

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Office of the Clerk

After Opening Your Agency Case: What You Need to Know

You have received this guide because you asked the U.S. Court of Appeals for the Ninth Circuit to review the final decision of a federal agency. (This guide is not for immigration cases, however. If you opened an immigration case, please request our immigration packet.) It provides information you need to know if you decide to handle your case without a lawyer.

Before you go further, you should be familiar with these terms:

- **Pro se** is the legal term for representing yourself. It is Latin for “on one’s own behalf.”
- A **petition for review** is the document you filed seeking review of the federal agency’s decision.
- You are the **petitioner** in your case—that is, the person who files the petition for review.

You will see these terms on some of the papers you receive from the court.

Read this guide carefully. If you don’t follow instructions, the court may dismiss your case.

This Guide Is Not Legal Advice

Court employees are legally required to remain neutral; that means they can’t give you advice about how to win your case. However, if you have a question about procedure—for example, which forms to send to the court or when a form is due—this packet should provide the answer. If it doesn’t, you may contact the clerk’s office for more information.

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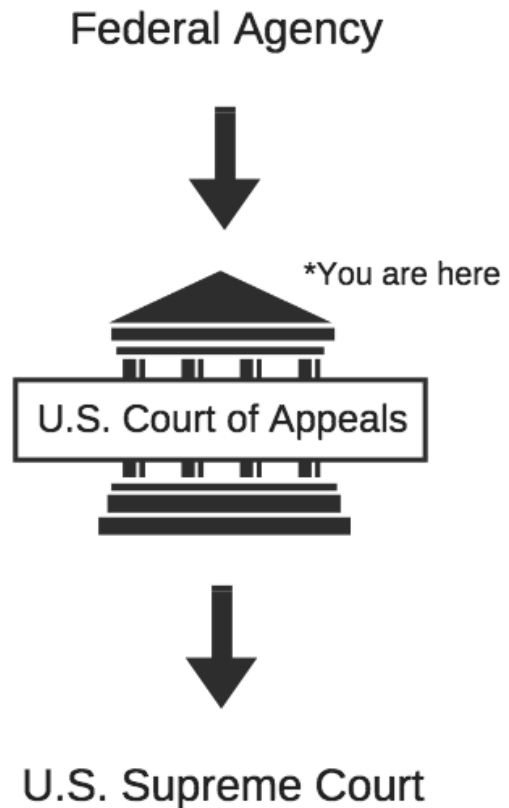
HOW AN AGENCY PETITION WORKS

The chart below shows the path of an agency petition from the agency to the highest court. Review these steps to make sure you understand where you are in the process.

Federal Agency. Cases come to the U.S. Court of Appeals from several different federal agencies. For example, your petition may arise from a final decision at the Federal Aviation Administration, National Labor Relations Board, Federal Trade Commission, or another agency. The important thing to understand is that you must have used up all of your options for appeal within the agency itself before filing a petition for review with the court of appeals. Some agency decisions must first be challenged in U.S. District Court before you can come to the Court of Appeals.

U.S. Court of Appeals. When reviewing the federal agency decision in your case, the court of appeals (usually a panel of three judges) will carefully consider everything that has happened so far. The court will also read all the papers that you and the other side file during your case. The court will look to see whether any agency, officer, or lower court has made a legal or factual mistake. You are not allowed to present new evidence or testimony in the court of appeals.

U.S. Supreme Court. If you do not agree with the decision of the court of appeals, you can ask the United States Supreme Court to review your case. The Supreme Court chooses which cases it wants to hear. It reviews only a small number of cases each



year.

Your case may not go through all of the stages shown above. For example, if the U.S. Court of Appeals resolves your case the way that you want, you won't need to file a petition in the U.S. Supreme Court.

YOUR CASE NUMBER

We have assigned your petition a seven-digit court of appeals case number, also called a “docket number.” You can find the number at the top of the letter you received with this guide. Include your case number on all papers you send to the court or to the opposing party. (In petitions for review of agency decisions, the opposing party is the government who is represented by a lawyer for the government. The terms “opposing party” and “opposing counsel” in this packet refer to the lawyer who represents the government in your case.)

You may want to jot down your case number here to keep it handy:

MY CASE NUMBER IS _____.

IMPORTANT RULES FOR ALL CASES

The rules in this section apply to everyone who files a case in the court of appeals. You must understand and follow each one.

