UNITED STATES COURT OF APPEALS

for the NINTH CIRCUIT

GENERAL ORDERS

Revised as of March 23, 2016

GENERAL ORDERS 1

Chapter I: GENERAL DEFINITIONS 1

1.1. Active Judge 1

1.2. Senior Judge 1

1.3. Member of the Court 1

1.4. Visiting Judge 1

1.5. Judge 2

a. Administrative Judge 2

1.6. Panel 2

1.7. Disposition 2

1.8. Appellate Commissioner 2

1.9. Staff Attorney 3

1.10. Circuit Mediator 3

1.11. Administrative Unit 3

1.12. Comeback Cases 4

1.13. Terms used for Cases, Case Participants, and Dispositive Reliefs 4

Chapter II: FILING & DOCKETING APPEALS 5

2.1. Inquiry Regarding Related Matters *(Abrogated 9/17/14)* 5

2.2. Proceedings In Forma Pauperis 5

2.3. Procedures for Failure to Comply with Deadlines Established by the Court 5

a. All Civil Appeals, Including All Pro Se and Retained Counsel Habeas Corpus and Criminal Post-Judgment Appeals) 6

b. All Direct Criminal Appeals and All Habeas Corpus and Criminal Post-Judgment Appeals in which Appellant is Represented by Counsel Appointed pursuant to the Criminal Justice Act 6

c. Direct Criminal Appeals (retained counsel) *(Abrogated 9/17/14)* 7

d. Direct Criminal Appeals (pro se appellants) *(Abrogated 9/17/14)* 7

e. Failure to File Answering Brief) 7

2.4. Motions for Reinstatement 8

Chapter III: CALENDARING 9

3.1. Time and Place of Court Calendars 9

a. Places of Hearings *(Rev. 1/11/16)* ... 9
b. Number of Panel Sittings per Calendar *(Rev. 1/11/16)* ... 9

3.2. Assignment of Judges to Calendars *(Rev. 1/11/16)* ... 9
a. Composition of Panels *(Rev. 1/11/16)* ... 10
b. Assignment of Active Judges ... 10
c. Assignment of Senior Judges ... 10
d. Assignment of Judges to Honolulu and Anchorage Calendars *(New 1/11/16)* ... 11
e. Rotation of Judges *(Rev. 1/11/16)* ... 11
f. Parity in Panel Sittings *(Rev. 1/11/16)* ... 11
g. Preferences of Judges *(Rev. 1/11/16)* ... 11
h. Unavailability *(Rev. 1/11/16)* ... 12
i. Disqualification or Recusal *(Rev. 1/11/16)* ... 12
j. Overburdens ... 13
k. Temporary Calendar Reduction ... 14

3.2.1. Selection of Circuit Judge to Serve on Three-Judge District Courts ... 14

3.3. Assignment of Cases to Calendars ... 14
a. Number of Panels Sitting *(Abrogated 9/17/14)* ... 14
b. Selection of Cases for Calendars *(Rev. 1/11/16)* ... 14
c. Priorities *(Rev. 1/11/16)* ... 15
d. Assignment of Cases to Panels *(Rev. 1/11/16)* ... 16
e. Subsequent Proceedings in Calendared Cases ... 16
f. Expediting Appeals (*Rev. 1/11/16*) ... 17
g. Urgent Cases *(New 1/11/16)* ... 17
h. Calendaring Policy: Ninth Circuit Only Panels and Emergency Assignments *(Rev. 1/11/16)* ... 18

3.4. Notification of Calendaring of Cases *(Rev. 1/11/16)* ... 19

3.5. Publication of Calendars *(Rev. 1/11/16)* ... 19

3.6. Comeback Cases *(Rev. 1/11/16)* ... 20
a. Matters on Remand From the United States Supreme Court ... 20
b. Matters Arising After Remand By an En Banc Court ... 20
c. Capital Cases ... 20
d. Appeals Following Remand or Other Decision in the Same Underlying Case ... 21

3.7. Oral Argument in Pro Bono Project Appeals ... 21

Chapter IV: DISPOSITIONS ... 23

4.1. Prevention of Conflicts ... 23
a. Questions Pending Concurrently Before Two or More Panels ... 23
b. Deferring Submission Pending Decision by Another Court ... 23

4.2. Deciding Cases on Points Not Raised and Argued 24
4.3. Writing of Dispositions 24
4.3.a. Memoranda Dispositions 24
4.4. Suggesting Changes to Draft Dispositions 25
a. Majority, Concurring, and Dissenting Dispositions 25
b. Rule 36 - Notation on Memoranda Dispositions 26
c. Electronic Transmission of Dispositions 26
d. Temporary Hold 26
e. Costs 27
4.6. Mandate 28
a. Policy Against Issuance of Mandate Forthwith 28
b. Exceptions to Policy Against Issuance of Mandate Forthwith 28
c. Stay of Mandate 29
d. Recall of Mandate 29
Chapter V: EN BANC PROCEDURES 30
5.1. Definitions and General Provisions 30
a. Definitions 30
1. Full Court 30
2. En Banc Court 30
3. Judge eligible to vote 30
4. Judge eligible to serve on the En Banc Court 31
5. En Banc Coordinator 31
6. En Banc Call 31
7. Stop Clock 32
b. General Provisions 32
1. Judicial Participation 32
2. Duties of the En Banc Coordinator 33
3. Vote Tallies 33
4. Duties of Panel Members 34
5. Computing and Extending Time 34
6. Notification to En Banc Coordinator 34
7. Death Penalty Cases 35
5.2. Initial Hearing En Banc 35
a. Petition by a Party Prior to Calendaring 35
b. Call for En Banc by Panel 36
5.3. Amendment of Disposition; Proposal by Judge 36
a. Amendment of Disposition 36

b. Proposal by Judge 37

5.4. Rehearing En Banc 38
a. Duties of Clerk 38
b. Request for Notice of Panel Vote on Petition for Panel Rehearing and Time Within Which Judges Must Act After Notice 38
1. Request for Notice 38
2. Circulation of Notice; Vote on Petitions; Proposed Amendments 38
3. Procedure When Only a Petition for Panel Rehearing is Filed 39
c. En Banc Calls and Supplemental Briefing 39
1. En Banc Calls 39
2. Supplemental Briefing 40
3. Sua Sponte Calls 40
4. Withdrawal of En Banc Calls 41
d. Staying the Mandate 42
e. Stopping the Clock 42

5.5. Procedure After Supplemental Briefing 43
a. Memoranda 43
b. Voting 43
c. No Majority Favoring En Banc Consideration 44
d. Majority Favoring En Banc Consideration 44
e. Recusals 44

5.6. Reserved Time 44

5.7. Assignment of Opinion Writing, Circulation, and Filing of Disposition 45
a. Assignment of Opinion Writing 45
b. Circulation of Opinions 45
1. Majority Opinion 45
2. Dissenting or Other Separate Opinion 45
3. Voting on Opinions 46
c. Filing of Dispositions 46

5.8. Rehearing by Full Court 46
a. Petition by a Party 46
b. Sua Sponte Calls 47

5.9. Stay of Mandate 47

5.10. Recall of Mandate 47

Chapter VI: MOTIONS & SCREENING CASES 48

6.1. Definitions 48
a. Motion 48

b. Criminal Motion *(Abrogated 9/17/14)* 49
c. Civil Motion *(Abrogated 9/17/14)* 49
d. Motions Attorney 49
e. *(Abrogated 12/13/10)* 49
f. Procedural Motion 49
g. Designated Deputy Clerk *(Abrogated 9/17/14)* 49
h. Emergency Motion 49
i. Oral Screening Calendar 49
j. Written Screening Calendar 49
k. COA Calendar 50
l. Motions Calendar 50

