transcript

The parties must designate and order the court reporter's transcript within the time limits provided in Circuit Rule 10-3 or as provided for in the Court of Appeals time schedule order. The appropriate Transcript Designation and Order Form should be used when ordering the transcript. The forms are available from district court clerks' offices. If no transcript is needed, the form should be used to notify the district court. In criminal appeals, a designated district court deputy clerk will prepare and issue a time schedule order setting forth records and briefing due dates shortly after the filing of the notice of appeal. Please note that habeas corpus cases are considered civil cases, not criminal cases. In civil appeals, the time schedule order will be issued by the Court of Appeals at the time the case is docketed in the Court of Appeals.

If a party wishes to designate transcripts that have previously been prepared, a Transcript Designation and Order Form must be filed. The designation should indicate that the transcripts have previously been prepared. Delayed preparation of the transcript does not automatically toll the briefing schedule; counsel must move to amend and indicate when the transcript was ordered, the date financial arrangements were made, the dates of hearing for which transcripts were not prepared, and the reporter's name(s).

2. Certificate of Record

After the transcript is filed in the district court or, alternatively, the district court clerk receives notice that no transcript will be ordered, the clerk of the district court files a "certificate of record" with the Clerk of the Court of Appeals, pursuant to Circuit Rule 11-2. The certificate, which will stand in the record's stead for the purpose of establishing a record filing date, must attest that all documents which will comprise the record, including the reporter's transcript, if any, are available to the parties in the trial court clerk's office.

3. **Transmittal of the Record**

Civil Cases: The district court clerk will forward the designated reporter's transcript within seven (7) days after notice of the filing of the appellee's brief. The clerk's record or pleadings will remain in the custody of the trial court clerk until requested by the Ninth Circuit. (See, Circuit Rule 11-4.3.)

Criminal Cases: The district court clerk will send designated portions of the reporter's transcript and the clerk's record or pleadings within seven (7) days after appellee's brief is filed. (See, Circuit Rule 11-5.)

In particular cases, the U.S. Court of Appeals may require early transmission or additional copies of the record, or both. When the court elects to exercise this option, all concerned parties will be notified by the Clerk of Court. The appellant will be required to pay for any additional copies of the record required by the U.S. Court of Appeals. (See, Circuit Rule 11-6.)

H. **BRIEFS**

1. **Due Dates**

- (a) In criminal cases, the briefing schedule will be set by a designated U.S. District Court deputy clerk based on directions from this Court. An appellant's brief filed earlier than the due date in the schedule does not advance the due date for the appellee's brief. If a briefing schedule has not been set within seven (7) days of the filing of a notice of appeal, parties in criminal cases should contact the District Court *and* the Court of Appeals.
- (b) In civil cases, the briefing schedule will be set by the Court of Appeals at the time the appeal is docketed. An appellant's brief filed earlier than the due date in the schedule order does not advance the due date for the appellee's brief. If a briefing schedule is not received along with the notification that the case has been docketed, the parties should *immediately* contact the Court of Appeals.
- (c) In civil cases in the Prehearing Conference Program, the briefing schedule set by the clerk at the time the case was docketed may be vacated and another schedule set by the conference attorney.
- (d) Motions that stay briefing. See, Ninth Circuit Rule 27-11.

2. **Contents of Briefs**

Briefs shall comply with the requirements of FRAP and Circuit Rules 28 and 32.

3. **Sanctions for Failure to Prosecute the Appeal**

The parties are advised that failure to prosecute the appeal, particularly failure of the appellant to file a timely brief, may result in the issuance of an *order to show cause* why sanctions should not be imposed under Circuit Rule 42-1 in criminal cases and *will result in an automatic dismissal of the appeal* in civil cases. Circuit Rule 42-1 provides:

DISMISSAL FOR FAILURE TO PROSECUTE

When an appellant fails to file a timely record, pay the docket fee, file a timely brief, or otherwise comply with rules requiring processing the appeal for hearing, an order may be entered by the clerk dismissing the appeal. In all instances of failure to prosecute an appeal to hearing as required, the Court may take such other action as it deems appropriate, including imposition of disciplinary and monetary sanctions on those responsible for prosecution of the appeal.

