

CHECKLIST FOR CRIMINAL APPEALS TO THE NINTH CIRCUIT¹

Daniel Donovan and John Rhodes²
for Ninth Circuit Appellate Advocacy Program
Billings, Montana
September 28, 2017

- _____ A. Notice of Appeal (to be filed within **14** days after entry of judgment)
(Federal Rules of Appellate Procedure (FRAP) 14(b))
 - _____ 1. Counsel is obligated to represent client on appeal (18 U.S.C. §3006A(c) and Ninth Circuit Rule (NCR) 4-1(a))
 - _____ 2. If client decides not to appeal, obtain written statement from client

- _____ B. Obtain Briefing Schedule (included with Docketing Letter (Doc. 1-1))
 - _____ 1. Calendar all deadlines
 - _____ 2. Double check deadlines with deadlines in rules

- _____ C. Order Transcripts (as soon as possible and no later than **21** days after the filing of the Notice of Appeal)
 - _____ 1. File Transcript Designation and Ordering Form
 - _____ 2. File Authorization and Voucher for Payment of Transcript (Criminal Justice Act (CJA) 24)
 - _____ 3. Follow up to make certain that the transcripts are filed within the designated time

¹ Updated from Checklist prepared for the Federal Defenders of Montana in December of 1995 (does not include interlocutory appeals, e.g., writ of mandamus)

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- _____ a. If late, contact the court reporter and the court reporter’s supervisor to try to resolve the default
- _____ b. Unless the reporter files a motion for an extension of time, file a Notice of Reporter Default within **21** days after the transcript due date (NCR 11-1.2)

_____ D. Develop a Persuasive Theory of Appeal

- _____ 1. What was unfair about your client’s conviction or sentence?
 - _____ a. Were his/her constitutional rights violated?
 - _____ b. Was prejudicial evidence admitted?
 - _____ c. Were Sentencing Guidelines miscalculated?
 - _____ d. Is the sentence unreasonable?
- _____ 2. What legal issues may be grounds for reversal?
 - _____ a. Identify most favorable standards of review
- _____ 3. Draft a Theory of Appeal Paragraph (to be used as the basis of the Summary of Argument in the Opening Brief)
 - _____ a. Remember that you need to convince the appellate judges that, despite the seriousness of the crime or the strength of the evidence, something happened that was so unfair that the case must be reversed
- _____ 4. Develop fact-based emotional themes that support the Theory of Appeal
- _____ 5. Use the Theory of Appeal to guide every aspect of the appeal³

³ This section on the Theory of Appeal has been adapted from “Developing a Persuasive Appellate Theory of Defense” by Ira Mickenburg and James Klein <http://www.ncids.org/Defender%20Training/2005%20Appellate%20Advocacy%2>

- _____ a. Is there a need for information outside of the record?
 - _____ b. What motions are needed?
 - _____ c. What issues should be raised?
 - _____ d. What facts help? What facts hurt?
 - _____ e. What arguments best support the Theory of Appeal?
 - _____ f. How will you present the Theory of Appeal in your oral argument?
 - _____ g. What relief will help your client?
 - _____ h. If unfairness cannot be denied, will the U.S. Attorney agree to remand for re-trial, re-sentencing, or other result favorable to your client?
- _____ 6. Go for walks or hikes (or other “head-clearing” activities) to think about the Theory of Appeal
- _____ 7. Get feedback to your ideas about the Theory of Appeal from your spouse, significant other, friends, colleagues, etc.
- _____ 8. Was there a waiver of appeal?
- _____ a. If so, do any exceptions apply?:
 - _____ (1) The guilty plea failed to comply with FRCP 11
 - _____ (2) The judge informed the defendant that he/she retains the right to appeal
 - _____ (3) The sentence does not comport with the terms of the plea agreement
 - _____ (4) The sentence violates the law *United States v. Tsosie*, 639 F.3d 1213, 1217 (9th Cir. 2011)

