

20 tips to help you practice like a pro in the Ninth Circuit and CA appellate courts

| | Topic | Ninth Circuit | CA State Court |
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| 1 | Title of judicial officer | Judge | Justice |
| 2 | Name of court | Court of Appeals | Court of Appeal |
| 3 | Title of litigants | Appellant. Appellee. (civil and criminal) Petitioner. Respondent. (immigration) | Appellant, Respondent. (civil, criminal) Petitioner. Respondent. (writ petitions) |
| 4 | Geography/territory | 9 states (AK, AZ, CA, HA, ID, MT, NV, OR, WA) and 2 territories (Guam, Northern Mariana Islands). | Six appellate judicial districts, some with divisions (smaller branches). |
| 5 | Makeup of the court | 1 Chief Judge; 29 active judgeships by statute. “Senior” judges hear cases but do not count as 1 of the 29, and handle reduced caseloads. Appellate Commissioner (handles some pre-appeal matters, including nondispositive motions, complex case management, fee | Chief Justice of the Cal. Supreme Court and 6 associate justices. Each judicial district has an Administrative Presiding Justice. All justices are active. |

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| | | <p>applications in CJA cases). <i>See</i> 9th Cir. General Order 1.8.</p> <p>Central court staff includes attorneys (includes mediators).</p> <p>Individual judges have law clerks who are recent graduates or newer attorneys (and generally rotate on 1-2 year basis), and some judges have a career law clerk.</p> | <p>Central court staff includes some specialty attorneys (e.g., managing attorney, writ attorneys), no mediators.</p> <p>Individual justices have staff attorneys, generally experienced hires and long-term employees.</p> |
| 6 | Appointment and term of office | Judges are nominated by the POTUS and confirmed by the Senate with lifetime tenure. | State Supreme Court and Court of Appeal justices are nominated by the governor and confirmed by Commission on Judicial Appointments (comprised of the CJ, AG, and Senior Presiding COA Justice) after a public hearing. The justice then must be confirmed by the voters at the next “general election,” and must stand for reelection every six years. |
| 7 | E-filing vs. paper copies | <p>All filings submitted electronically via CM/ECF NextGen, including sealed material.</p> <p>Certain paper copies are required (the clerk will issue an order).</p> | <p>The Cal. Supreme Court and all 6 Divisions Courts of Appeal now require e-filing through TrueFiling.</p> <p>Formatting requirements can vary by District, including re bookmarks, naming conventions, and other requirements. *Check the local rules*</p> |

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| | | | <p>https://www.courts.ca.gov/truefiling.htm</p> <p>No paper copies (except sealed materials in some districts)</p> |
| 8 | Jurisdiction | <p>The Ninth Circuit generally has jurisdiction to hear appeals from all federal courts within the Circuit.</p> <p><i>Exceptions:</i></p> <p>(1) Cases statutorily appealable directly to the SCOTUS.</p> <p>(2) Bankruptcy appeals → two possible routes: (a) bankruptcy court → appeal to U.S. District Court → appeal to Ninth Circuit OR (b) bankruptcy court → appeal to Bankruptcy Appellate Panel (BAP) → appeal to Ninth Circuit 28 U.S.C. § 158.</p> <p>(3) Appeals involving patent claims (which can be heard in <i>any</i> U.S. District Court subject to venue requirements) must be appealed to the Federal Circuit in DC. 28 U.S.C. § 1295.</p> <p>(4) Appeals from the U.S. Court of Federal Claims, also are appealable to the Federal Circuit. 28 U.S.C. § 1295.</p> | <p>The CA Courts of Appeal have appellate jurisdiction over:</p> <p>(1) “unlimited civil cases” (amount in controversy exceeds \$25,000)</p> <p>(2) non-capital felony cases, and</p> <p>(3) certain proceedings in which a writ petition is the sole means of invoking appellate review. Cal. Const. art. VI, § 11, subd. (a); Code Civ. Proc., § 904.1, subd. (a); Pen. Code, § 1235, subd. (b).</p> <p>The Courts of Appeal do <i>not</i> hear the following appeals, which go directly to the CA Supreme Court:</p> <p>(1) Death penalty cases; see Cal. Const., art. VI, § 11; Pen. Code, § 1239(b);</p> <p>(2) Disciplinary cases involving judges or attorney misconduct;</p> <p>(3) Appeals from the Public Utilities Commission</p> |

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| | | | The appellate division of the superior court hears appeals in “limited” civil cases, where the amount in controversy is under \$25,000. See Cal. Code Civ. Proc. §§ 85-86. |
| 9 | Deadlines | <p>The Ninth Circuit sets a Time Schedule Order with deadlines for designating the transcript, for the reporter to file the transcripts, for the AOB and opposition brief (30 days after the AOB) and the optional reply (21 days after the opposition).</p> <p>Deadlines can be extended. The Ninth Circuit has an option to file a “streamlined” motion for an extension of time to file any brief, which can give you 30 days. <i>See</i> 9th Cir. Rule 31-2.2(a). However, if you use this option and then need more time, you have to file a written motion and show “diligence and substantial need” to get a further extension. <i>See</i> 9th Cir. Rule 31-2.2(b). The court typically prefers if you ask up front in a written motion for the extension you think you will need. https://www.ca9.uscourts.gov/cmecf/faqs/stre-qs/ Other items have specific deadlines (like petitions for rehearing, rehearing en banc, cert petitions).</p> | <p>AOB is due 40 days after the record is filed.</p> <p>Respondent’s brief is due 30 days after AOB.</p> <p>Optional reply brief is due 20 days after the respondent’s brief.</p> <p>If the AOB or respondent’s brief is not filed by the deadline, the clerk will issue a “default” letter allowing in civil case 15 days to file the missing brief (see Cal. Rules of Court, rule 8.220(a)(1)) and in criminal cases 30 days see Cal. Rules of Court, rule 8.360(c)(4)-(5)).</p> <p>Writs and other petitions (like petitions for rehearing, petitions for review), have specific deadlines and the date of “finality” must be carefully calculated.</p> |