6.2. Assignment of Judges 50
a. Motions and Oral Screening Calendars 50
b. Certificate of Appealability Calendars 50
c. Written Screening Calendars 51
d. Scheduling of Motions and Oral Screening Calendars/ Procedure Governing Motions Panel Matters 51

6.3. Delegation of Authority to Dispose of Motions 52
a. Disposition of Motions by the Clerk 53
b. Motions in Cases Assigned to Oral Argument Panels 53
c. Motions in Cases Assigned to Screening Panels 54
d. Procedural Motions Filed During the Pendency of a Substantive Motion 54
e. Disposition of Motions by Appellate Commissioner 54
f. Disposition of Single Judge Motions *(Abrogated 9/17/14, see 6.3.b)* 56
g. Disposition of Two and Three Judge Motions 56

6.4. Emergency Motions 58
a. General Procedure 58
b. Emergency Motions Requiring Same Day or Next Day Action 59
c. Motions for Stay of Deportation or Removal in Petitions for Review 61
1. Temporary Stay 61
2. Supplemental Motion 61
3. Response 62
4. Reply 63
5. Orders to Show Cause 63
6. Non-Opposition 63
7. Other Petitions for Review 64

6.5. Screening Calendars 65
a. Selection and Criteria of Cases for Screening Calendars 65
b. Oral Screening Panel Presentations 65

1. Disposition of Cases 65
2. Rejection of Cases 66
3. Petitions for Rehearing 67
c. Written Screening Panels 67
1. Rejection by Judges 67
2. Dispositions 68
d. Written Screening Calendars *(Abrogated 3/24/04)* 68

6.6. Recalcitrant Witness Appeals 68

6.7. Criminal Justice Act Vouchers 69

6.8. Applications for Extraordinary Writs (Exclusive of Habeas Corpus) 69
a. General Procedures 69
b. Emergency Procedures *(Abrogated 9/17/14, see G.O. 6.4.a and 6.4.b)* 70

6.9. Certification of Orders and Memoranda Dispositions 70

6.10. Motions for Clarification and Petitions for Reconsideration or Rehearing *(Abrogated 7/1/03)* 71

6.11. Motions for Reconsideration En Banc 71

Chapter VII: MEDIATION OFFICE 72

7.1 Purpose and Staffing 72

7.2 Authority to Enter Orders 72

7.3 Cases Subject to Mediation 73

7.4 Confidentiality 74

7.5 Imposition of Sanctions 74

7.6 Processing of Selected Cases 74

Chapter VIII: DEATH PENALTY PROCEDURES 75

8.1 Capital Case Coordinator 75
a. Selection 75
b. Principal Duties 75
c. Deadline for Voting *(Abrogated 9/17/14)* 76

8.2 Duties of En Banc Coordinator 76

8.3 Duties of Chief Judge 77

Chapter IX: JUDICIAL PROCEDURES 78

9.1 Reports by Judges on Cases Under Submission 78

9.2 Priorities for Consideration of Proposed Dispositions 78
9.3 Delay by Visiting Judges 79
9.4 Seniority of Visiting Judges 79
9.5 Individual Public Expression of Views 79
9.6 Three-Judge District Court Assignments *(Abrogated)* 80

Chapter X: MEETING OF COURT & EXECUTIVE COMMITTEE 81
10.1. Executive Committee of the Court 81
a. Membership 81
b. Authority 82
c. Meetings 82
d. Agendas and Minutes 83
10.2. Court Meetings 83
a. Time, Place, and Judicial Participation 83
b. Agenda and Non-Agenda Items 83
c. Minutes 84
10.3. Mail Votes 84

Chapter XI: DUTIES of ADMINISTRATIVE UNIT JUDGES 85
11.1 Duties of the Administrative Unit Judge 85

Chapter XII: MISCELLANEOUS PROVISIONS 87
12.1. Seal and Process *(Abrogated 9/17/14)* 87
12.2. Use of Court, Conference, and Robing Rooms *(Abrogated 9/17/14)* 87
12.3. Information Concerning Presentation of Oral Argument *(Abrogated 9/17/14)* 87
12.4. Bar Admission Fees 87
a. Bar Admission Fees 87
b. Expenditures from the Attorney Admission Fund 87
12.5. Discipline of Attorneys Admitted to Practice in This Court 88
12.6. Use of General Orders 89
12.7. Distribution of Briefs, Records, and Exhibits After Use 89
12.8. Prisoner Mail 89
12.9. Sua Sponte Imposition of Sanctions 90
a. Sanctions Imposed Against Counsel or a Party 90
b. Court Reporter Sanctions 92

12.10. Communication From Other Courts Regarding Cases 93
a. Communications Regarding Dispositions and Extraordinary Writs 93
b. Petitions for Rehearing 93
c. Closed Cases 94
12.11. Suspension of General Orders 94
12.12. Confidentiality 95
12.13. Confidentiality and Disposition of Judges' Personal Papers and Property upon Death 97
12.14. Purpose and Effect of General Orders 98
APPENDIX A Disposition of Motions by the Clerk 99

Posted on April 7, 2016

Chapter I: GENERAL DEFINITIONS

Terms in these General Orders conform to Title 28 of the United States Code, the Federal Rules of Appellate Procedure ("FRAP"), and the Rules of the United States Court of Appeals for the Ninth Circuit ("Circuit Rules"), unless otherwise indicated. *(Rev. 12/13/10; 9/17/14)*

1.1. <u>Active Judge</u>

- means a circuit judge of this circuit in regular active service.

1.2. <u>Senior Judge</u>

- means a circuit judge of this circuit who has retired from regular active service pursuant to 28 U.S.C. § 371(b) or 28 U.S.C. § 372(a).

1.3. <u>Member of the Court</u>

- means an active judge or a senior judge; in the plural, it means all active judges and senior judges, collectively.

1.4. <u>Visiting Judge</u>

- means any judge or justice of the United States, not a member of the Court, designated, pursuant to 28 U.S.C. §§ 291-96, to act as a member of a panel to hear and decide a case.

1.5. <u>Judge</u>

- without qualification, means an active judge, senior judge, or a visiting judge as the context may require.

a. <u>Administrative Judge</u>

- means the most senior eligible active judge willing to serve, not including the Chief Judge, in an administrative unit. Any active judge is eligible to serve as an administrative judge; service is to be in order of seniority, the term of office shall be 3 years. *(Rev. 1/1/07)*

1.6. <u>Panel</u>

- means a division of more than one judge of this Court to which a case or motion is referred for disposition.

1.7. <u>Disposition</u>

- means an opinion, memorandum, or order of the Court, without regard to the distinctions set forth in Circuit Rule 36-1.

1.8. <u>Appellate Commissioner</u>

- means a magistrate judge-level judicial officer appointed by the Court to rule or review and make recommendations on a variety of nondispositive matters, such as applications by appointed counsel for compensation under the Criminal

Justice Act and certain motions specified in Chapter Six of these orders, and to serve as special master as directed by the Court. *(Rev. 9/17/14)*

1.9. <u>Staff Attorney</u>

- means an attorney appointed by the Court to assist in the processing of appeals and motions and to perform such other duties as the Court directs.

1.10. <u>Circuit Mediator</u>

- means an attorney employed by the Court to facilitate the settlement of cases and to perform such other duties as the Court directs. *(Rev. 12/13/10)*

1.11. <u>Administrative Unit</u>

Pursuant to 28 U.S.C. § 41, 3 administrative units are established: the Northern Unit, composed of the districts of Alaska, Idaho, Montana, Oregon, Eastern and Western Washington;

The Middle Unit, composed of the districts of Arizona, Nevada, Hawaii, Guam, Northern Mariana Islands and Northern and Eastern California; and

The Southern Unit, composed of the districts of Central and Southern California.