Meet Your Deadlines

Read all documents you get from the court. They will contain important instructions and deadlines for filing your court papers. Write down deadlines on your calendar. **If you miss a deadline or fail to respond to the court as directed, the court may dismiss your case.**

Complete Your Forms Properly

Everything you send to the court must be clear and easy to read. If we can’t read your papers, we may send them back to you.

Follow these guidelines:

- ✓ Use white 8.5 x 11-inch (letter size) paper.
- ✓ Use blue or black pen or type your papers. If you write by hand, please write clearly.
- ✓ Number your pages and put them in order.
- ✓ Use only one paper clip or a single staple to keep your documents organized. The clerk’s office must scan your documents and extra binding makes that job difficult.

Deliver Papers the Right Way

- ✓ When you deliver papers to the court or to opposing counsel, you must take certain steps to show you sent them to the right place on time. When you properly deliver papers to the opposing party, it's called "serving" a document.
- ✓ **Use the correct address.** Before you put anything in the mail, make sure the address is current and correct.
 - To find current addresses for the court, see "How to Contact the Court," at the end of this guide. It's okay to deliver a document to the court in person, but you must hand it to someone designated to receive documents in the clerk's office.
 - To find the correct address for the opposing party, see opposing counsel's "notice of appearance." Opposing counsel should have file this notice with the agency or after you filed your petition for review. The notice states the name and address of the attorney who represents the other side in your case.
- ✓ **Attach a certificate of service.** You must attach a signed "certificate of service" to each document you send to the court or to opposing counsel. You can find a blank certificate of service at the end of this guide. Make copies of the blank document and fill them out as needed.
- ✓ **Send a copy of *all* documents to opposing counsel.** When you send a document to the court, you must also send a copy (including any attachments) to opposing counsel.

Filing Documents Electronically

The court allows self-represented petitioners who are not currently in prison to file documents and make payments electronically if they have access to the internet. This means using the same system that lawyers use. To learn about or apply for electronic filing, review the materials on the court's website at www.ca9.uscourts.gov/cmecf.

Keep Copies of Your Documents

Make copies of all documents you send to the court and to opposing counsel and keep all papers sent to you. Put everything in a folder that you keep in a safe place.

Pay Your Filing Fee or Request a Waiver

The filing fee for your case is \$500.00.

Your fee is due when you file your petition for review. If you don't pay the fee, you will receive a notice informing you that you have **21 days** to either pay the fee or request a waiver because you can't afford to pay.

- **If you can afford the fee.** Send a check or money order to the court. Make it out to "Clerk, U.S. Courts." Don't forget to include your case number. Please note that after you pay the fee, we cannot refund it, no matter how your case turns out.
- **If you can't afford to pay.** You may ask the court to waive your fee by completing a form called a "motion to proceed in forma pauperis." (See "Filing Opening Motions," below.)

If you do not pay the fee or submit a waiver request by the deadline, the court will dismiss your case.

If You Move, Tell the Court

If your mailing address changes, you must immediately notify the court in writing, using the change of address form at the end of this guide. (You can also find the form on the court's website at www.ca9.uscourts.gov/forms.) If you don't promptly tell the court that you changed your address, you might not receive court notices or decisions, and you could miss court deadlines. Missing a deadline may cause the court to dismiss your case.

Additional Rules

This guide describes the key rules that you **absolutely must follow** during your case.

You can find the complete set of court rules in the Federal Rules of Appellate Procedure (Fed. R. App. P.) and the Ninth Circuit Rules (9th Cir. R.), available at www.ca9.uscourts.gov/rules. If you would like the court to mail you a free copy of the rules, use the form "Request for Docket Sheet, Documents, or Rules," at the end of this guide.

Because you do not have a lawyer, the court will do its best to work with you, but it is your job to do your best to follow the rules.

HANDLING YOUR OWN CASE: THREE STAGES

This section will help you understand and manage the different parts of your case. You'll learn about the documents you must file with the court and the timing of each step.

To begin, review the chart below. It introduces the three stages of a case.

1 Opening

- You file a petition for review.
- The court sends you a case schedule.
- You pay filing fees or get a waiver.
- You and opposing counsel may file motions.
- You respond to any court orders or motions from opposing counsel.

2 Briefing

- You submit an opening brief.
- Opposing counsel submits an answering brief.
- You may submit a reply to opposing counsel's brief.

3 Decision

- The court decides your case.
- If you don't like the result, you decide whether to take further action.

Stage One: Opening Your Case

By the time you receive this guide, you have already opened your case by filing a petition for review. In response, the clerk's office created your case record and gave you a case number and a schedule. This section covers some important things to think about next.