_____ E. Obtain and Consult Resources

- _____ 1. Read the Case Opening Packet (Doc. 1-2) in your case (“After Opening a Case - Counseled Cases”)
- _____ 2. From Ninth Circuit Website www.ca9.uscourts.gov
- _____ a. Federal Rules of Appellate Procedure (FRAP)
 - _____ b. Ninth Circuit Rules (NCR)
 - _____ c. The Appellate Lawyer Representatives’ Guide to Practice in the United States Court of Appeals for the Ninth Circuit (June 2017 ed.)
 - _____ d. Appellate Lawyer Representatives’ Shell Brief
 - _____ e. Perfecting Your Appeal
 - _____ f. Forms
 - _____ g. Standards of Review
 - _____ h. Video: Perfecting Your Appeal: A Criminal Case
 - _____ i. Model Criminal Jury Instructions
 - _____ j. Criminal Justice Act (CJA) Information
 - _____ k. Appellate Mentoring Program
 - _____ l. Videos of Oral Arguments
 - _____ m. Videos of Training Seminars
- _____ 3. *Defending a Federal Criminal Case*, by Federal Defenders of San Diego, 2016 ed., Chapter 15
- _____ 4. *The Seven Sins of Appellate Brief Writing and Other Transgressions* by Judge Harry Pregerson, 34 U.C.L.A. .L. Rev. 431 (1986)
- _____ 5. *The Seven Virtues of Appellate Brief Writing: An Update from the Bench* by Judge Harry Pregerson and Suzanne D. Painter-Thorne, 38 SW. L. Rev. 221 (2008)
- _____ 6. *Federal Appeals: Jurisdiction and Practice* (3d. ed. 1999) by Michael E. Tigar and Jane B. Tigar

_____ F. Motions (FRAP 27; NCR 27-1 through 27-14)

_____ 1. Basic Requirements for Motions

- _____ a. Neither a notice of motion nor a proposed order is required (FRAP 27(a)(2)(C)(ii), (iii))
- _____ b. A motion or a response to a motion may not exceed 20 pages (NCR 27-1(1)(d))
- _____ c. A separate brief in support is not permitted (NCR 27-1(a)(2)(C)(I))
- _____ d. Motions may be supported by an affidavit or declaration (NCR 27-1(a)(2)(B); 28 U.S.C. § 1746)
- _____ e. Each motion should provide the position of the opposing party (Circuit Advisory Committee Note to NCR 27-1(5); NCR 31-2.2(b)(6))
- _____ f. A response to a motion is due 10 days from the service of the motion (FRAP 27(a)(3)(A))
- _____ g. The reply is due 7 days from service of the response (FRAP 27(a)(4) & 26(c))
- _____ h. A response requesting affirmative relief must include that request in the caption (FRAP 27(a)(3)(B))
- _____ i. A motion must include the defendant's bail status (NCR 27-2.8.1)
- _____ j. A motion filed after a case has been scheduled for oral argument, has been argued, is under submission or has been decided by a panel, must include on the initial page and/or cover the date of argument, submission or decision and, if known, the names of the judges on the panel (NCR 25-4)
- _____ k. Emergency or urgent motions (NCR 25-4)

_____ 2. Motion for Release Pending Appeal (FRAP 9; NCR 9-1)
(Must first request release in District Court, then in Circuit if denied)

- _____ a. If appropriate, also file Motion to Stay Execution of Judgment
- _____ b. 18 U.S.C. §3143
- _____ c. *United States v. Handy*, 761 F.2d 1279, 1281 (9th Cir. 1985)

_____ 3. Motion for Extension of Time (NCR 31-2)

- _____ a. Streamlined Requests (NCR 31-2.2(a))
 - _____ (1) you may request one streamlined extension of up to 30 days from the brief's existing due date
 - _____ (2) Submit request via CM/ECF using the "File Streamlined Request to Extend Time to File Brief" event on or before the brief's existing due date.
 - _____ (3) No form or written motion is required
- _____ b. Written Extension (NCR 31-2.2(a))
 - _____ (1) For more than 30 days
 - _____ (2) Must show diligence and substantial need
 - _____ (3) Shall be filed at least 7 days before the due date for the brief
 - _____ (4) Shall be accompanied by an affidavit or declaration that includes all of the information listed at NCR 31-2.2(b)

_____ 4. Other Motions

- _____ a. Motion for Withdrawal of Counsel After Filing the Notice of Appeal (NCR 4-1(c))
 - _____ (1) Shall be filed within **21** days after notice of appeal is filed
 - _____ (2) Shall be accompanied by statement of reasons
 - _____ (3) Six alternatives, including *Anders* brief requirements are listed at NCR 4-1(c)
- _____ b. Motion for Voluntary Dismissal (FRAP 42)
 - _____ (1) Requires client's written consent
- _____ c. Motion to Submit a Sealed Document