1.12. Comeback Cases

- means subsequent appeals or petitions from a district court case or agency proceeding involving substantially the same parties and issues from which there previously had been a calendared appeal or petition.

1.13. Terms used for Cases, Case Participants, and Dispositive Reliefs

When these General Orders use the term "appeal" without qualification, the intention is to include a petition for review. Therefore, the terms for parties in an appeal (such as appellant and appellee) are intended to correspond to the terms for parties in a petition (such as petitioner and respondent). In addition, the terms for dispositive reliefs used when resolving appeals (such as affirmed and reversed) are intended to correspond to the terms for dispositive reliefs used when resolving petitions (such as denied and granted). *(New 9/17/14)*

Chapter II: FILING & DOCKETING APPEALS

2.1. Inquiry Regarding Related Matters *(Abrogated 9/17/14)*

2.2. Proceedings In Forma Pauperis

With respect to proceedings in this Court in forma pauperis pursuant to 18 U.S.C. § 3006A, 28 U.S.C. § 1915, and FRAP 24, the appointment of counsel by the trial court to represent the defendant shall create a rebuttable presumption of pauper status for the purpose of dispensing with the docket fee in this Court. This presumption may be challenged by the opposing party, or by the Court on its own motion, when it appears that the defendant may not be a pauper. Unless challenged, however, the presumption shall cure, for accounting purposes, any administrative failure by the district court to supply documents in support of pauper status. *(Rev. 9/17/14)*

2.3. Procedures for Failure to Comply with Deadlines Established by the Court

Circuit Rule 42-1 provides for dismissal if records, docket fees, or appellant's briefs are not timely filed. The Clerk may issue an order to show cause directing the payment of fees or a response with respect to jurisdictional and other issues that may be appropriate for summary disposition. If appellant fails to comply with the order, the Clerk may dismiss the appeal for lack of prosecution;

however, a direct criminal appellant shall have a second opportunity to respond. *(Rev. 9/17/14)*

In situations where the failure to prosecute involves the failure to file the brief, the Clerk shall follow these procedures:

a. <u>All Civil Appeals, Including All Pro Se and Retained Counsel Habeas Corpus and Criminal Post-Judgment Appeals</u>*)*

If appellant pro se or appellant's retained or pro bono counsel fails to timely file the opening brief, the Clerk shall dismiss the appeal for failure to prosecute no sooner than 14 days after the brief's due date has passed. *(Rev. 9/17/14)*

b. <u>All Direct Criminal Appeals and All Habeas Corpus and Criminal Post-Judgment Appeals in which Appellant is Represented by Counsel Appointed pursuant to the Criminal Justice Act</u>

If any appellant in a direct criminal appeal or an appellant represented by appointed counsel in a habeas corpus or criminal post-judgment appeal fails to timely file the opening brief, the Clerk shall issue a default order directing appellant to correct the deficiency within 14 days. The default order shall warn that failure to comply timely with the order may result in the imposition of sanctions on counsel, the removal of appointed counsel from the appeal, and/or dismissal of the appeal for failure to prosecute. The default order will further require the United States Attorney or the State Attorney General, within 14 days, to serve the order on appellant individually and to provide proof of service, including

appellant's registration number and address, to the Court. The Clerk shall serve the default order on appellant's counsel by overnight mail if counsel is not registered for Appellate ECF.

If the opening brief is submitted along with a motion for relief from default, the Clerk may grant the motion and re-set the remainder of the briefing schedule or refer the motion to an Appellate Commissioner for resolution.

If a motion for extension of time to file the opening brief is filed in response to the default order, the motion will be referred to an Appellate Commissioner for resolution.

If appellant fails to respond to the default order with 14 days of the date of the default order, the matter will be referred to an Appellate Commissioner for further proceedings.

In the event appointed counsel is relieved pursuant to this section, a copy of the order shall be served on the appointing authority. *(Rev. 9/17/14)*

c. <u>Direct Criminal Appeals (retained counsel)</u> *(Abrogated 9/17/14)*

d. <u>Direct Criminal Appeals (pro se appellants)</u> *(Abrogated 9/17/14***)**

e. <u>Failure to File Answering Brief</u>*)*

In all cases, if no answering brief is filed, the Clerk shall, no sooner than 14 days after the brief's due date, issue an order that directs appellee either to inform the Clerk by letter that no brief will be filed or to submit the brief along with a

motion within 14 days of the date of the order. The Clerk may grant or refer the motion to an Appellate Commissioner, motions panel, or merits panel. If appellee fails to respond to the order, the case will be deemed ready for calendaring on the basis of the opening brief. *(New 9/17/14)*

2.4. <u>Motions for Reinstatement</u>

Any motion to reinstate an appeal dismissed for want of prosecution shall indicate how the deficiency has been corrected or explain why correction is impossible. *(Rev. 9/17/14)*

Chapter III: CALENDARING

3.1. Time and Place of Court Calendars

a. Places of Hearings *(Rev. 1/11/16)*

It is policy of the Court that, in general, depending on caseload, there shall be Court calendars each year in the following places: San Francisco; Pasadena; Seattle; Portland; Honolulu; and Anchorage. Court calendars may be set in other locations within the circuit subject to the approval of the Chief Judge. (*Rev. 12/13/10; 9/17/14; 1/11/16*)

b. Number of Panel Sittings per Calendar *(Rev. 1/11/16)*

Each Court calendar shall consist of as many panel sittings during one or two consecutive weeks as may be deemed appropriate in view of the number of cases ready for hearing, the availability of judges, personnel, and facilities, holidays, and travel-related concerns. *(Rev. 9/17/14; 1/11/16)*

3.2. Assignment of Judges to Calendars *(Rev. 1/11/16)*

After the time and place of calendars have been established by the Clerk's Office, judges and visiting judges shall be assigned to particular days on the calendars. Except as provided in G.O.3.2.d, the Clerk's Office will use a computer program that is designed to equalize the workload among all judges, randomly assign panels, and take into account the following factors: (*Rev. 1/11/16*)

a. <u>Composition of Panels</u> *(Rev. 1/11/16)*

Except as provided in Circuit Rule 22-2(a) and G.O.3.3.h, oral argument panels will be composed of no fewer than two members of the Court, as defined by G.O.1.3, at least one of whom shall be an active judge at the time the panel is drawn. *(Rev. 1/11/16)*

b. <u>Assignment of Active Judges</u>

Every year, the Court will establish the number of panel sitting days required of each active judge. These panel sitting days do not include en banc hearings, motions panels, oral screening panels, three-judge district court cases, certificate of appealability panels, and cases for which a judge's name is drawn by lot. With the approval of the Executive Committee, the Chief Judge may have fewer panel sitting days than other active judges. *(Rev. 12/13/10; 9/17/14)*

c. <u>Assignment of Senior Judges</u>

Senior judges may choose the number of panels on which they will serve and are not calendared for hearings away from their home stations unless they are willing. Senior judges who wish to hear cases in particular locations are accommodated to the extent consistent with the other factors listed in this section. However, in order to make the assignment work, they may be required to accept a full load of panel assignments in those locations. Within the context of this

subsection "panel" refers to the panel of judges hearing cases in a given location over the course of a sitting. *(Rev. 9/17/14)*

d. <u>Assignment of Judges to Honolulu and Anchorage Calendars</u> *(New 1/11/16)*

Honolulu and Anchorage panels are composed of two willing judges, chosen in the order of when they last served, and one junior judge, if any, who has not yet served. *(New 1/11/16)*

e. <u>Rotation of Judges</u> *(Rev. 1/11/16)*

Insofar as possible, over time, each active judge should sit with every other active and senior judge approximately the same number of times. *(Rev. 1/11/16)*

f. <u>Parity in Panel Sittings</u> *(Rev. 1/11/16)*

Insofar as possible, over time, each active judge should sit on approximately the same number of panels in San Francisco, Pasadena, Seattle, Portland, Honolulu and Anchorage as each of the other active judges. *(Rev. 1/11/16)*

g. <u>Preferences of Judges</u> *(Rev. 1/11/16)*

Insofar as practicable, the wishes of each judge with regard to sitting during particular months and on particular days during any calendar shall be accommodated. *(Rev. 1/11/16)*

h. <u>Unavailability</u> *(Rev. 1/11/16)*

Each member of the Court shall inform the Clerk of Court as far in advance as possible of his or her unavailability for assignment to a calendar. Each member of the Court has the option to exchange days of sitting with another member of the Court upon mutual agreement and with the approval of the Chief Judge. Exchanges of assignments shall normally be accomplished at least 60 days in advance of the hearing week. Although the Clerk's Office may be consulted and must be notified of any exchanges, arrangements for exchanges shall be made by direct contact between the members of the Court.

