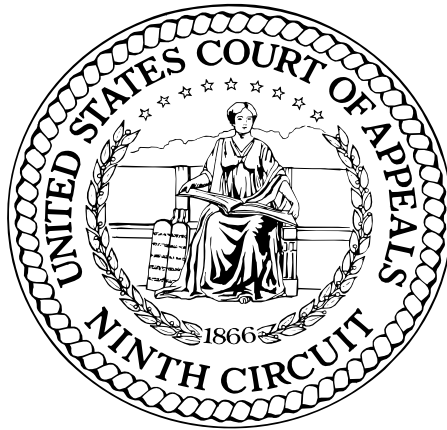


UNITED STATES COURT OF APPEALS

for the

NINTH CIRCUIT



Perfecting Your Appeal

A simple guide to the
proper and timely preparation of your appeal

December 2007

Perfecting Your Appeal

In an effort to improve the quality of appellate advocacy, the Ninth Circuit has produced a 28-minute **practice guide video**. Separate versions oriented toward criminal and civil appeals are available. The guide is a valuable aid for both experienced and novice advocates, and is available as a digital download from this website. Copies are also available for viewing at all circuit library locations.

The guide, collaboratively developed by members of the Ninth Circuit bench, seasoned practitioners and court staff, traces a hypothetical case from filing to disposition. Viewing the tape may be applied to the continuing legal education requirements for California, Montana, Nevada, Oregon and Washington.

The video covers the following topics:

Initial Considerations

- **Obtain and Review the Federal Rules of Appellate Procedure and Ninth Circuit Rules**
Copies of the Federal and Circuit Rules are available upon written request to the Clerk's Office. The rules and the Court's general orders are also available at www.ca9.uscourts.gov.
- **Electronic Filing**
Electronic filing is mandatory for counseled litigants and court reporters effective January 2, 2009. Consult the Administrative Order Regarding Electronic Filing in All Ninth Circuit Cases at the Court's website for further information.
- **Post-Judgment Motions**
Certain timely post-judgment motions render a notice of appeal ineffective. An amended notice must be filed if review of the post-judgment motion's disposition is desired. See Federal Rules of Appellate Procedure 4(a)(4).

- **File Timely Notice of Appeal in District Court**
The filing deadlines are set forth at Federal Rule of Appellate Procedure 4. The deadlines are mandatory and jurisdictional. *Browder v. Director, Department of Corrections*, 434 U.S. 275 (1978).
- **Civil Appeals Docketing Statement/Settlement Program**
All litigants (except pro se litigants) are generally required by Ninth Circuit Rules 3-3 and 15-2 to file a civil appeals docketing statement at the same time the notice of appeal is filed. The docketing statement is used to assess whether a possible settlement of the case could be aided by the court's settlement program described at Ninth Circuit Rule 33. Litigants may also request a conference by contacting the settlement unit.
- **Order the Reporter's Transcripts**
The process to designate and order transcripts is described at Ninth Circuit Rule 10-3. The deadlines for initiating the process are triggered by the filing of the notice of appeal. A transcript designation form may be obtained from the district court. Counsel is obligated under Ninth Circuit Rule 11-1.2 to notify the court if the reporter fails to produce the transcripts.

Briefing

- **Filing Dates**
Consult your scheduling order and Ninth Circuit Rule 31-2.2 with regard to due dates and extensions of time. Note that unlike some state courts, there is no rule permitting automatic approval of stipulations or unopposed motions for extensions of time. If the opening brief in a civil case is not filed and no motion for an extension of time has been submitted, the clerk will dismiss the appeal for lack of prosecution without prior warning under Ninth Circuit Rule 42-1.
- **Contents/Length/Format**
Contents of a brief are set forth at FRAP 28 and Ninth Circuit Rule 28. Format and length limitations are set forth at FRAP 32.
- **Stylistic Considerations**
Use short sentences and comprehensible language. Avoid legalese. Refer

to the parties by name or by terms such as “the taxpayer” or “the employer.” Fed. R. App. P. 28(d).

- **Record Citations**

All references to the record must be supported by an appropriate citation to the excerpts of record pursuant to Ninth Circuit Rule 28-2.8.

Excerpts of Record

- **Purpose**

The excerpts of record are intended to provide each member of the panel with those portions of the record necessary to reach a decision on the appeal. 9th Cir. R. 10-2. The full record is not regularly transmitted in civil cases. 9th Cir. R. 11-4.1.

- **Required Contents/Format/Length**

The contents of the excerpts of record are governed by Ninth Circuit Rules 17-1 and 30-1. There are different requirements for civil and criminal appeals and for petitions for review. Rules 17-1.6 and 30-1.6 govern the length and format of the excerpts.

Oral Argument

- **Generally**

Practices regarding calendaring and oral argument are discussed in the introduction to the Ninth Circuit Rules and the Circuit Advisory Note to Rules 34-1 to 34-4.

- **Notice**

If oral argument will be heard, counsel are informed approximately five weeks before the date of the hearing. Once a case has been assigned to the panel that will consider the merits of the case, all filings must include the information listed at Circuit Rule 25-4.

- **Additional Authorities**

When additional authorities are discovered after the filing of the brief, the party may advise the court by letter. The letter shall refrain from including any additional argument. Fed. R. App. P. 28(j). If the case has been assigned to a panel for disposition, the letter must include the information listed at Circuit Rule 25-4.

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Reference Materials

The views expressed in the following books and articles are not necessarily those of the Court of Appeals. These references are a small sample of the readily available reference materials on appellate advocacy.

Books on Ninth Circuit Practice

Goelz, Christopher A., Meredith J. Watts, and consulting editor Cole Benson. *Federal Ninth Circuit Civil Appellate Practice*. Encino, Ca.: The Rutter Group, 1995.

Ulrich, Thompson, and Kessler, P.C.; Sidley and Austin. *Federal Appellate Practice Guide, Ninth Circuit*. Rochester: Lawyers Cooperative Publishing, 1994.

Additional Books

Aldisert, Ruggero J., *Winning on Appeal: Better Briefs and Oral Argument*. Deerfield, Ill.: Clark Boardman Callaghan, 1992.

Tigar, Michael E., *Federal Appeals: Jurisdiction and Practice, 2nd Ed.*, Colorado Springs: Shephard's/McGraw-Hill, Inc., 1993.

Articles

Kozinski, Alex, *The Wrong Stuff*, 1992 Brigham Young University Law Review 325 (1992).

Pregerson, Harry, *The Seven Sins of Appellate Brief Writing and Other Transgressions*, 34 University of California Los Angeles Law Review 431 (1986).

Ryan, Carla, *The Champion*, Appellate Advocacy Vol. XLII No. 9, NACDL Nov. 1994.