(Interim NCR 27-13(e))

- _____ d. Motion to Expedite (NCR 27-12)
- _____ e. _____

_____ G. Obtain and Review Trial Counsel's Files (if not Trial Counsel)

_____ H. Obtain and Review Clerk's Docket Sheet and all Filed Documents (if not Trial Counsel)

- _____ 1. Read Presentence Investigation Report with Addendum (PSR)
 - _____ a. For background on case
 - _____ b. To determine if there are any sentencing issues

_____ I. Read Transcript

- _____ 1. Opening Statements and Closing Arguments
- _____ 2. Arguments and rulings on pretrial motions
- _____ 3. Objections and rulings on objections
- _____ 4. Pretrial, bench and chambers conferences
- _____ 5. Jury Instructions - proposed, modified, given, and objections
 - _____ a. Was theory of defense instruction offered?
Given?
- _____ 6. Voir Dire
- _____ 7. Sentencing hearing

_____ J. Conduct Legal Research

- _____ 1. Prioritize the importance of authority: 1) Supreme Court; 2) Ninth Circuit; 3) Other Circuits; 4) District Courts

_____ K. Draft Opening Brief

- _____ 1. Required Contents (FRAP 28 & 32; NCR 28-2, 32-1 & 32-2)
 - _____ a. Table of Contents with page references
 - _____ b. Table of Authorities - cases (alphabetically arranged), statutes, and other authorities - with references to the pages of the brief where they are cited
 - _____ c. Statement of Subject Matter and Appellate Jurisdiction (NCR 28-2.2)
 - _____ d. Statement of Issues
 - _____ e. Statement of the Case (including Statement of Facts)
 - _____ (1) “The law doesn’t matter a bit, except as it applies to a particular set of facts”
The Wrong Stuff by Judge Alex Kozinski, 1992 BYU L. Rev. 325, 330
 - _____ f. Bail Status of Defendant-Appellant
 - _____ g. Summary of Argument
 - _____ h. Argument
 - _____ (1) As to each issue, must identify applicable standard of review
 - _____ (2) As to each issue, must state where in record the issue was raised and ruled on and state where in the record the objection and ruling are set forth
 - _____ i. Conclusion stating the precise relief sought
 - _____ j. Certificate of Compliance
 - _____ k. Statement of Related Cases (NCR 28-2.6)
 - _____ l. Certificate of Service
 - _____ m. Addendum/Appendix (optional - NCR 28-2.7)
- _____ 2. Stylistic Considerations
 - _____ a. Use short sentences
 - _____ (1) “Never use two words when one would suffice” Chief Judge Sidney R. Thomas (quoting former Chief Judge James R.

Browning (citation omitted))

- _____ b. Use comprehensive language
- _____ c. Avoid legalese
- _____ d. Refer to parties by name or by terms (FRAP 28(d))
- _____ e. Cover all important and relevant facts in Statement of Facts, even if bad; surround bad facts with good facts and contextual explanations
- _____ f. Do not put headings toward or at the bottom of a page
- _____ g. Design headings to support and present your Theory of Appeal

_____ 3. Record Citations

- _____ a. Every assertion in brief regarding matters in the record shall be supported by a reference to the location in the excerpts of record where the matter is to be found (NCR 28-2.8)

_____ 4. Case Citations

- _____ a. Refer to internal page citations of cases so the judges and opposing counsel can easily find the authority

_____ 5. Format (NCR 32-1)

- _____ a. 7 paper copies of brief to be mailed after electronic version is approved by clerk (NCR 31-1)
 - _____ (1) accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically
 - _____ (2) The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF

- _____ b. Blue cover
- _____ c. Style of cover: as described in FRAP 32(a)(2)
- _____ d. Must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open
- _____ e. Maximum length: 14,000 words
- _____ f. Mail paper copies to:
Molly C. Dwyer
Clerk of Court
Ninth Circuit Court of Appeals
PO Box 193939
San Francisco CA 94119-3939
(Overnight to 95 Seventh Street,
San Francisco CA 94103-1526)