If a member of a three-judge panel becomes unavailable by reason of death, disability, recusal or departure from the Court and the case is under submission, the Clerk shall draw a replacement as needed, utilizing a list of active judges randomly drawn by lot. Once a judge's name has been drawn, it shall be removed from the list until such time as the list has been exhausted. However, if the judge whose name is so drawn is unavailable for service, his or her name will remain on the list. When the list has been exhausted, the Clerk shall create a new list of active judges randomly drawn by lot. *(Rev. 1/11/16)*

i. <u>Disqualification or Recusal</u> *(Rev. 1/11/16)*

In the event a judge disqualifies or recuses himself or herself before submission, the Clerk shall try to find a replacement by switching cases or judges

with panels in the same location. If unsuccessful, the Clerk shall draw a replacement, utilizing a list of active judges randomly drawn by lot as provided in G.O. 3.2.h. In rare instances, argument of the case may be postponed until the next calendar. *(Rev. 12/13/10; Rev. 1/11/16)*

j. <u>Overburdens</u>

If a member of the Court falls behind in preparing dispositions, the Chief Judge may determine that the judge should be relieved of further calendar duties until he or she becomes more current. A prima facie case for relieving a judge exists when one or more of the following criteria are met:

(1) 2 or more cases not presently in circulation were assigned to the judge for preparation of a disposition over 9 months earlier;

(2) 5 or more cases not presently in circulation were assigned to the judge for preparation of a disposition over 6 months earlier;

(3) 15 or more cases not presently in circulation were assigned to the judge for preparation of a disposition over 3 months earlier.

The judge may rebut the prima facie case by showing either that within one month or less he or she will no longer meet any of the criteria or that there is good cause for remaining on calendar. The Chief Judge may alternatively assign the judge to fewer panels rather than relieve him or her of all calendar duties.

A judge may also request to be relieved of his or her administrative duties.

Calendar relief is not appropriate to compensate for a judge's increased workload that results from sitting with the district court.

k. Temporary Calendar Reduction

Any active judge having completed 7 years of service with the Court may request a one-year reduction to 5 monthly calendars with 3 consecutive months without any calendar duties. The Chief Judge may grant the request if the judge's disposition backlog is reasonably current. Requests shall be granted in order of seniority, but no more than 3 active judges may take such a reduction within a given year. Any judge granted such reduction shall be ineligible for a subsequent grant for 7 years. *(New 9/18/02)*

3.2.1. Selection of Circuit Judge to Serve on Three-Judge District Courts

The Clerk shall select, by random draw from the circuit-wide pool of senior and active judges, a judge to serve on three-judge district courts as required by 28 U.S.C. § 2284.

3.3. Assignment of Cases to Calendars

a. Number of Panels Sitting *(Abrogated 9/17/14)*

b. Selection of Cases for Calendars *(Rev. 1/11/16)*

Prior to each calendar, the Clerk's Office shall designate the cases that are to be included in the calendar. The Clerk's Office shall identify the judges who have been designated for the panels and, to the extent possible, the districts of any Ninth

Circuit district judges who will be sitting on the various panels. (*Rev. 12/13/10; 9/17/14; 1/11/16*)

Cases ready for submission to a panel shall be screened by case management attorneys, who shall designate issues, identify cases with similar issues, and assign a numerical weight to each case. Drawing upon a computerized file of such cases, the Clerk's Office generates a prospective case list using a computer application that takes into account, to the extent possible, the priorities set forth in the following subsection. *(Rev. 1/11/16)*

c. <u>Priorities</u> *(Rev. 1/11/16)*

Generally, cases are selected for calendaring according to the order in which the notices of appeal, petitions, or applications for enforcement were filed, except that priority is given to direct criminal appeals, capital cases, civil appeals having statutory priority, and cases entitled to calendaring priority under Circuit Rule 34-3. Unless petitioner is in the custody of the Department of Homeland Security, petitions for review of orders of the Board of Immigration Appeals are selected for calendaring in the order in which principal briefing is completed. A case may also be advanced in calendaring so that it may be heard at the same time as a case that involves the same legal issues. Capital cases and direct criminal appeals are given priority over all other cases. There is no ordering among civil cases entitled to priority. *(Rev. 1/11/16)*

d. <u>Assignment of Cases to Panels</u> *(Rev. 1/11/16)*

Prior to each calendar, the Clerk's Office shall assign the cases to the panels that will be sitting. The assignments are made using a computer application that takes into account the number of panel sitting days, known recusals and the location and month of oral argument to then randomly assign cases to each sitting panel day. To the extent practicable, each panel sitting day should have cases that add up to the same numerical weight total. The total shall be established by the Court as appropriate for any one panel sitting day. After initial assignment, the Clerk may make adjustments in order to reassign individual cases based on: (1) a judge's conflicts of interest, (2) attorney unavailability and (3) the Court's policy against allocating to a panel on which a district judge is sitting any appeal from that judge's district. Such reassignment will be accomplished by shifting assignment days within the same week or through the drawing of a replacement judge from the list described in G.O. 3.2.h above. *(Rev. 1/11/16)*

e. <u>Subsequent Proceedings in Calendared Cases</u>

Once a case has been assigned to a specific panel and the calendar described in G.O. 3.3.d is mailed to the members of the Court, that panel shall have responsibility for all further proceedings in the case, unless it directs otherwise. If it comes to the attention of a motions panel to which a motion for reconsideration has been referred that the case has been assigned to a specific panel, the motions

panel shall contact the members of that panel before disposing of the motion. *(Rev. 9/17/14)*

(former f) Exchange of Assignments *(Abrogated 1/11/16)*

f. <u>Expediting Appeals</u> (*Rev. 1/11/16*)

Notwithstanding the foregoing provisions, the Clerk, an Appellate Commissioner, or a motions or screening panel may order that an appeal be expedited for good cause such as those set forth at Circuit Rule 27-12. See also Fed. R. App. P. 2 (Suspension of the Rules). Such a case shall be assigned through the randomized computer calendaring system to the next available panel in the administrative unit where the case would normally be heard and where the panels sitting for that calendar have not yet been assigned their cases. The order directing that a case be expedited may include information about the time and place of the hearing once the next available panel has been determined. *(Rev. 1/11/16)*

g. <u>Urgent Cases</u> *(New 1/11/16)*

The Clerk, the Appellate Commissioner, or a motions or screening panel may determine that extraordinary circumstances require that a case be heard within a specified time period and ordered onto a specific calendar, even though the panels sitting for that calendar have already been assigned their cases. See Fed. R. App. P. 2; Circuit Rule 27-12. Examples of such urgent cases include a case that

may become moot in the absence of a decision within a specified time period or a case involving factual circumstances requiring a prompt decision, such as an appeal from a temporary stay. A case designated as an urgent case shall be randomly assigned by the Clerk to a non-recused existing panel, utilizing all panels drawn for the month in which the case must be heard, regardless of geographic location excluding Honolulu and Anchorage (unless the urgent case originates from that location). Absent extraordinary circumstances, the assigned panel shall accept the additional case. The assigned panel may remove another case from its existing calendar to compensate for the assignment of the additional case. If no such panel is available, the Clerk shall draw a panel from the list described in G.O. 3.2.h above. *(New 1/11/16)*

