

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Request for Public Comments

Pursuant to 28 U.S.C. § 2071(b), comments are invited on the proposed amendments to Ninth Circuit Rules 31-2.2(a), 22-1(d) and 32-5.

Please direct comments to Molly C. Dwyer, Clerk of Court at Molly_Dwyer@ca9.uscourts.gov and Cole Benson, Supervising Deputy at Cole_Benson@ca9.uscourts.gov. Comments must be submitted on or before September 3, 2014.

CIRCUIT RULE 31-2.2, Extensions of Time for Filing Briefs

(a) Streamlined Extensions of Time: If a party has not previously filed a motion for an extension of time to file an opening, answering, reply or cross-appeal brief under subsection (b) of this rule, that party may obtain a single streamlined extension of time to file that brief not to exceed 30 days. The streamlined extension of time is not available

- (1) If a case has been previously expedited;
- (2) When a Notice of Oral Argument has issued; or
- (3) For any brief filed in a Preliminary Injunction Appeal (Ninth Circuit Rule 3-3), an Incarcerated Recalcitrant Witness Appeal (28 U.S.C. § 1826; Ninth Circuit Rule 3-5) or a Class Action Fairness Act appeal (28 U.S.C. § 1453(c)).

Parties registered for electronic filing may request a streamlined extension of time online via the Appellate ECF system using the 'File a Streamlined Request to Extend Time to File Brief' event. A request must be made on or before the brief's due date.

Parties not registered for electronic filing may request a streamlined extension of time by completing Form 13 and placing the form in the mail to the Clerk on or before the brief's due date.

The Clerk will approve requests that comply with the rule and will provide the parties with a new schedule. The Clerk will inform parties not eligible for relief under this subsection as to the appropriate method to obtain relief.

~~(a) If good cause is shown, the clerk or a designated deputy may grant an oral request for a single extension of time of no more than 14 days to file an opening, answering or reply brief. Such extensions may be applied for and granted or denied by telephone. The grant or denial of the extension shall be entered on the court docket. Application for such an extension shall be conditioned upon prior notice to the opposing party. The grant of an extension of time under this rule will bar any further motion to extend the brief's due date unless such a motion, which must be in writing, demonstrates extraordinary and compelling circumstances. The previous filing of a motion under Circuit Rule 31-2.2(b) precludes an application for an extension of time under this subsection.~~

(b) Written Motion for Extension of Time to File a Brief: In all other cases, an extension of time may be granted only upon written motion supported by a showing of diligence and substantial need.

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Cross References

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- Circuit Rule 27-11, Motions, Effect on Schedule
- Advisory Note to Circuit Rule 32-2 (impact of motion for leave to file overlength brief on schedule)

Circuit Advisory Committee Note to Rule 31-2.2

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The streamlined extension of time is available only for opening, answering, reply and cross-appeal briefs. A request to extend any other deadline must be made by way of written motion. The streamlined extension of time is intended to be the sole extension of time to file a brief; parties should file a written motion if 30 days is not sufficient time to prepare the brief. If a streamlined extension of time is approved, any further

request for an extension of time to file a brief must be made in writing pursuant to Circuit Rule 31-2.2(b).

The streamlined extension of time replaces the former 14-day telephonic extension of time.

Purpose of amendment: Codify pilot project that substituted the described streamlined extensions of time for the telephonic extensions of time to file briefs.

CIRCUIT RULE 22-1, Certificate of Appealability

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(d) **Denial in Full by the District Court.** If the district court denies a COA as to all issues, petitioner may file a motion for a COA in the court of appeals within 35 days of the district court's entry of its order (1) denying a COA in full, or (2) denying a timely filed post-judgment motion, whichever is later. If petitioner does not file a COA motion with the court of appeals after the district court denies a COA motion in full, the court of appeals will deem the notice of appeal to constitute a motion for a COA. ~~If the court of appeals appoints counsel to represent petitioner, counsel will be given additional time to file a renewed COA motion.~~

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(e) **Briefing Uncertified Issues.** Petitioners shall brief only issues certified by the district court or the court of appeals. Alternatively, if a petitioner concludes during the course of preparing the opening brief that an uncertified issue should be discussed in the brief, the petitioner shall first brief all certified issues under the heading, "Certified Issues," and then in the same brief shall discuss any uncertified issues under the heading, "Uncertified Issues." Uncertified issues raised and designated in this manner will be construed as a motion to expand the COA and will be addressed by the merits panel to such extent as it deems appropriate. Except in the extraordinary case, the Court will not extend the length of the brief to accommodate uncertified issues.

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Purpose of amendment: Eliminate duplicative opportunity to broaden scope of certificate of appealability.

CIRCUIT RULE 32-5, Unrepresented Litigants

An opening form brief filed by an unrepresented party pursuant to Ninth Circuit Rule 28-1(c) shall not exceed 40 double-spaced pages. The limit includes answers to the questions listed in the form brief and any supplemental argument offered in the brief. The limit excludes any attached copies of court documents, statutory material, covers, tables of contents and/or authorities, and the certificate of service. If an opening form brief is filed, the reply brief need not comply with the technical requirements set forth at FRAP 28(c) but shall not exceed 20 double-spaced pages. The materials excluded from the length limit for opening briefs shall also be excluded from the calculation of a reply brief's length. The brief of an unrepresented party who elects not to file a form brief must comply with FRAP 28 and 32 and Ninth Circuit Rules 28 and 32-1 to 32-4.

~~If an unrepresented litigant elects to file a form brief pursuant to Circuit Rule 28-1, neither the optional reply brief nor any petition for rehearing need comply with FRAP 32.~~

~~Alternatively, if an unrepresented litigant elects to file a brief that complies with FRAP 28 and Circuit Rule 28-2 but not with FRAP 32, any principal brief shall not exceed 40 pages, and an optional reply brief shall not exceed 20 pages.~~

Purpose of amendment: Clarify permissible lengths of briefs filed pursuant to Circuit Rule 28-1(c).