_____ L. Draft Excerpts of Record (NCR 30-1)

- _____ 1. Purpose: Provide those portions of record necessary to reach a decision on appeal and to permit an informed analysis of your positions (NCR 10-2 and 30-1.1)
- _____ 2. Required Contents (NCR 30-1.3 through 30-1.6)
 - _____ 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 NCR 30-1.4(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 NCR 30-1.4(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
- _____ 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
- _____ l. The final indictment
- _____ m. Where an issue on appeal concerns matters raised at a suppression hearing, change of plea hearing or sentencing hearing, the relevant portions of reporter's transcript of that hearing

_____ 3. Items Not to Be Included (NCR 30-1.5)

- _____ a. Briefs or memoranda filed with the District

Court unless necessary to resolve issue on appeal, and shall include only those pages necessary therefor

- _____ b. The presentence report, documents attached to the report, and any sentencing memoranda filed under seal in the district court (Interim NCR 27-13(d))

_____ 4. Format if exceed 75 pages (NCR 30-1.6(a))

- _____ a. First Volume: “limited to specific portions of the transcript containing any oral statements of decisions, the orders to be reviewed, any reports, opinions, memoranda or findings of fact or conclusions of law prepared by the district [or] magistrate...judge...and, in proceedings governed by 28 U.S.C. § 2254, the state reviewing court disposition, that relate to the issues being appealed”

- _____ b. Second and Subsequent Volumes: All additional documents

- _____ c. Order of documents:

- _____ (1) arranged by file date in chronological order beginning with the document with the most recent file date

- _____ (2) Reporter’s transcripts or portions thereof shall be placed according to the date of the hearing

- _____ (3) The trial court docket shall always be the last document in the excerpts

- _____ d. 4 paper copies of Excerpts to be mailed after electronic version is approved by clerk

- _____ e. White cover

- _____ f. Style of cover: as described in FRAP 32(a), except that the wording “Excerpts of Record” shall be substituted for “Brief of Appellant”

- _____ g. Cover shall include volume number

- _____ h. Excerpts must be consecutively paginated

- _____ i. beginning with page one or tabbed
 - _____ j. Excerpts must be securely bound on the left side
 - _____ k. Index: Excerpts must begin with an index organized in the order the documents are presented describing the documents, exhibits and portions of the reporter's transcript contained therein, the location where the documents and exhibits may be found in the district court record, and the page where the documents, exhibits or transcript portions may be found in the excerpts
 - _____ k. Page limit for each volume: 300
- _____ 5. Format if 75 pages or less (NCR 30-1.6(b))
- _____ a. Order of documents:
 - _____ (1) arranged by file date in chronological order beginning with the document with the most recent file date
 - _____ (2) Reporter's transcripts or portions thereof shall be placed according to the date of the hearing
 - _____ (3) The trial court docket shall always be the last document in the excerpts
 - _____ b. 4 paper copies of Excerpts to be mailed after electronic version is approved by clerk
 - _____ c. White cover
 - _____ d. Style of cover: as described in FRAP 32(a), except that the wording "Excerpts of Record" shall be substituted for "Brief of Appellant"
 - _____ e. Cover shall include volume number
 - _____ f. Excerpts must be consecutively paginated beginning with page one or tabbed
 - _____ g. Index: Excerpts must begin with an index organized in the order the documents are presented describing the documents, exhibits

and portions of the reporter's transcript contained therein, the location where the documents and exhibits may be found in the district court record, and the page where the documents, exhibits or transcript portions may be found in the excerpts

- _____ 6. Sealed documents: if sealed documents must be submitted separately (NCR 30-1.6(c) & Interim NCR 27-13)

- _____ M. Review and Analyze Government's Answering Brief

- _____ N. (Optional) Draft and file Reply Brief (within **21 days** of date of service of Government's Answering Brief (NCR 31-2.1(a))
 - _____ 1. Required Contents (FRAP 28(c))
 - _____ a. A table of contents, with page references
 - _____ b. A table of authorities – cases (alphabetically arranged), statutes, and other authorities with references to the pages of the reply brief where they are cited
 - _____ c. Certificate of Compliance
 - _____ d. Certificate of Service

 - _____ 2. Format (NCR 32-1)
 - _____ a. 7 paper copies of brief to be mailed after electronic version is approved by clerk (NCR 31-1)
 - _____ (1) accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically
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PO Box 193939
San Francisco CA 94119-3939
(Overnight to 95 Seventh Street,
San Francisco CA 94103-1526)

