

# UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT

## Office of the Clerk

### After Opening a Case – Counselled Immigration Cases (revised April 2016)

#### Court Address – San Francisco Headquarters

| <i>Mailing Address for U.S. Postal Service</i>  | <i>Mailing Address for Overnight Delivery (FedEx, UPS, etc.)</i>  | <i>Street Address</i>                           |
|---|---|---|
| Office of the Clerk<br>James R. Browning<br>Courthouse<br>U.S. Court of Appeals<br>P.O. Box 193939<br>San Francisco, CA<br>94119-3939 | Office of the Clerk<br>James R. Browning<br>Courthouse<br>U.S. Court of Appeals<br>95 Seventh Street<br>San Francisco, CA<br>94103-1526 | 95 Seventh Street<br>San Francisco, CA<br>94103 |

#### Court Addresses – Divisional Courthouses

| <i>Pasadena</i>   | <i>Portland</i>   | <i>Seattle</i>  |
|---|---|---|
| Richard H. Chambers<br>Courthouse<br>125 South Grand Avenue<br>Pasadena, CA 91105 | The Pioneer Courthouse<br>700 SW 6th Ave, Ste 110<br>Portland, OR 97204 | William K. Nakamura<br>Courthouse<br>1010 Fifth Avenue<br>Seattle, WA 98104 |

#### Court Website – [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov)

The Court's website contains the Court's Rules and General Orders, information about electronic filing of documents, answers to frequently asked questions, directions to the courthouses, forms necessary to gain admission to the bar of the Court, opinions and memoranda, live streaming of oral arguments, links to practice manuals, and an invitation to join our Pro Bono Program.

## Court Phone List

|                                 |   |
|---------------------------------|---|
| <b>Main Phone Number</b> .....  | <b>(415) 355-8000</b>   |
| Attorney Admissions.....        | (415) 355-7800  |
| Calendar Unit.....              | (415) 355-8190  |
| Docketing.....                  | (415) 355-7840  |
| Electronic Filing – CM/ECF..... | Submit form at<br><a href="http://www.ca9.uscourts.gov/cmecf/feedback">http://www.ca9.uscourts.gov/cmecf/feedback</a> |
| Library.....                    | (415) 355-8650  |
| Mediation Unit.....             | (415) 355-7900  |
| Motions Attorney Unit.....      | (415) 355-8020  |
| Procedural Motions Unit.....    | (415) 355-7860  |
| Records Unit.....               | (415) 355-7820  |
| Divisional Court Offices:       |   |
| Pasadena.....                   | (626) 229-7250  |
| Portland.....                   | (503) 833-5300  |
| Seattle.....                    | (206) 224-2200  |

## Electronic Filing - CM/ECF

The Ninth Circuit’s CM/ECF (Case Management/Electronic Case Files) system is mandatory for all attorneys filing in the Court, unless they are granted an exemption. All non-exempted attorneys who appear in an ongoing case are required to register for and to use CM/ECF. Registration and information about CM/ECF is available on the Court’s website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Electronic Filing–CM/ECF*. Read the [Circuit Rules](#), especially Ninth Circuit Rule 25-5, for guidance on filing documents electronically via CM/ECF, and see the [CM/ECF User Guide](#) for a complete list of the available types of filing events.

## **Rules of Practice**

The Federal Rules of Appellate Procedure (Fed. R. App. P.), the Ninth Circuit Rules (9th Cir. R.) and the General Orders govern practice before this Court. The rules are available on the Court's website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Rules*.

## **Practice Resources**

The following resources are on the Court's website, [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov), under *Guides and Legal Outlines*.

- [Ninth Circuit Immigration Outline](#), providing a comprehensive discussion of applicable law.
- [Immigration training materials](#), powerpoint presentations from comprehensive Court-sponsored immigration CLE trainings.
- [Appellate Practice Guide](#), prepared by the Appellate Lawyer Representatives.
- [Perfecting Your Appeal](#), a video which may be viewed for free at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) and may be purchased through the Clerk's office in San Francisco for \$15.00.

## **Admission to the Bar of the Ninth Circuit**

All attorneys practicing before the Court must be admitted to the Bar of the Ninth Circuit. Fed. R. App. P. 46(a); 9th Cir. R. 46-1.1 & 46-1.2.

For instructions on how to apply for bar admission, go to [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) and click on the *Attorneys* tab > *Attorney Admissions* > *Instructions*.

## **Notice of Change of Address**

Counsel who are registered for CM/ECF must update their personal information, including street addresses and email addresses, online at:

<https://pacer.psc.uscourts.gov/pscof/login.jsf> 9th Cir. R. 46-3.

Counsel who have been granted an exemption from using CM/ECF must file a

written change of address with the Court. 9th Cir. R. 46-3.

## **Payment of Fees**

The \$500.00 filing fee or a motion to proceed in forma pauperis shall accompany the petition for review. 9th Cir. R. 3-1.