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| 10 | Word limits for briefs | <p>Same rules apply in civil and criminal. <i>See</i> 9th Cir. Rule 32-1.</p> <p>AOB: 14,000 words (this is an exception to the general federal limit of 13,000 words) Oppo: 14,000 words Reply: 7,000 words</p> <p>A party can file an application file an overlength brief along with the proposed brief. If rejected, the court will set a word limit and give additional time to shorten the brief. <i>See</i> Fed. R. App. 32; 9th Cir. Rules 32-1, 32-2.</p> | <p><u>Civil</u> (Cal. Rules of Court, rule 8.204(c)) AOB: 14,000 words Respondent’s brief: 14,000 words Reply: 14,000 words</p> <p><u>Criminal</u> (Cal. Rules of Court, rule 8.360(b)) AOB: 25,500 words Respondent’s brief: 25,500 words Reply: 25,500 words</p> <p>A party can file an application to file an overlength brief along with the proposed brief. If rejected, the court will set a word limit and give additional time to shorten the brief.</p> |
| 11 | Unpublished opinions and citation rules | <p>In the Ninth Circuit, most decisions issued are “unpublished” memorandum dispositions.</p> <p>If published after Jan. 1, 2007, you can cite them. 9th Cir. Rule 36-3. (Note: Parties often also cite earlier unpublished cases.)</p> | <p>In the California courts, the majority of decisions also are “unpublished.” And, “<i>unpublished</i>” decisions are not citeable, except in limited circumstances. <i>See</i> Cal. Rules of Court, rule 8.1115.</p> <p>Don’t break this rule; it is sanctionable.</p> |

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| 12 | Citation methods | Bluebook citation format | <p>California Style Manual or Bluebook are acceptable under the rules. Cal. Rules of Court, rule 1.200.</p> <p>But, based on anecdotal feedback, CSM is preferred (because this is what the court is going to use to write its opinion)</p> |
| 13 | New authority letters | See Fed. R. App. Proc. Rule 28(j); 9th Cir. Rule 28-6 | See Cal. Rules of Court, rule 8.254(a) |
| 14 | “No issue” briefs (criminal appeals) | See <i>Anders v. California</i> , 386 U.S. 738 (1967) and 9th Cir. Rule 4-1(C)(6). | See <i>People v. Wende</i> (1979) 25 Cal.3d 436 and <i>Anders v. California</i> , 386 U.S. 738 (1967). |
| 15 | Right to oral argument? | No automatic right to argument; most cases are submitted on the briefs (court will notify). | Constitutional right to request oral argument (can be waived). |
| 16 | Oral argument timing and make-up of 3-judge panels | <p>Oral argument is scheduled approximately 10 weeks ahead.</p> <p>The names of the judges are released the week before argument and are available on the Court’s website.</p> | <p>Oral argument is generally scheduled 4-6 weeks ahead.</p> <p>The panel is announced when argument is scheduled, but is subject to change at any time, even on the day of argument.</p> |

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| | | 3-judge panels often have a visiting judge sitting “by designation” from another federal Court of Appeals or District Court. At least 2 panel members must be Ninth Circuit judges, though 1 can be active and 1 senior. <i>See</i> 28 U.S.C. §§ 291-96; 9th Cir. Gen. Order 3.2(a). | On occasion, a superior court judge may be designated to hear cases on the Court of Appeal (e.g., if there are vacancies on the Court of Appeal). |
| 17 | The day of argument | Oral arguments are livestreamed and videotaped, and archived on Ninth Circuit’s website and YouTube channel. <i>Large archive of arguments to watch</i> | As of January 2019, oral arguments are livestreamed but not yet archived. |
| 18 | Logistics in court | Podiums are <i>not</i> height adjustable. Panels typically call the cases in order on the docket. Records generally can be brought on a laptop or iPad, but if in doubt, ask the clerk for the panel’s permission. | Podium in 4D1 (San Diego) is height adjustable. Cases can be called in any order depending on the prerogative of the acting presiding justice and how many panel changes are on calendar. In some districts, records can be brought on laptop or tablet. |
| 19 | Indigent criminal defense | Handled by the Federal Defenders’ office in that jurisdiction or by an attorney appointed pursuant to the Criminal Justice Act. | Handled by a a staff attorney at the appellate defenders’ office in the local judicial district (called an appellate “project” OR by an attorney appointed from the project’s “panel”). |

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| 20 | Pro bono programs | <p>Ninth Circuit pro bono program handled through the court. Attorneys are appointed, a designated clerk handles the pre-briefing orders, cases are guaranteed oral argument, some costs may be reimbursed by the court and the case could potentially be eligible for attorney's fees (if otherwise statutorily eligible, for example, 42 U.S.C. § 1983 civil rights cases).</p> <p><i>See 9th Cir. General Order 3.7.</i></p> | <p>SDCBA is launching (in May-ish) an Access to Appellate Justice (ATAJ) program, which will serve as a clearinghouse to try to connect civil appellate litigants with attorneys who are willing to handle pro bono matters.</p> <p>The superior court will assist in making records available to assist potential counsel in evaluating the case.</p> <p>Not court appointed; but volunteer counsel will need to file an appearance.</p> <p><i>Stay tuned for more details!</i></p> |
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