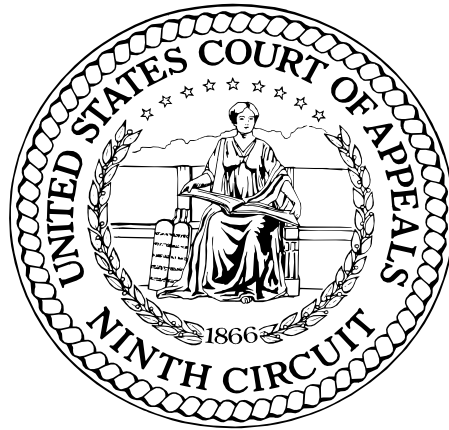


# UNITED STATES COURT OF APPEALS

for the

## NINTH CIRCUIT



## Perfecting Your Appeal

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

December 2009

# 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 free digital download at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *FAQs, Forms and Instructions -> Guides and Legal Outlines*. 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 video may be applied to the continuing legal education requirements for California, Montana, Nevada, Oregon and Washington.

Please note that these videos were created prior to the Court's use of the Appellate ECF (Electronic Case Files) system, which allows documents to be filed electronically. Some of the references in the videos to filing documents by mail or in person are therefore outdated. Electronic filing of documents is now mandatory for all attorneys who have not received an exemption. Please refer to the Ninth Circuit Rules, especially 9th Cir. R. 25-5, for current filing requirements.

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 Rules of Appellate Procedure (Fed. R. App. P.) and Ninth Circuit Rules (9th Cir. R.) are available on the Court's website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Rules*. They are also available upon written request to the Clerk's Office.
- **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 Fed. R. App. P. 4(a)(4).

- **File Timely Notice of Appeal in District Court**  
The filing deadlines are set forth at Fed. R. App. P. 4. The deadlines are mandatory and jurisdictional. See *Browder v. Dir., Dep't of Corrections*, 434 U.S. 275 (1978).
- **Mediation Questionnaire**  
All litigants (except pro se litigants) are generally required by 9th Cir. R. 3-4 and 15-2 to complete a Mediation Questionnaire within 7 days of the docketing of an appeal or a petition for review. The Mediation Questionnaire is used to assess whether a possible settlement of the case could be aided by the court's settlement program described at Fed. R. App. P. 33 and 9th Cir. R. 33-1. Litigants may also request a conference by contacting the Mediation unit. More information is available on the Court's website at [www.ca9.uscourts.gov/mediation](http://www.ca9.uscourts.gov/mediation).
- **Order the Reporter's Transcripts**  
The process to designate and order transcripts is described at 9th Cir. R. 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 9th Cir. R. 11-1.2 to notify the court if the reporter fails to produce the transcripts.

## **Briefing**

- **Filing Dates**  
Consult your scheduling order and 9th Cir. R. 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 9th Cir. R. 42-1.
- **Contents/Length/Format**  
Contents of a brief are set forth at Fed. R. App. P. 28 and 9th Cir. R. 28. Format and length limitations are set forth at Fed. R. App. P. 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 9th Cir. R. 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. 30-1.
- **Required Contents/Format/Length**  
The contents of the excerpts of record are governed by 9th Cir. R. 17-1.4 and 30-1.4. There are different requirements for civil and criminal appeals and for petitions for review. 9th Cir. R. 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 34-3.
- **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 9th Cir. R. 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 9th Cir. R. 25-4.

## Directory

<i>Mailing Address for U.S. Postal Service</i>	<i>Mailing Address for Overnight Delivery (FedEx, UPS, etc.)</i>	<i>Street Address</i>
Office of the Clerk James R. Browning Courthouse U.S. Court of Appeals P.O. Box 193939 San Francisco, CA 94119-3939	Office of the Clerk James R. Browning Courthouse U.S. Court of Appeals 95 Seventh Street San Francisco, CA 94103-1526	95 Seventh Street San Francisco, CA 94103

### Telephone Numbers

- Docketing. . . . . (415) 355-7830 or -7840
- Attorney Admissions. . . . . (415) 355-7800
- General information. . . . . (415) 355-8000
- Motions Attorneys. . . . . (415) 355-8020
- Procedural Motions. . . . . (415) 355-7860
- Mediation Office. . . . . (415) 355-7900

## Divisional Offices

<i>Pasadena</i>	<i>Portland</i>	<i>Seattle</i>
Richard H. Chambers Courthouse 125 South Grand Avenue Pasadena, CA 91105	Pioneer Courthouse 700 SW 6th Ave, Ste 110 Portland, OR 97204	William K. Nakamura Courthouse 1010 Fifth Avenue Seattle, WA 98104

## 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.