A motion to proceed in forma pauperis must be supported by the affidavit of indigency found at [Form 4](#) of the Federal Rules of Appellate Procedure, available on the Court's website, [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov), under *Forms*.

Failure to satisfy the fee requirement or to apply to proceed without payment of fees will result in the petition's dismissal. 9th Cir. R. 42-1.

## **Motions Practice**

Following are some of the basic points of motion practice, governed by Fed. R. App. P. 27 and 9th Cir. R. 27-1 through 27-14.

- Each motion in an immigration case must inform the Court whether petitioner is in the custody of the Department of Homeland Security or at liberty. 9th Cir. R. 27-8.2.
- Neither a notice of motion nor a proposed order is required. Fed. R. App. P. 27(a)(2)(C)(ii), (iii).
- Motions may be supported by an affidavit or declaration. 28 U.S.C. § 1746.
- Each motion should provide the position of the opposing party. Circuit Advisory Committee Note to Rule 27-1(5); 9th Cir. R. 31-2.2(b)(6).
- A response to a motion is due 10 days from the service of the motion. Fed. R. App. P. 27(a)(3)(A); Fed. R. App. P. 26(c). The reply is due 7 days from service of the response. Fed. R. App. P. 27(a)(4); Fed. R. App. P. 26(c).
- A response requesting affirmative relief must include that request in the caption. Fed. R. App. P. 27(a)(3)(B).
- 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. 9th Cir. R. 25-4.

## **Emergency or Urgent Motions**

All emergency and urgent motions must conform with the provisions of 9th Cir. R. 27-3. Note that a motion requesting procedural relief (e.g., an extension of time to file a brief) is *not* the type of matter contemplated by 9th Cir. R. 27-3. Circuit Advisory Committee Note to 27-3(3).

Prior to filing an emergency motion, the moving party *must* contact an attorney in the Motions Unit in San Francisco at (415) 355-8020.

When it is absolutely necessary to notify the Court of an emergency outside of standard office hours, the moving party shall call (415) 355-8000. Keep in mind that this line is for true emergencies that cannot wait until the next business day (e.g., an imminent execution or removal from the United States).

## **Motions to Stay Removal**

The filing of an initial motion to stay removal temporarily stays the order of removal until further order of the Court. *De Leon v. INS*, 115 F.3d 643 (9th Cir. 1997); Ninth Circuit General Order 6.4(c)(1).

Any such motion must discuss the merits of the petition and the specific hardships that petitioner will suffer if removed. *Nken v. Holder*, 556 U.S. 418 (2009).

If the motion to stay is filed with the petition for review, the briefing schedule will not be set until the Court resolves the motion. General Order 6.4(c)(1). If no motion to stay is filed with the petition for review, a briefing schedule will be set and there will be no stay in place. A later-filed motion to stay vacates the existing briefing schedule.

The response to an initial motion to stay is due 84 days from the filing of the motion (during which time petitioner is covered by the temporary stay described above). If respondent fails to submit a response within the time set, the silence will be construed as a statement of non-opposition, a briefing schedule will be set and the temporary stay will continue absent further order of the Court. General Order 6.4(c)(1). Any reply is due 7 days from service of the response.

## **Briefing Schedule**

The briefing schedule is set when the Court docket the petition for review, unless a motion to stay removal is filed with the petition. If a stay motion is filed, the briefing schedule is set after disposition of the motion.

Certain motions (e.g., a motion to dismiss the case) automatically stay the briefing schedule. 9th Cir. R. 27-11.

The briefing schedule is dependent upon the respondent's timely filing of the certified administrative record. If the record is late, the Court will revise the schedule; no motion by petitioner is necessary.

The opening and answering brief due dates are not subject to the additional time described in Fed. R. App. P. 26(c). 9th Cir. R. 31-2.1. The early filing of petitioner's opening brief does not advance the due date for respondent's answering brief. *Id.*

## **Extensions of Time to file a Brief**

### *Streamlined Request*

Subject to the conditions described at 9th Cir. R. 31-2.2(a), you may request one streamlined extension of up to 30 days from the brief's existing due date. Submit your request via CM/ECF using the "File Streamlined Request to Extend Time to File Brief" event on or before your brief's existing due date. No form or written motion is required.

### *Written Extension*

Requests for subsequent extensions or extensions of more than 30 days will be granted only upon a written motion supported by a showing of diligence and substantial need. This motion shall be filed at least 7 days before the due date for the brief. The motion shall be accompanied by an affidavit or declaration that includes all of the information listed at 9th Cir. R. 31-2.2(b).

The Court will ordinarily adjust the schedule in response to an initial motion. Circuit Advisory Committee Note to Rule 31-2.2. The Court expects that the brief will be filed within the requested period of time. *Id.*

## **Contents of Briefs**

The required components of a brief are set out at Fed. R. App. P. 28 and 32, and 9th Cir. R. 28-2, 32-1 and 32-2.