_____ O. Oral Argument

- _____ 1. “Notice [from Court] – Case being considered for Oral Argument”
 - _____ (1) File letter within **3** days if you have any conflicts with the proposed oral argument calendar
- _____ 2. “Notice [from Court] – of Oral Argument” [Date, Time & Location]
 - _____ (1) File Acknowledgment of Hearing Notice
 - _____ (2) Make travel arrangements
- _____ 3. Order - submitted on briefs and record without oral argument
 - _____ (1) Cancel travel arrangements
- _____ 4. Preparation
 - _____ a. Prepare Argument Notebook
 - _____ (1) Outline key points you plan to make
 - _____ (2) Determine key (tough) questions (to be asked by court) and answers thereto
 - _____ (3) Citations to record
 - _____ (4) Summaries of key cases

- _____ (5) Citations to key cases
- _____ b. Seek input from one or more other lawyers
 - _____ (1) Regarding key (tough) questions (to be asked by court)
 - _____ (2) Do your answers hold water?
 - _____ (3) Moot court practice session (optional)
- _____ c. Obtain background information on the judges on your panel
 - _____ (1) Have any of the judges decided a case or an issue similar to yours?
 - _____ (2) Contact other lawyers for their input on the judges on your panel

- _____ 5. Additional Authorities (FRAP 28(j); NCR 28-6)
 - _____ a. Cite check before oral argument
 - _____ b. Review Ninth Circuit opinions issued after the filing of the Reply Brief
 - _____ c. FRAP 28(j) letter - cite supplemental authorities
 - _____ (1) Shall not exceed 350 words
 - _____ (2) File ASAP or at least 7 days before oral argument or within 7 days of notification that case will be submitted on briefs
 - _____ d. Slip Citations submitted prior to oral argument (form provided at Ninth Circuit Courtroom)

- _____ 6. Presentation
 - _____ a. Use clear, strong voice
 - _____ b. Be persuasive, succinct
 - _____ c. Do not read notes or outline (key points to be on the tip of your tongue, not on the bottom of your finger)
 - _____ d. Make eye contact with the judges
 - _____ e. Slow down; use plain English
 - _____ f. Summarize your key points at beginning
 - _____ g. Do not use general terms, e.g.,

- _____ appellant/appellee; use case specific names
- _____ h. Do not get hostile about trial judge or opposing counsel
 - _____ i. Respond directly to questions
 - _____ (1) After answering question which takes you off-point, return to your point
 - _____ j. Reserve time for rebuttal (at beginning)
 - _____ k. Conclude with your request for relief

_____ P. Review Decision by Ninth Circuit Panel

- _____ 1. Read, analyze and evaluate the opinion or memorandum
- _____ 2. Read the “Information Regarding Judgment and Post-Judgment Proceedings” form filed with the decision
- _____ 3. Consult with client
 - _____ a. Explain decision
 - _____ b. If adverse, advise client of options for further review, including petition for rehearing, petition for certiorari and motion for post-conviction relief (28 U.S.C. §2255) (NCR 4-1(e))

_____ Q. (Optional) If adverse, consider filing Petition for Panel Rehearing or Petition for Rehearing En Banc (FRAP 40; NCR 40-1)

- _____ 1. Petition for Panel Rehearing (FRAP 40, NCR 40-1)
 - _____ a. One or more of the following grounds MUST exist:
 - _____ (1) A material point of fact or law was overlooked in the decision
 - _____ (2) A change in the law occurred after the case was submitted which appears to have been overlooked by the panel
 - _____ (3) An apparent conflict with another decision of the Court was not addressed in the opinion

- _____ b. Do not file a petition for panel rehearing merely to reargue the case

- _____ 2. Petition for Rehearing En Banc (FRAP 35, NCR 35)

 - _____ a. One or more of the following grounds MUST exist:

 - _____ (1) Consideration by the full Court is necessary to secure or maintain uniformity of the Court’s decisions
 - _____ (2) The proceeding involves a question of exceptional importance
 - _____ (3) An apparent conflict with another decision of the Court was not addressed in the opinion

- _____ 3. Or, Petition for Panel Rehearing together with Petition for Rehearing En Banc (FRAP 35, NCR 35)

- _____ 4. Deadlines for Filing (FRAP 40(a)(1), NCR 40-1 & -2)

 - _____ a. Within **14** days after entry of judgment
 - _____ b. If necessary, file motion for extension of time