The court may dismiss your case at any time. Even if you pay your fees and get a schedule, the court may decide not to keep your case for a variety of legal reasons. If the court dismisses your case and you think the court was wrong, see “If You Don't Agree with a Court Decision,” below.

Ordering Documents and Paying Fees

When you filed your petition for review, you should have included:

- ✓ **A copy of the agency order you want the court to review.** If you did not submit a copy of the agency's final order with your petition, send it to the court and to opposing counsel right away.
- ✓ **Your filing fee.** If you did not pay your filing fee, you must do so now. See “Pay Your Filing Fee or Request a Waiver,” above.

Filing Motions

Now is the time for you and opposing counsel to file opening motions with the court, if you have any. A “motion” is a legal document that asks the court to do or decide something—for instance, to waive your filing fee or give you more time to submit a document.

Here, we describe a few motions that you might make at the beginning of your case.

Motion to Proceed in Forma Pauperis

This motion asks the court to waive your filing fee. “In forma pauperis” is Latin for “in the form of a pauper,” which simply means that you don't have enough money to pay. The motion form includes information about your finances and a sworn statement that you don't have enough money or other assets to pay the fee. You can find a blank copy of the form, called “Motion and Affidavit for Permission to Proceed in Forma Pauperis (Form 4),” at the end of this guide. In addition, be sure to follow the instructions in “How to Write and File Motions,” below.

Motion for Appointment of Counsel

You may ask the court to appoint a volunteer lawyer to represent you for free, called “pro bono.” These appointments are rare, however. You will be given a lawyer only if the court decides that a lawyer is needed to help explain the issues in the case or if there are other unusual circumstances.

To ask for a lawyer, you must file a motion for appointment of counsel, and you may use the motion for appointment of counsel form 24 at the end of this guide. In addition, be sure to follow the instructions in “How to Write and File Motions,” below.

Motion for Injunction Pending Appeal

This motion, sometimes called a “motion for injunctive relief,” asks the court to order someone to do something or to stop doing something while your case is in progress. For example, your motion might ask the court to stop a federal agency from building a road while an environmental impact study is underway. Or you might ask the court to let you keep your job while the court reviews an agency decision that terminated your employment. To write your motion, start with the generic motion form 27 at the end of this guide and follow the instructions in “How to Write and File Motions,” below.

Stage Two: Preparing and Filing Briefs

During the second stage of your case, you and opposing counsel will prepare and file written arguments. These written arguments are called briefs.

Opening brief. It is your job to write and file the first brief in your case. In the opening brief, you will:

- state the facts of your case
- tell the court what you want it to do, and
- give the legal reasons that support your petition.

You must file your opening brief by the deadline in the schedule the clerk sent to you. (The schedule is called a “time schedule order” or a “briefing schedule,” because it tells you when your briefs are due. **If you do not file your brief on time or request an extension, the court will dismiss your case.**

Answering brief. To respond to your arguments, opposing counsel may file an answering brief. The time scheduling order sets the deadline for the answering brief. If opposing counsel files an answer, they must send a copy to you.

Reply brief. You are invited to reply to opposing counsel’s answering brief, but you are not required to do so.

How to Write Your Opening Brief

Because you are representing yourself, you may use the informal brief form at the end of this guide. If you use the informal brief, you do not have to follow the rules that apply to regular briefs. The court will give your informal brief the same consideration as any other brief.

To prepare your brief, answer **all** the questions on the informal brief form as clearly and accurately as possible. Be sure to sign your brief on the blank line at the end.

You may include additional pages with the informal brief form, up to a total of **50 double-spaced pages** including the form itself. If your brief is longer than 50 pages, think about whether you can make it shorter. If you need more than 50 pages to make your case, you must file a motion with your brief requesting permission for the extra pages and explaining why you need them. The court may deny permission and may require you to file a shorter brief.

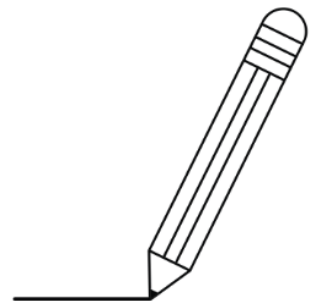


Standard opening briefs must comply with additional rules. If you choose not to use the informal brief provided by the court, and you instead draft a brief using your own format, your brief must meet all the requirements of the federal rules and it must include a [certificate of compliance](#). (You can view the certificate of compliance on the court's website at www.ca9.uscourts.gov/forms.) If your brief does not meet all the rules, we may return it to you for correction, which will delay your case. You can find the detailed rules and requirements in [Federal Rules of Appellate Procedure 28](#) and [32](#) and [Ninth Circuit Rules 28-1, 28-2, 32-1, and 32-3](#).