(former h.) Adding Cases to Calendars *(Abrogated 1/11/16)*

h. <u>Calendaring Policy: Ninth Circuit Only Panels and Emergency Assignments</u> *(Rev. 1/11/16)*

Any exceptions to the Court's calendaring policies shall be directed to the Chief Judge. The Chief Judge, in consultation with the Clerk, or a motions or screening panel may determine before a case has been assigned to a panel that a case should only be heard by a panel composed of three members of the Court. This determination may be made because a case is likely to set circuit precedent for a large number of cases, is likely to involve subsequent appeals which would be

best heard by the same panel, or is a case of exceptional importance. Such a case shall be calendared according to the usual procedure provided in these General Orders, except that the case shall be assigned to a panel consisting only of members of the Court. In addition, notwithstanding other provisions of this chapter, in exigent circumstances including the death, illness or last minute unavailability or recusal of a judge, when substitution or drawing by lot is impractical, the Chief Judge may direct the Clerk to reassign a case or cases to another judge the Chief Judge determines is available to serve on short notice. *(Rev 1/11/16)*

3.4. <u>Notification of Calendaring of Cases</u> *(Rev. 1/11/16)*

About fourteen weeks before oral argument, parties are notified of the month that their cases are being considered for oral argument.

About ten weeks before oral argument, parties shall be notified of the time and place of the hearing of their cases.

If a panel decides not to hear oral argument, the parties should be notified at least 12 days before the scheduled date of argument. However, such notices may by necessity be issued any time before the scheduled hearing. *(Rev 1/11/16)*

3.5. <u>Publication of Calendars</u> *(Rev. 1/11/16)*

The composition of panels shall be made public on the first working day of the week preceding argument. Calendars shall be posted on the Court's website

and in the San Francisco, Pasadena, and Seattle courthouses. Only under exceptional circumstances will the Court consider motions for continuances filed within 14 days of the hearing date. (See Circuit Rule 34-2.) *(Rev. 12/13/10; Rev. 1/11/16)*

3.6. Comeback Cases *(Rev. 1/11/16)*

a. Matters on Remand From the United States Supreme Court

Matters on remand from the United States Supreme Court will be referred to the last panel that previously heard the matter before the writ of certiorari was granted.

b. Matters Arising After Remand By an En Banc Court

Where a new appeal is taken following a remand or other decision by an en banc court, the Clerk's Office shall notify the en banc court that the new appeal is pending, and proceed only after hearing instructions from that en banc court. The en banc court will decide whether to keep the case or to refer it to the three judge panel.

c. Capital Cases

Subject to the foregoing provisions, comebacks in capital cases are governed by Circuit Rule 22-2(c), which states, "that once a capital case is assigned to a panel it retains jurisdiction for all future appeals."

d. Appeals Following Remand or Other Decision in the Same Underlying Case

When a new appeal is taken to this Court from a district court or agency decision following a remand or other decision by an argument panel, the Clerk's Office will notify the panel that previously heard the case that the new appeal or petition is pending, and will provide a brief description of the issues presented. The prior panel is encouraged to accept a case that predominately involves the interpretation and application of the prior panel decision, except when it is impossible to reconstitute the prior panel. Any motion to assign a new appeal to a prior panel will be referred to the prior panel for decision. A new appeal will be assigned to the prior panel if two of the judges on the prior panel agree to accept the case. If the third judge on the prior panel is unavailable, the Clerk shall draw a replacement, utilizing a list of active judges randomly drawn by lot as provided in G.O. 3.2.h.

3.7. Oral Argument in Pro Bono Project Appeals

If an appeal has been selected for inclusion in the Court's Pro Bono Representation Project and pro bono counsel has been appointed, the panel shall not submit the case on the briefs, but shall hear oral argument unless pro bono counsel withdraws or consents in writing to submission on the briefs.

When a case has been selected for inclusion in the project, the case management attorneys will revise the inventory card to notify the panel that the case should not be submitted on the briefs.

Chapter IV: DISPOSITIONS

4.1. Prevention of Conflicts

a. Questions Pending Concurrently Before Two or More Panels

Whenever an author of a proposed disposition knows that the disposition may decide a question pending concurrently before one or more other panels of the Court, the author shall circulate copies of the proposed disposition to all members of such other panels. The author shall include a memorandum explaining the purpose of the circulation and setting a 14-day time period within which a response, if any, will be expected.

The panel which first takes the issue under submission has priority. All other panels before which the issue is pending that know of another panel's priority shall enter an order vacating or deferring submission pending a decision by the first panel. If the first panel defers or withdraws submission, the concerned panels shall confer to determine which panel will dispose of the issue.

b. Deferring Submission Pending Decision by Another Court

Whenever a panel decides to defer or vacate submission pending decision in another case before another court or administrative agency, the panel shall enter an order identifying the case by name and number and the court in which the decision is pending.

4.2. Deciding Cases on Points Not Raised and Argued

If a panel determines to decide a case upon the basis of a significant point not raised by the parties in their briefs, it shall give serious consideration to requesting additional briefing and oral argument before issuing a disposition predicated upon the particular point.

4.3. Writing of Dispositions

An opinion should be written if at least one member of the panel deciding the case specifically determines that a published decision is necessary. *(Rev. 9/17/14)*

4.3.a. Memoranda Dispositions

Unlike an opinion for publication which is designed to clarify the law of the circuit, a memorandum disposition is designed only to provide the parties and the district court with a concise explanation of this Court's decision. Because the parties and the district court are aware of the facts, procedural events and applicable law underlying the dispute, the disposition need recite only such information crucial to the result. Accordingly, all that is necessary is a statement such as the following:

> Defendant's statements were volunteered rather than made in response to police questioning, and were therefore admissible. United States v. Cornejo, 598 F.2d 554, 557 (9th Cir. 1979). AFFIRMED.

(Rev. 12/13/10)

4.4. Suggesting Changes to Draft Dispositions

When a member of a panel suggests a change in a draft disposition to the authoring judge, the judge should, whenever possible, submit proposed language incorporating the suggestion.

4.5. Filing of Dispositions

a. Majority, Concurring, and Dissenting Dispositions

Except for decisions from the bench, the determination of each appeal, administrative review proceeding, and original writ proceeding shall be evidenced by a written disposition concurred in by a majority of the panel assigned to act thereon. The disposition shall indicate the district court or agency and Court of Appeals docket numbers, district judge whose decision is being appealed, date and city of argument, date of submission to the panel, and filing date. The majority disposition shall be certified by one of the members as having been concurred in by such members. Any separate concurring or dissenting disposition shall be certified by the author or by one of the members of the panel as having been prepared by the author thereof. *(Rev. 12/13/10)*

When 2 judges of a panel have concurred in a written disposition but the third judge has neither agreed nor circulated a dissent or concurrence within 60 days after notice of the concurrence and circulation of the proposed disposition in

its final form, the author shall submit the disposition to the Clerk and send a copy of the covering memorandum to the third member. Ten days after receipt, the Clerk shall file the disposition with a notation that the third judge may file a separate statement at a later date. The author, with the concurrence of the second judge, may grant the request of the third judge to delay filing for a period of 14 days or for a longer period if the third judge cites extraordinary circumstances or the complexity of the case. *(Rev. 12/13/10)*

b. <u>Rule 36 - Notation on Memoranda Dispositions</u>

All memoranda dispositions shall contain the following notation:

> This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

(Rev. 12/13/10)

c. <u>Electronic Transmission of Dispositions</u>

The authoring judge shall transmit the disposition electronically to the Opinions Clerk or the Memoranda Clerk, respectively. *(Rev. 1/1/06; 12/13/10; 9/17/14)*

d. <u>Temporary Hold</u>

The authoring judge may request that the Clerk of the Court temporarily withhold filing of an opinion, order, or memorandum disposition. *(Rev. 9/17/14)*

e. <u>Costs</u>

In every disposition in a civil or agency case where (1) the judgment is affirmed in part, reversed in part, modified, or vacated; (2) the case is remanded; (3) the panel determines that costs shall be unequally divided among the losing parties; or (4) the panel wishes to depart from the presumptive entitlements set forth at FRAP 39(a)(1)-(3), the disposition shall indicate in its text or in a separate order which party or parties shall bear the costs. See FRAP 39. The Clerk's Office, before filing the disposition, shall determine whether the disposition makes that indication. If the disposition does not indicate which party or parties shall bear the costs, the Clerk's Office immediately shall request that information from the authoring judge, or the presiding judge if the author is not a member of the Court, who will enter an appropriate order.