I. **EXCERPTS OF RECORD**

Five (5) separately-bound excerpts of record shall be filed at the time of the filing of appellant's brief. Each party shall be served with one (1) copy. (See, Circuit Rule 30-1.2.) The excerpts are required in lieu of the appendix prescribed by FRAP 30.

1. **Required Contents for Appeals from District Court Orders/Judgments**

- (a) the notice of appeal;
- (b) the trial court docket sheet;
- (c) the judgment or interlocutory order appealed from;
- (d) any opinion, findings of fact or conclusions of law relating to the judgment or order appealed from;

- (e) any other orders or rulings, including minute orders, sought to be reviewed;
- (f) any jury instruction given or refused which presents an issue on appeal;
- (g) except as provided in Circuit Rule 30-1.3(b)(ii), where an issue on appeal is based upon a challenge to the admission or exclusion of evidence, that specific portion of the reporter's transcript recording any discussion by court or counsel involving the evidence, offer of proof, ruling or order, and objections at issue;
- (h) except as provided in Circuit Rule 30-1.3(b)(ii), where an issue on appeal is based upon a challenge to any other ruling, order, finding of fact, or conclusion of law, and that ruling, order, finding or conclusion was delivered orally, that specific portion of the reporter's transcript recording any discussion by court or counsel in which the assignment of error is alleged to rest;
- (i) where an issue on appeal is based upon a challenge to the allowance or rejection of jury instructions, that specific portion of the reporter's transcript recording any discussion by court or counsel involving the instructions at issue, including the ruling or order, and objections;
- (j) where an issue on appeal is based on written exhibits (including affidavits), those specific portions of the exhibits necessary to resolve the issue; and
- (k) any other specific portions of any documents in the record that are cited in appellant's briefs and necessary to the resolution of an issue on appeal.

(See, Circuit Rule 30-1.3.)

2. **Additional Items**

In addition to the items required by Circuit Rule 30-1.3(a), in all **criminal appeals** and motions for relief under 28 U.S.C. § 2255 the excerpts of record shall also include:

- (a) the final indictment; and
- (b) where an issue on appeal concerns matters raised at a suppression hearing, change of plea hearing or sentencing hearing, the relevant portions of the transcript of that hearing.

And in **civil appeals**, the excerpts of record shall also include:

- (a) the final pretrial order, or, if the final pretrial order does not set out the issues to be tried, the final complaint and answer, petition and response, or other pleadings setting out those issues, and;
- (b) where the appeal is from the grant or denial of a motion, those specific portions of any affidavits, declarations, exhibits or similar attachments submitted in support of or in opposition to the motion that are essential to the resolution of an issue on appeal.

In appeals from a district court decision reviewing agency actions, the excerpts of record shall include the items required by Circuit Rule 17-1.

In those unusual cases in which the total number of pages in the excerpts exceeds 300 pages, the excerpts shall be filed in multiple volumes, with each volume containing 300 pages or fewer. (See, Circuit Rule 30-1.5.)

J. **COURT CALENDARS**

1. **Submission Calendar**

If your case is identified as one in which oral argument may not be necessary, you will be notified by the Clerk's office.

(See, FRAP 34 (a)(2).)

2. **Oral Argument Calendars**

Hearing notices for oral argument calendars are distributed approximately four to five weeks prior to the argument. Generally, cases are heard in the administrative unit from which they arise. Monthly calendars are held in San Francisco, Pasadena and Seattle. Portland calendars are at least every other month, depending on the caseload. The Court also hears argument twice a year in Honolulu and once a year in Anchorage.

Generally, cases will be set for oral argument about eight to ten months following completion of briefing. The amount of time for oral argument is either 10 or 20 minutes per side, unless the Court directs otherwise.