How to Write a Reply Brief

If opposing counsel files an answer to your opening brief, you may submit a reply telling the court why you think opposing counsel's arguments are incorrect. You may use the informal reply brief form at the end of this guide. If you write a reply brief, do not simply restate the arguments in your opening brief. Instead, use the reply brief to directly address the arguments in opposing counsel's answering brief.

You must file your reply brief within **21 days** of the date the government serves you with its answering brief.





Tips for Writing Your Briefs

Keep these points in mind to write a better brief:

Avoid unnecessary words. Don't use 20 words to say something you can say in ten.

Write clearly. If you write by hand, make sure we can read your writing. Print using blue or black ink and don't crowd too many words into a small space.

Think things through. Do your best to make logical arguments and back them up with legal rules.

Be respectful. You can disagree without being disagreeable. Focus on the strengths of your case, not the character of others.

Tell the truth. Don't misstate or exaggerate the facts or the law.

Proofread. Before you file, carefully check for misspellings, grammatical mistakes, and other errors.

How to File a Brief

You must follow these special rules for filing briefs:

- ✓ Send the original document and **seven copies** of your brief to the court.
- ✓ Send **two copies** to opposing counsel unless you are proceeding in forma pauperis, in which case you may send just one copy.
- ✓ Attach a signed certificate of service to the original and to each copy for opposing counsel.
- ✓ Keep a copy for yourself.

If You Need More Time to File

You may ask for one extension of up to 30 days for each brief by filing a “Streamlined Request for Extension of Time to File a Brief” (Form 13), available at the end of this guide. You must file Form 13 on or before your brief’s existing due date.

If you need more than 30 days, or if the court has already given you an extension, you must submit a motion asking for more time. File your request at least seven days before your brief is due. The motion must meet the requirements of [Ninth Circuit Rule 31-2.2\(b\)](#). To file your motion, use the “Motion for Extension of Time” (Form 14) at the end of this guide.

If you followed the correct procedures to ask for more time but the court doesn’t respond by the date your brief is due, act as though the court has granted your request and take the time you asked for.

What Happens After You File

After you and opposing counsel have filed your briefs, a panel of three judges will evaluate the case. Sometimes the court decides a case before briefing is complete; if that happens, we will let you know.

Judges often decide agency petitions without hearing oral (in-person) argument. To make a decision, they use the information included in the briefs and the case record. But if the court decides that oral argument would be helpful in resolving your case, we will schedule a hearing and may appoint a lawyer to help you.

Stage Three: The Court’s Final Decision

After the judges decide your case, you will receive a memorandum disposition, opinion, or court order stating the result. (A memorandum disposition is a short, unpublished decision.) If you are happy with the outcome, congratulations.

If you didn’t get the final results you wanted, you may take the case further. We explain your options below; see “If You Don’t Agree With a Court Decision.”



HOW TO WRITE AND FILE MOTIONS

This section provides general guidelines for writing and filing motions, including motions discussed elsewhere in this guide. The motion you want to make may have special rules—for example, a different page limit or deadline—so be sure that you also read its description, as noted below.

How to Write a Motion

If you want to file a motion with the court, we ask that you:

- ✓ Use the correct motion form at the end of this guide.
- ✓ Clearly state **what** you want the court to do.
- ✓ Give the legal reasons **why** the court should do what you are asking.
- ✓ Tell the court **when** you would like it done.
- ✓ Don't write a motion that is more than 20 pages long unless you get permission from the court.

How to File a Motion

To file your motion, you must follow the rules described in “Deliver Papers the Right Way,” at the beginning of this guide. In particular, remember to:

- ✓ Send the original document to the court.
- ✓ Send a copy to opposing counsel.
- ✓ Attach a signed certificate of service to the original and to each copy.
- ✓ Keep a copy for yourself.

What Happens After You File

The path of a motion depends on the details of your case, but the following steps are common.

Opposing counsel may respond to your motion. After you file a motion with the court, opposing counsel has ten days to file a response. In the response, opposing counsel will tell the court whether and why it disagrees with the arguments in your motion.

You may reply to opposing counsel’s response. If opposing counsel responds, you may tell the court why you think opposing counsel’s view is incorrect. If you file a reply, don’t just repeat the arguments in your original motion. Instead, directly address the arguments in opposing counsel’s response. You usually have **seven days** to file a reply with the court, starting on the day opposing counsel serves you with their response. Usually, a reply may not be longer than ten pages.