The authoring judge, or the presiding judge if the author is not a member of the Court, shall also be responsible for motions for reconsideration of the Clerk's orders pertaining to cost bills that are entered under Circuit Rule 39-1.5 and G.O. 6.3.a. The Clerk may refer a motion and proposed order to the authoring judge, or the presiding judge if the author is not a member of the Court, when the motion presents an issue other than technical application of FRAP 39 and Circuit Rule 39-1. *(New 7/1/02; Rev. 9/17/14)*

4.6. Mandate

a. Policy Against Issuance of Mandate Forthwith

FRAP 40 and 41 direct that, following a decision by this Court, the mandate should not issue forthwith, but that time should be allowed after entry of judgment for the filing of a petition for rehearing en banc, or petition for writ of certiorari. Therefore, only in exceptional circumstances should a panel order the issuance of mandate forthwith upon the filing of a disposition. *(Rev. 3/24/04; 9/17/14)*

b. Exceptions to Policy Against Issuance of Mandate Forthwith

Exceptional circumstances may include, but are not limited to, instances where it appears from the record that a petition for rehearing en banc, or petition for writ of certiorari would be legally frivolous, where the losing litigant is attempting to defeat a just result by interposing delaying tactics, or where an emergency situation requires that, to effectuate a just result, the action of the Court should become final, and mandate issue, at once. In such a case, the panel may close the disposition with the following language: "No petition for rehearing will be entertained and mandate shall issue forthwith. See Fed. R. App. P. 2." However, such language in the disposition does not prevent a judge from making an en banc call. In a criminal case, the panel may also revoke bail forthwith. *(Rev. 3/24/04; 12/13/10; 9/17/14)*

c. **Stay of Mandate**

A motion for stay of mandate shall be forwarded to the panel. The author, or presiding judge if the author is not a member of the Court, shall dispose of the motion in accordance with the panel's vote on the motion. *(Rev. 3/26/03; 9/17/14)*

d. **Recall of Mandate**

A motion for recall of mandate shall be forwarded to the panel. The author, or the presiding judge if the author is not a member of the Court, shall dispose of the motion in accordance with the panel's vote on the motion. *(New 3/26/03; Rev. 9/17/14)*

Chapter V: EN BANC PROCEDURES

5.1. Definitions and General Provisions

a. Definitions

- For purposes of this Chapter:

1. Full Court

- means all active judges.

2. En Banc Court

- means that number of judges, greater than 3, established by rule of the Court, which shall hear and decide cases taken en banc as provided by statute, rule, or in these General Orders.

3. Judge eligible to vote

- means any active judge who is not recused or disqualified. Upon entry to active service, a judge may choose to recuse from voting on en banc calls for a transition period specified by the judge. When the transition period expires, the judge will become eligible to vote, including voting on calls in which the voting period has already commenced. Notice of recusal or disqualification shall be given to the full Court. No senior judge is eligible to vote on whether to take a case en banc. *(Rev. 1/1/04; 9/17/14)*

4. <u>Judge eligible to serve on the En Banc Court</u>

- means any active or senior judge who is not recused or disqualified and who entered upon active service prior to the date the Court is drawn. Senior judges shall not serve on an en banc court except: (i) a senior judge who was a member of the three-judge panel that decided the case being reheard en banc may elect to be eligible to be selected as a member of the en banc court. Any senior judge who elects to be eligible shall notify the Clerk's Office prior to the date the panel is drawn; (ii) a senior judge who takes senior status while serving as a member of an en banc court may continue to serve until all matters pending before that en banc court, including remands from the Supreme Court, are finally disposed of. *(Rev. 7/1/03)*

5. <u>En Banc Coordinator</u>

- means an active or senior judge appointed by the Chief Judge to perform the duties set forth in this Chapter.

6. <u>En Banc Call</u>

- means a request by a judge or panel that a vote be taken to determine whether a case be heard or reheard by an en banc court.

7. <u>Stop Clock</u>

- means a one-time 14 day extension of the time limits under this Chapter, and the time for issuing the mandate.

b. <u>General Provisions</u>

1. <u>Judicial Participation</u>

Each judge selected for the en banc court shall make every reasonable effort to sit on the en banc court, but if unable to sit, the judge shall notify the Clerk as promptly as possible so that the Clerk may be directed to draw a replacement. If a judge becomes available after notifying the Clerk of inability to sit, that judge shall notify the Clerk of his or her availability and shall sit on the en banc court, unless a replacement judge has already been drawn, in which case the replacement judge shall sit on the en banc court. In such event, the originally-selected judge shall be placed back in the pool of available judges. *(Rev. 7/1/02)*

All members of the Court, senior and active, and visiting judges who participated in the panel decision, shall be kept informed of en banc proceedings, including all en banc calls, responsive memoranda, and votes, until a case is taken en banc or returned to the panel.

After a case has been taken en banc, only those judges participating in the en banc court shall be included in the distribution of memoranda, proposed opinions, and other communications regarding en banc proceedings. It is permissible for

judges on en banc courts to discuss and disclose information concerning such cases with other judges not assigned to the en banc court. *(Rev. 6/23/10)*

2. Duties of the En Banc Coordinator

The En Banc Coordinator shall supervise the en banc process, including time schedules provided in this Chapter; shall circulate periodic reports on the status of each case under en banc consideration; may, for good cause, extend, suspend, or compress the time schedules provided in this Chapter; may designate another judge to perform all or part of the En Banc Coordinator's duties during the coordinator's absence; may suggest, for any particular case, a modification or suspension of the provisions of this Chapter; and may for good cause suspend en banc proceedings. *(Rev. 7/1/02)*

3. Vote Tallies

The En Banc Coordinator or the Clerk's office will record the en banc votes and circulate the final tally to the Court. Orders rejecting or accepting cases for en banc consideration shall not specify the vote tally. Any judge eligible to vote may direct that his or her dissent from a failure to accept a case for en banc consideration be incorporated in the order. *(Rev. 9/17/14)*

4. Duties of Panel Members

The following persons shall be responsible for the dis¬tribution of the panel recommendation pursuant to G.O. 5.4.b and for orders denying a petition for rehearing en banc if no timely en banc call is made or if an en banc call fails to receive a majority vote:

(a) The author of a majority disposition, when an active or senior judge of this Court, or

(b) The presiding judge of the panel, when the author is a visiting judge. *(Rev. 9/17/14)*

5. Computing and Extending Time

FRAP 26 applies in computing any period of time specified in this Chapter. Until a case is taken en banc or returned to the panel, any request by a judge for an extension of time shall be made in writing or by electronic mail to the En Banc Coordinator with copies to all judges prior to the expiration of the relevant time period. *(Rev. 9/17/14)*

6. Notification to En Banc Coordinator

Judges should direct copies of all en banc correspondence under this Chapter to the En Banc Coordinator and the Clerk of Court or any person the Clerk may designate until a final en banc vote is tallied.

