



UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NOTICE AND OPPORTUNITY FOR COMMENT ON PROPOSED AMENDMENTS TO THE CIRCUIT RULES

Pursuant to 28 U.S.C. § 2071(b), comments are invited on the proposed changes to Ninth Circuit Rule 25-5, Electronic Filing and the noted companion amendments to Circuit Rule 5-2, Number of Copies, Circuit Rule 15-1, Review or Enforcement of Agency Orders, Circuit Rule 15-4, Petitions for Review, Circuit Rule 21-2, Extraordinary Writs Format, Circuit Rule 22-3, Applications for Authorization, Circuit Rule 27-13, Sealed Documents and Circuit Rule 30-1, Presentence Reports. Please direct comments to Molly C. Dwyer, Clerk of Court at Molly_Dwyer@ca9.uscourts.gov and Cole Benson, Supervising Deputy Clerk at Cole_Benson@ca9.uscourts.gov. Comments must be submitted no later than May 20, 2013.

Circuit Rule 25-5. Electronic Filing

(a) Participation

All attorneys and court reporters are required to submit all filings electronically using the Court's Appellate Electronic Case Files ("ECF") system unless the Court grants a request to be exempted from the requirement. Filers seeking an exemption must complete the Appellate ECF Exemption Form found on the Court's website. ~~If granted, the exemption will be applicable to pending and future cases for one calendar year.~~ If an exempt filer registers for the Appellate ECF system, that registration will abrogate the exemption.

Use of the Appellate ECF system is voluntary for all parties proceeding without counsel.

If a technical malfunction prevents access to the Appellate ECF system for a protracted period, the Court by special order may permit paper filings pending restoration of electronic access.

(b) Documents excluded from electronic filing requirement

- (1) Documents to be maintained under seal and motions and notices seeking leave to file a document under seal under Circuit Rule 27-13 must be submitted in paper format unless the entire case is maintained under seal; and
- (2) Excerpts of record under Circuit Rules 13-2, 17-1, 22-6, 30-1, and 32-4 must be submitted in paper format (this subsection is modified by the provisional requirement found at www.ca9.uscourts.gov/excerpts).

(c)(b) Documents that may be submitted either electronically or in paper format

- (1) Petitions for review of agency orders under FRAP 15(a) and Circuit Rule 15-~~13~~;
- (2) Applications for enforcement of agency orders under FRAP 15(b) and Circuit Rules ~~15-1~~; ~~and 15-4~~.
- (3) Petitions for permission to appeal under FRAP 5 and Circuit Rule 5-2;
- (4) Petitions for writs of mandamus or prohibition under FRAP 21 and Circuit Rules ~~21-12~~ ~~and 21-3~~; and
- (5) Applications for leave to file second or successive petitions under 28 U.S.C. § 2254 or motions under 28 U.S.C. § 2255 and Circuit Rule 22-3~~;~~;
- ~~(6) Presentence reports and related documents under Circuit Rule 30-1.10;~~
- ~~(7) Requests for compensation for services and reimbursement for expenses under the Criminal Justice Act, 18 U.S.C. § 3006A and Circuit Rule 4-1(f);~~

- (8) ~~Motions under the Criminal Justice Act for interim payment, advance authorization for expert services and advance travel authorization;~~
- (9) ~~Documents to be maintained under seal and motions seeking leave to file a document under seal under Circuit Rule 27-13;~~
- (10) ~~Motions filed before the assignment of a Ninth Circuit docket number; and~~
- (11) ~~Excerpts of record under Circuit Rules 17-1 and 30-1.~~

~~(d)(c)~~ Deadlines

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~~(e)(d)~~ Technical requirements.

All documents must be submitted in Portable Document Format (“PDF”). The version filed with the Court must be generated ~~by publishing to PDF~~ from the original word processing file to permit the electronic version of the document to be searched and copied. PDF ~~files images~~ created by scanning paper documents are prohibited; however, exhibits submitted as attachments to a document may be scanned and attached if the filer does not possess a word processing file version of the attachment. No single attachments shall ~~not~~ exceed 50 MB in size. Attachments that exceed that size must be divided into sub-volumes.

~~(f)(e)~~ Signature

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~~(g)(f)~~ Service

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~~(h)(g)~~ Court-Issued Documents

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Circuit Advisory Committee Note to Rule 25-5

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Practitioners appointed under the Criminal Justice Act are directed to the Court's website, www.ca9.uscourts.gov/attorneys for information regarding the submission procedures for claims for services and requests related to such services.