The court decides your motion. After you and opposing counsel file all papers related to the motion, a panel of judges will decide the issue.

How to Respond to a Motion from Opposing Counsel

Opposing counsel may submit its own motions to the court. For example, opposing counsel may file a motion to dismiss your case or to ask the court to review your case more quickly than usual. If opposing counsel files a motion, you are allowed to respond with your arguments against it. Your response may not be longer than 20 pages.

Usually, you must file your response with the court no more than **ten days** from the day opposing counsel delivers a copy of its motion to you. To get started, you may use the blank motion response form 28 at the end of this guide.



Read More About These Motions

If you are making one of the following motions, read the section noted here:

Motion to proceed in forma pauperis in “Filing Motions,” above.

Motion for appointment of counsel in “Filing Motions,” above.

Motion for injunctive relief pending appeal in “Filing Motions,” above.

Motion for extension of time to file a brief in “If You Need More Time to File,” above.

Motion for reconsideration in “If You Don’t Agree With a Court Decision,” below.



Emergency or Urgent Motions

An emergency motion is a motion that asks the court to act within 21 days in order to prevent “irreparable harm”—that is, serious damage that can’t be fixed after it happens. An urgent motion asks the court to act within a window of 21 days to 8 weeks to avoid irreparable harm. If you need emergency relief, call the Motions Unit of the court at 415-355-8020. The attorney on duty will help you figure out the best way to file the motion. Please note that a request for more time to file a document with the court will *not* qualify as an emergency or urgent motion.

Learn More About Motions

This guide covers the basics of preparing, filing, and responding to motions. You can find the detailed court rules governing motions in [Federal Rules of Appellate Procedure 8](#) and [27](#), and [Ninth Circuit Rule 27-1](#).

IF YOU DON'T AGREE WITH A COURT DECISION

If you think the court of appeals made an incorrect decision about important issues in your case, you can ask the court to take a second look. You may do this during your case—for example, if you disagree with the court's ruling on a motion. Or you may ask the court to review its final decision at the end of your case.

During Your Case: Motion for Reconsideration

If you disagree with a court order or ruling during your case, you may prepare a document stating the reasons why you think the court's ruling was wrong. This document is called a "motion for reconsideration." Your motion may not be longer than 15 pages.

A motion for reconsideration of any court order that does not end your case is due **within 14 days** of the date stamped on the court order. In addition to these rules, please follow the general guidelines in "How to Write and File Motions," above.

After Your Case: Motions and Petitions

If you think the court's final decision in your case was wrong and you want to take further action, you have two options:

- File a motion for reconsideration or petition for rehearing in this court.
 - If the court decided your case in an order, then you would file a motion for reconsideration, as discussed just above. You have **45 days** (instead of 14 days) to file a motion for reconsideration of a court order that ends your case.
 - If the court decided your case in a memorandum disposition or opinion, then you would file a petition for rehearing, discussed below.
- File a petition for writ of certiorari with the U.S. Supreme Court.

It is most common to do these things one after the other—that is, to file a petition for rehearing or motion for reconsideration in this court and then, if that doesn't succeed, petition the Supreme Court. It is technically possible to file both petitions at the same time but that is not the typical approach. Our discussion focuses on the common path.

If You Think the Court's Final Decision Was Wrong

Within
45 Days



U.S. Court of Appeals
Petition for Rehearing
or
Motion for Reconsideration

If You Still Do Not Agree

Within
90 Days



Court of Appeals: Petition for Rehearing

To ask the court of appeals to review its final decision in your case, you must file a petition for rehearing. Before starting a petition, remember that you must have a legal reason for believing that this court’s decision was incorrect; it is not enough to simply dislike the outcome. You will not be allowed to present any new facts or legal arguments in your petition for rehearing. Your document should focus on how you think the court overlooked existing arguments or misunderstood the facts of your case.

A petition for rehearing may not be longer than 15 pages. Your petition is due **within 45 days** of the date stamped on the court’s opinion or memorandum disposition. To learn more about petitions for rehearing, read [Federal Rules of Appellate Procedure 40 and 40-1](#).

Most petitions for rehearing go to the same three judges who heard and decided your case. It is also possible to file a petition called a “petition for rehearing en banc.” This type of petition asks 11 judges to review your case instead of three. The court grants petitions for rehearing en banc only in rare, exceptional cases. If you want to find out more about petitions for rehearing en banc, see [Federal Rule of Appellate Procedure 35](#).