- _____ 5. Contents (FRAP 32(b) & 40; NCR 40-1)

 - _____ a. Table of Contents and Table of Authorities
 - _____ b. Introduction

 - _____ (1) Include a statement of counsel clearly stating that, in counsel’s judgment, one or more of the required grounds exist
 - _____ c. Questions Presented on Rehearing
 - _____ d. Course of Proceedings and Disposition
 - _____ e. Statement of Facts
 - _____ f. Argument
 - _____ g. Conclusion
 - _____ h. Certificate of Compliance
 - _____ i. Certificate of Service
 - _____ j. Appendix (Copy of Opinion or Memorandum Decision of the Panel)

- _____ 6. Format (FRAP 32(c)(2); NCR 40-1)
 - _____ a. No paper copies are required unless the Court orders otherwise
 - _____ b. Maximum length: 4,200 words

- _____ R. (Mandatory) If lose, file Petition for Certiorari with U.S. Supreme Court (NCR 4-1(e))
 - _____ 1. “If requested to do so by the client, appointed or retained counsel shall petition the Supreme Court for certiorari only if in counsel’s considered judgment sufficient grounds exist for seeking Supreme Court review. See Sup. Ct. R. 10” (NCR 4-1(d))

 - _____ 2. Or, file with Ninth Circuit a Statement of Intent to Not Seek Certiorari signed by client (NCR 4-1(d))

 - _____ 3. Or, file with Ninth Circuit a Motion for Leave to Withdraw within **21** days of entry of judgment if counsel determines a Petition for Certiorari would be frivolous (NCR 4-1(d))
 - _____ a. A conclusory statement of frivolity is not a sufficient basis for withdrawal. *Austin v. United States*, 513 U.S. 5 (1994)
 - _____ b. Advise client in writing of Motion for Leave to Withdraw and inform client concerning the procedures for filing a Petition for a Writ of Certiorari *pro se*
 - _____ c. If relieved by the Court, notify the client and, if unable to do so, notify the court

 - _____ 4. Required Contents of Petition for Certiorari (Supreme Court Rule (SCR) 14)
 - _____ a. The questions presented for review “expressed concisely...without unnecessary detail”
 - _____ b. List of all parties
 - _____ c. Table of Contents and Table of Authorities (if

- _____ petition exceeds 5 pages)
- _____ d. A reference to the lower court decisions (reported or unreported)
- _____ e. Statement of jurisdiction (SC R 14.1(e))
- _____ f. Constitutional provisions and statutes involved in case
- _____ g. A “concise” statement of the case, including material facts
 - _____ (1) Basis for federal jurisdiction of the court of first instance
- _____ h. Argument (“direct and concise...amplifying the reasons relied on for the allowance of the writ.”)
- _____ i. Appendix (SCR 14.1(i))

_____ 5. Required Format

- _____ a. As short as possible “stated briefly and in plain terms” (SCR 14.4)
 - _____ (1) 40 page limit if typed and double spaced (SCR 14.3 & 33.2)
- _____ b. No Separate Brief (SCR 14.2)
- _____ c. Re: Proceedings *In Forma Pauperis* (SCR 39)
- _____ d. “The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying the petition” (SCR 14.4)

_____ 6. Submit Motion to Proceed *In Forma Pauperis* with the Petition (original and 10 copies)

_____ 7. Deadline: A Petition for Certiorari must be filed within **90** days of date of entry of judgment or of date of order denying Petition for Rehearing. If only a Petition for Rehearing En Banc is filed, then Petition for Certiorari must be filed within 90 days of the entry of judgment. The

Petition for Certiorari is deemed filed on the date of mailing unless sent by Federal Express or other private carrier (SCR 13.4 and 29.2)

_____ S. Review Order by Supreme Court re Certiorari

_____ 1. Consult with client

_____ a. Explain Order

_____ b. If petition for certiorari is denied, advise client of options for further review, including motion for post-conviction relief (28 U.S.C. §2255)

_____ T. Submit CJA 20 Voucher to Ninth Circuit no later than **45** days after final disposition in Ninth Circuit or after filing of a Petition for Certiorari, whichever is later (NCR 4-1(f))

_____ 1. CJA Information Summary Form must be filed with CJA 20 Voucher

_____ 2. Refer to Ninth Circuit CJA Policies and Procedures adopted October 20, 2016