Additionally, an opening brief filed in a petition challenging a decision of the Board of Immigration Appeals must 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. 9th Cir. R. 28-2.4(b).

The petitioner's opening brief must include an addendum, bound with the brief, containing all orders of the immigration court and BIA that are being challenged. 9th Cir. R. 28-2.7. The opening brief need not be accompanied by Excerpts of Record. 9th Cir. R. 17-1.2(b).

After the electronically submitted brief has been reviewed, the Clerk will request 7 paper copies of the brief that are identical to the electronic version. 9th Cir. R. 31-1. Do not submit paper copies until directed to do so.

## **Mediation Program**

Petitioners in immigration cases are not required to file a Mediation Questionnaire, the document used for an initial assessment for mediation. From time to time, however, the Court may direct the parties to confer with a Court Mediator.

If you are interested in requesting a conference with a Mediator, you may call the Mediation Unit at (415) 355-7900, email [ca09\\_mediation@ca9.uscourts.gov](mailto:ca09_mediation@ca9.uscourts.gov) or make a written request to the Chief Circuit Mediator. Circuit Advisory Committee Note to Rule 15-2. You may request conferences confidentially. More information about the Court's mediation program is available at <http://www.ca9.uscourts.gov/mediation>.

## **Oral Hearings**

Approximately 14 weeks before a case is set for oral hearing, the parties are notified of the hearing dates and locations and are afforded 3 days from the date of those notices to inform the Court of any conflicts. Notices of the actual calendars

are then distributed approximately 10 weeks before the hearing date.

The Court will change the date or location of an oral hearing only for good cause, and requests to continue a hearing filed within 14 days of the hearing will be granted only upon a showing of exceptional circumstances. 9th Cir. R. 34-2.

Oral hearing will be conducted in all cases unless all members of the panel agree that the decisional process would not be significantly aided by oral argument. Fed. R. App. P. 34(a)(2).

Oral arguments are live streamed to You Tube and can be accessed on the Court's website.



## **Ninth Circuit Appellate Lawyer Representatives APPELLATE MENTORING PROGRAM**

### 1. Purpose

The Appellate Mentoring Program is intended to provide mentoring on a voluntary basis to attorneys who are new to federal appellate practice or would benefit from guidance at the appellate level. In addition to general assistance regarding federal appellate practice, the project will provide special focus on two substantive areas of practice - immigration law and habeas corpus petitions. Mentors will be volunteers who have experience in immigration, habeas corpus, and/or appellate practice in general. The project is limited to counseled cases.

### 2. Coordination, recruitment of volunteer attorneys, disseminating information about the program, and requests for mentoring

Current or former Appellate Lawyer Representatives (ALRs) will serve as coordinators for the Appellate Mentoring Program. The coordinators will recruit volunteer attorneys with appellate expertise, particularly in the project's areas of focus, and will maintain a list of those volunteers. The coordinators will ask the volunteer attorneys to describe their particular strengths in terms of mentoring experience, substantive expertise, and appellate experience, and will maintain a record of this information as well.

The Court will include information about the Appellate Mentoring Program in the case opening materials sent to counsel and will post information about it on the Court's website. Where appropriate in specific cases, the Court may also suggest that counsel seek mentoring on a voluntary basis.

Counsel who desire mentoring should contact the court at [mentoring@ca9.uscourts.gov](mailto:mentoring@ca9.uscourts.gov), and staff will notify the program coordinators. The coordinators will match the counsel seeking mentoring with a mentor, taking into account the mentor's particular strengths.

### 3. The mentoring process

The extent of the mentor's guidance may vary depending on the nature of the case, the mentee's needs, and the mentor's availability. In general, the mentee should initiate contact with the mentor, and the mentee and mentor should determine together how best to proceed. For example, the areas of guidance may range from

basic questions about the mechanics of perfecting an appeal to more sophisticated matters such as effective research, how to access available resources, identification of issues, strategy, appellate motion practice, and feedback on writing.

#### 4. Responsibility/liability statement

The mentee is solely responsible for handling the appeal and any other aspects of the client's case, including all decisions on whether to present an issue, how to present it in briefing and at oral argument, and how to counsel the client. By participating in the program, the mentee agrees that the mentor shall not be liable for any suggestions made. In all events, the mentee is deemed to waive and is estopped from asserting any claim for legal malpractice against the mentor.

The mentor's role is to provide guidance and feedback to the mentee. The mentor will not enter an appearance in the case and is not responsible for handling the case, including determining which issues to raise and how to present them and ensuring that the client is notified of proceedings in the case and receives appropriate counsel. The mentor accepts no professional liability for any advice given.

#### 5. Confidentiality statement

The mentee alone will have contact with the client, and the mentee must maintain client confidences, as appropriate, with respect to non-public information.