7. Death Penalty Cases

En banc procedures in death penalty cases, when a date for execution has been set, are contained in Circuit Rule 22 and shall be supervised by the Capital Case Coordinator.

5.2. Initial Hearing En Banc

a. Petition by a Party Prior to Calendaring

The Clerk shall (1) enter the receipt or filing of a petition for an initial hearing en banc, (2) send copies to the En Banc Coordina¬tor and the appropriate case management attorney, (3) notify the parties that the case will be heard in due course by a panel unless the Court votes to hear it en banc, and (4) send copies of the briefs to the case management attorney upon the completion of briefing. *(Rev. 12/13/10)*

As soon as possible after the completion of briefing, the attorney shall prepare for the En Banc Coordinator a memorandum setting forth the facts and issues of the case. The En Banc Coordinator shall promptly notify all judges that a party has petitioned for an initial hearing en banc, but that the case will be calendared before a three-judge panel unless a judge makes an en banc call. The En Banc Coordinator shall distribute the attorney's memorandum and may also distribute an independent evaluation of the matter. Any judge may call for en banc

within 14 days after receipt of notice from the En Banc Coordinator. (*Rev. 12/13/10)*

The En Banc Coordinator shall notify the Clerk and attorney of the rejection of the petition when either (1) no judge calls for a vote on the petition, or (2) upon a vote, there is no majority in favor of en banc consideration. Upon notification, the Clerk shall enter an order rejecting the petition. *(Rev. 12/13/10; 9/17/14)*

b. <u>Call for En Banc by Panel</u>

The panel before which a case is calendared may call for a vote that a case be heard en banc. If the call is made before the panel hears the case, the panel shall instruct the Clerk to remove the case from the calendar. The panel shall circulate its call to all members of the Court with a memorandum setting forth the reasons for a hearing en banc. The provisions of G.O. 5.4.c and 5.5 governing supplemental briefing by the parties, exchange of memos, and voting shall then apply. If the case fails to receive a majority of votes to be heard en banc it shall be returned to the three-judge panel.

5.3. <u>Amendment of Disposition; Proposal by Judge</u>

a. <u>Amendment of Disposition</u>

If a panel amends its disposition, the panel shall set forth in its amended disposition or separate order: (1) the ruling on the petition for rehearing or petition for rehearing en banc; (2) whether subsequent petitions for rehearing or rehearing

en banc may be filed; and (3) the status of any pending petitions for rehearing or rehearing en banc not ruled on. The Clerk's Office shall contact the authoring judge if the amended disposition does not so specify. *(New 7/1/02)*

If a panel substantively amends its disposition, any off-panel judge may, within 7 days of the filing of the amended disposition, notify the panel and the other members of the Court that he or she is considering making an en banc call on the basis of the substantive amendment. The judge who makes such notification shall in writing or by electronic mail direct the Clerk of Court or any person the Clerk may designate to stay the mandate. Such notification shall extend the time to make an en banc call by 14 days. Thereafter, the provisions of this Chapter relating to a sua sponte en banc calls shall apply. *(New 12/1/02)*

b. <u>Proposal by Judge</u>

Any active or senior judge may, before an en banc call is made or before the time for calling for en banc expires, propose to the panel that it amend its disposition. Such a request does not suspend en banc procedures. Any proposal to amend shall be accompanied by the text of the proposed amendment.

5.4. Rehearing En Banc

a. Duties of Clerk

Upon the filing by a party of a petition for rehearing en banc, the Clerk shall circulate a copy to each active judge and to those senior judges who have requested copies.

b. Request for Notice of Panel Vote on Petition for Panel Rehearing and Time Within Which Judges Must Act After Notice

1. Request for Notice

An off-panel judge may request notice of the panel's vote on a petition for panel rehearing and petition for rehearing en banc within 21 days of the circulation of the last-filed petition for rehearing en banc. In the absence of a timely request for notice, the panel may enter an order denying the petition for rehearing en banc and denying the petition for panel rehearing. *(Rev. 9/17/14*)

2. Circulation of Notice; Vote on Petitions; Proposed Amendments

If a judge timely requests notice pursuant to G. O. 5.4.b.1, the panel shall circulate to all judges notice of its vote on the petitions for panel rehearing and rehearing en banc. If the panel decides to amend its opinion the panel shall notify all judges of its proposed amendments. The panel should respond as soon as possible to the G.O. 5.4b.1 request, but ordinarily within 90 days of the request or the petition for rehearing, whichever is later. *(New 7/1/06)*

A judge must call for an en banc vote within: (1) 14 days of the date of the panel's distribution of the G.O. 5.4b notice; (2) 21 days after the circulation of the last-filed petition for rehearing en banc; or (3) if a response to the petition for rehearing en banc has been requested, within 14 days after the circulation of the response, whichever is latest. *(Rev. 7/1/02)*

3. Procedure When Only a Petition for Panel Rehearing is Filed

In a case where a party files only a petition for panel rehearing and no petition for rehearing en banc, an off-panel judge may call for en banc within the time limits set forth for sua sponte calls in G.O. 5.4.c.3. Any such call shall act as a request for notice of the panel's vote on the petition for rehearing. Alternatively, an off-panel judge may expressly request notice of the panel's vote on the petition for rehearing, but such a request must also be made within the time limits for sua sponte calls set forth in G.O. 5.4.c.3. The time to call for en banc shall expire 14 days after such notice.

c. En Banc Calls and Supplemental Briefing

1. En Banc Calls

Any judge may call for a vote to rehear a case en banc: (1) in response to notice of the panel's vote that a petition for rehearing en banc ¬be denied and a petition for panel rehearing denied (see G.O. 5.4.b), or (2) sua sponte. The

requesting judge shall notify the panel and all other members of the Court of any call, and shall forward a memorandum setting forth reasons: (1) within 14 days of the date of distribution of the call; (2) within 14 days after the circulation of the response to the petition for rehearing en banc; or (3) in the case of sua sponte calls, within 7 days after the circulation of the simultaneous briefing, whichever is latest. *(Rev. 7/1/02)*

2. Supplemental Briefing

When an en banc call is made in a case in which a party has petitioned for en banc consideration and in which no response to the petition has been previously filed, the author of the panel opinion or the Clerk of Court upon request of the En Banc Coordinator, shall ordinarily enter an order directing counsel to file within 21 days of the date of the order a response to the petition for rehearing en banc. The time provided by G.O. 5.5.a in which judges shall circulate memoranda will not start to run until the response is filed or the En Banc Coordinator determines that no response will be filed.