U.S. Supreme Court: Petition for Writ of Certiorari

If the court of appeals denies your petition for rehearing—or if it rehears your case and issues a new judgment you don’t agree with—you have 90 days from the denial order or the new decision to petition the U.S. Supreme Court to hear your case. You do this by asking the Supreme Court to grant a “writ of certiorari” (pronounced “sersh-oh-**ra**-ree”). A writ of certiorari directs the appellate court to send the record of your case to the Supreme Court for review. This petition is filed directly with the Supreme Court, not at the court of appeals.

The Supreme Court is under no obligation to hear your case. It usually reviews only cases that have clear legal or national significance—a tiny fraction of the cases people ask it to hear each year. Learn the [Supreme Court’s Rules](#) before starting a petition for writ of certiorari. (You can find the rules and more information about the Supreme Court at www.supremecourt.gov.)

HOW TO GET HELP

We understand that it’s not easy to handle your own petition for review. In this section, you’ll find resources that may provide support if you need legal help or language assistance.

Asking Questions About Court Procedures

As the beginning of this guide makes clear, court employees can’t give you legal advice. However, if you have a question about court procedures or rules, the clerk’s office may be able to help. Here are some examples of questions you could ask the court clerk:

- Which form should I use?
- When is my form due?
- How many copies of the form should I send to the court?
- Did the court receive the form I sent?

Begin by reviewing this guide to see if it answers your question. If you don’t find the answer you need, you may call the clerk’s office at (415) 355-8000.

Finding Legal Help

If you need legal advice but can't afford a lawyer, you may want to consider the following options.

Court appointed lawyers. You can ask the court to appoint a volunteer lawyer to represent you for free. These appointments are rare, however. To ask for a lawyer, you must file a “motion for appointment of counsel.” (See “Filing Motions,” above.)

Low-cost legal services. Another option is to seek help from a legal aid organization in your area. You may want to begin with www.lawhelp.org, a searchable network of national nonprofit agencies that provide free or low-cost legal help to people in a variety of circumstances.

If You Need English Language Assistance

All papers you file with the U.S. Court of Appeals must be in English. At this time, the court is not able to accept, translate, or process paperwork in other languages. We realize this may present a barrier to non-native speakers of English. If you need help understanding and completing your court papers in English, we recommend that you seek legal aid as described above or find someone with strong English language skills who is available and willing to support you during your case.

HOW TO CONTACT THE COURT



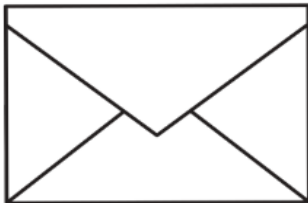
IN PERSON

95 Seventh Street
San Francisco, CA 94103
Hours: 8:30 a.m. - 5:00 p.m.
Open Monday through Friday, except
federal holidays



BY PHONE

(415) 355-8000



BY MAIL

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APPENDIX OF COURT FORMS*

Motion and Affidavit for Permission to Proceed in Forma Pauperis (Form 4). Use this form to ask the court to waive your filing fees.

Motion for Appointment of Counsel (Form 24). Use this form to ask the court to appoint a lawyer for you.

Streamlined Request for Extension of Time to File Brief (Form 13). Complete and submit this form to receive one extension of up to 30 days to file your brief. For other requests or to ask for more time, use the Motion for Extension of Time (Form 14).

Motion for Extension of Time (Form 14). Use this form to:

- request an extension of time to file a document other than a brief
- request a first extension of time to file a brief if you need more than 30 days
- request an additional extension of time to file a brief after filing Form 13.

Generic Motion (Form 27). Use this form to request something from the court that is not covered by any of the other motion forms in this guide.

Response to Motion or Court Order (Form 28). Use this form to respond to a motion filed by the other side or a court order that directs you to respond.

Informal Brief Forms. Use these forms to write the opening and reply briefs in your case. If you use these forms, you are not required to comply with the technical requirements for Ninth Circuit briefs.

Certificate of Service (Form 25). Include a completed copy of this form with every document you send to the court and opposing counsel.

Notice of Change of Address (Form 22). Use this form if your mailing address changes.

Request for Docket Sheet, Document, or Rules (Form 29). Use this form to request a copy of the Federal Rules of Appellate Procedure, the Ninth Circuit Rules, the docket sheet, or documents for a case to which you are a party.

*For Access to All Court Forms, visit our website at www.ca9.uscourts.gov/forms