Companion Amendments

Circuit Rule 5-2, Number of Copies

Petitioner shall file an original in paper format of petitions and any supporting papers and appendices filed pursuant to FRAP 5 unless the petition is submitted via Appellate ECF. If the answer is not required to be filed electronically, respondent shall file an original in paper format of an answer. (*New Rule 7/1/00; Rev. 12/1/09; Rev. 7/1/13*)

Cross Reference: (Rev. 12/1/09; Rev. 7/1/13)

- Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(c)(b), Documents That May Be Submitted Either Electronically or in Paper Format Excluded From Electronic Filing

Circuit Rule 15-1, Review or Enforcement of Agency Orders

Review of an order of an administrative agency, board commission or officer (hereinafter “agency”) and applications for enforcement of an order an agency shall be governed by FRAP 15. If petitioner or applicant submits the petition or application in paper format, it does not need to supply the Court with the copies required by FRAP 15(c)(3). (*Rev. 7/1/13*)

Cross Reference: (Rev. 12/1/09; Rev. 7/1/13)

- Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(c)(b), Documents That May Be Submitted Either Electronically or in Paper Format Excluded From Electronic Filing

Circuit Rule 15-4. Petitions for Review of Board of Immigration Appeals Decisions

A petition for review of a Board of Immigration Appeals decision shall state whether petitioner (1) is detained in the custody of the Department of Homeland Security or at liberty and/or (2) has moved the Board of Immigration Appeals to reopen or applied to the district director for an adjustment of status. The petition shall be (1) accompanied by a copy of the Board of Immigration Appeals order being challenged, (2) include the petitioner's alien registration number in the caption and (3) filed in an original in paper format unless submitted via Appellate ECF. (New 1/1/05; Rev. 12/1/09; Rev. 7/1/13)

Cross Reference: (Rev. 12/1/09; Rev. 7/1/13)

- Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(c)(b), Documents That May Be Submitted Either Electronically or in Paper Format Excluded From Electronic Filing

Circuit Rule 21-2, Extraordinary Writs Format; Number of Copies

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- (b) The petitioner shall file an original in paper format of the petition and any supporting papers and appendices unless the petition is submitted via Appellate ECF (Rev. 7/1/13)

Cross Reference: (Rev. 12/1/09; Rev. 7/1/13)

- Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(c)(b), Documents That May Be Submitted Either Electronically or in Paper Format Excluded From Electronic Filing

Circuit Rule 22-3, Applications for Authorization to File Second or Successive 2254 Petition or 2255 Motion – All Cases; Stay of Execution - Capital Cases

- (a) **Applications:** Any petitioner seeking authorization to file a second or successive 2254 petition or 2255 motion in the district court must file an application in the Court of Appeals demonstrating entitlement to such leave under 28 U.S.C. § 2254 or § 2255. See Form 12. An original in paper format of the application must be filed with the Clerk of the Court of

Appeals unless the application is submitted via Appellate ECF. (Rev. 7/1/13)

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Cross Reference (Rev. 12/1/09; Rev. 7/1/13)

- Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(c)(b), Documents That May Be Submitted Either Electronically or in Paper Format Excluded From Electronic Filing

Circuit Rule 27-13, Sealed Documents, Motions to Seal

(a) Procedures (New 1/1/09; Rev. 7/1/13)

Sealed documents, notifications under subsection (b) and motions under subsection (c) of this rule must be filed in paper format unless the entire case is maintained under seal.

Cross Reference (Rev. 12/1/09)

- Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(b), Documents Excluded From Electronic Filing

Circuit Rule 30-1.10, Presentence Reports

In all cases in which the presentence report is referenced in the brief, the party filing such brief must file forward 4 paper copies of the presentence report and may file forward 4 copies of any other relevant confidential sentencing documents, under seal to the Clerk of the Court of Appeals. This filing shall be accomplished by mailing the 4 copies of the presentence report in a sealed envelope which reflects the title and number of the case and that 4 copies of the presentence report are enclosed. The copies of the presentence report and documents shall accompany be filed on the same day as the brief that references the report and documents excerpts of the record. The presentence report and documents shall remain under seal and but be provided by the Clerk to the panel hearing the case (New Eff. 7/1/97; Rev. 12/1/09; Rev. 7/1/13)

Cross Reference

- ~~Circuit Rule 25-5. Electronic Filing, specifically, Circuit Rule 25-5(b); Documents Excluded From Electronic Filing~~