3. Sua Sponte Calls

A judge may sua sponte call for a vote on rehearing en banc within 7 days of the expiration of the time for filing a petition for panel rehearing or rehearing en banc. This means the sua sponte call must ordinarily be made within 21 days of the filing of the panel's decision in all cases, except civil cases in which the United

States is a party. In such cases, the call must ordinarily be made within 52 days of the filing of the panel's decision. See FRAP 40(a). When the panel grants a party an extension of time to file a petition for rehearing or rehearing en banc, the time to make a sua sponte call will extend for 7 days after the petition is due. If a judge makes a sua sponte en banc call when a party has filed a petition for rehearing and rehearing en banc, then the panel or the En Banc Coordinator will order a response to the petition for rehearing and rehearing en banc pursuant to G.O. 5.4.c.2 rather than ordering the parties to file simultaneous supplemental briefing. A judge may also call for en banc within 21 days of the filing of an order directing that a previously unpublished disposition be published. Upon receipt of a timely sua sponte en banc call, the author of the panel opinion or the Clerk of Court upon the request of the En Banc Coordinator shall ordinarily enter an order directing the parties to file simultaneous briefs within 21 days setting forth their respective positions on whether the matter should be reheard en banc. If the En Banc Coordinator orders that no supplemental briefing will be filed, the parties will be notified of the sua sponte en banc call. *(Rev. 7/1/02; 10/4/06; 9/17/14)*

4. Withdrawal of En Banc Calls

A judge may withdraw an en banc call by notifying the En Banc Coordinator in writing with copies to all judges. The time periods set forth in this Chapter shall

be suspended for a period of 7 days following circulation of the notice to enable another judge to pursue en banc consideration. *(New 7/1/02)*

d. <u>Staying the Mandate</u>

If a stop clock or a sua sponte call is made, in a case where no petition for rehearing en banc or petition for panel rehearing has been filed, the judge who makes the call shall in writing or by electronic mail direct the Clerk of Court or any person the Clerk may designate to stay the mandate and notify the panel. If a judge makes a call or stops the clock before the time for filing a petition for panel rehearing has expired, it is the responsibility of that judge to notify the Clerk of Court or any person(s) he or she may designate to stay the mandate in the event no petition for panel rehearing is filed. Otherwise the mandate will issue pursuant to FRAP 41(a) and en banc procedures will terminate. It is also that judge's responsibility to notify the Clerk's Office if the stop clock or en banc call is withdrawn.

e. <u>Stopping the Clock</u>

A judge, without calling for an en banc vote, may extend the time in which to make an en banc call for 14 days. The stop clock period extends for 14 days after the date the en banc call is due. Only one such delay is permitted. In cases where no petition for rehearing has been filed by a party, the judge stopping the clock shall notify the Clerk's Office to stay the mandate. When a judge stops the

clock pending review of a petition for rehearing, and the panel grants a party an extension of time to file a petition for rehearing beyond the 14-day stop clock period, the "stop clock" period will extend for 14 days after the petition is due. *(Rev. 7/1/02; 9/17/14)*

5.5. Procedure After Supplemental Briefing

a. Memoranda

Any judge may circulate memoranda in response to an en banc call within 21 days after: (1) the conclusion of all supplemental briefing by the parties pursuant to G.O. 5.4.c.2 and .3, or (2) the calling judge's circulation of a memorandum in support of the en banc call, whichever is later. *(Rev. 9/17/14)*

b. Voting

When the exchange of memoranda has been completed, the En Banc Coordinator shall notify all active judges to vote. No judge shall circulate further correspondence on the case after that notice. A judge's failure to vote shall be considered a "no" vote. Unless otherwise ordered, each judge shall cast a vote within 14 days of the notice to vote. A judge may change his or her vote if accomplished prior to the expiration of the voting period. Upon the expiration of the voting period, the En Banc Coordinator shall notify the judges of the result and the vote tally.

c. No Majority Favoring En Banc Consideration

If the call fails to obtain a majority, the panel shall resume control of the case and no further en banc action is required.

d. Majority Favoring En Banc Consideration

If a majority of the judges eligible to vote on the en banc call votes in favor of en banc consideration, the Chief Judge shall enter an order taking the case en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to this Court or any district court of the Ninth Circuit, except to the extent adopted by the en banc court. *(Rev. 1/27/04)*

e. Recusals

It is left to the discretion of the individual judge as to whether that judge's recusal is noted in the order either denying or granting en banc review. (*New 10/4/06)*

5.6. Reserved Time

En banc oral arguments and conferences shall normally be scheduled on a quarterly basis in conjunction with Court meetings. A location for each en banc argument will be determined by the Chief Judge in consultation with the Court Executive Committee. Judges are expected to appear in person for en banc hearings. In the event no oral argument is to be heard, the Chief Judge shall

designate a date, time, and place for a conference of the en banc court, which ordinarily shall also be the date of submission of the case.

5.7. Assignment of Opinion Writing, Circulation, and Filing of Disposition

a. Assignment of Opinion Writing

After the case has been submitted to the en banc court, the judge senior in service among those voting with the majority shall assign the writing of the majority opinion. In the event more than one judge expresses a minority view, the senior judge among those sharing that view may assign the writing of a dissenting opinion without restricting any judge in the expression of individual views. A judge should not be selected to write a majority or dissenting opinion unless the judge's workload will permit the judge to circulate the opinion within this 45 days.

b. Circulation of Opinions

1. Majority Opinion

Any judge unable to circulate the first draft of the majority opinion within 45 days shall circulate a memorandum to the members of the en banc court stating why the deadline cannot be met. The memorandum should state when the draft opinion will be circulated.

2. Dissenting or Other Separate Opinion

A judge who plans to circulate a dissenting or other separate opinion shall notify the members of the en banc court as soon as possible, but in any event

within 14 days after the date of distribution of the draft of the majority opinion. Any dissenting or separate opinion shall be circulated within 30 days after a proposed majority opinion is distributed. Any judge unable to circulate a draft of the dissenting or separate opinion within 30 days after a proposed majority opinion is distributed shall notify the members of the en banc court and state when the dissenting or separate opinion will be circulated. *(Rev. 7/1/06; 9/17/14)*

3. Voting on Opinions

Voting shall conclude within the time established by the Chief Judge or the presiding judge.

c. Filing of Dispositions

The author of the majority opinion shall be responsible for coordinating the proposed majority, dissenting, and concurring dispositions, and filing the final dispositions at the appropriate time.

5.8. Rehearing by Full Court

a. Petition by a Party

Upon a timely petition by a party for a rehearing en banc before the full court, the Clerk shall forward a copy thereof to all active judges and any senior judge on the en banc court, and those senior judges who have requested copies. Thereafter, the provisions of this Chapter relating to petitions for rehearing en banc on three-judge panel cases shall apply. *(Rev. 12/13/10)*

b. Sua Sponte Calls

If no petition for rehearing en banc before the full court is filed, any judge may, within 7 days after the date such petition was due, request a vote on whether the case should be reheard by the full court. This request shall be accompanied by a memorandum in support of full court consideration. Thereafter, the provisions of this Chapter relating to petitions for rehearing en banc of three-judge panel cases shall apply.

5.9. Stay of Mandate

A motion for stay of mandate in a case decided en banc shall be forwarded to the author of the disposition, who shall dispose of the motion and then send all members of the en banc court a copy of the motion and the disposition of the motion. *(Rev. 3/36/03)*

5.10. Recall of Mandate

A motion for recall of mandate in a case decided en banc shall be forwarded to the members of the en banc court. The authoring judge shall be responsible for entering the order disposing of the motion after polling the members of the en banc court. *(New 3/26/03)*

Chapter VI: MOTIONS & SCREENING CASES

6.1. Definitions

For purposes of these General Orders:

a. Motion

- means an application to the Court, or a member thereof, for procedural, summary, or discretionary relief. It includes, without limitation, a petition for writ of mandamus or prohibition; a petition for permission to take an interlocutory appeal; an application for stay or application for injunction; an application for permission to file a second or successive habeas corpus petition; an appeal from the grant or denial of bail or change of conditions of bail pending trial; a motion for bail pending appeal; an application for a certificate of appealability; an application for summary affirmance or application for summary reversal; an application for leave to proceed on appeal in forma pauperis or for appointment of counsel; an application for extension of time to take any action required or permitted by law; certain fee vouchers; and Court initiated proceedings, such as disciplinary and dismissal matters. *(Rev. 9/17/14)*

b. **<u>Criminal Motion</u>** *(Abrogated 9/17/14)*

c. **<u>Civil Motion</u>** *(Abrogated 9/17/14)*

d. **<u>Motions Attorney</u>**

- means any staff attorney assigned to the processing of substantive motions for disposition by the Court. *(Rev. 9/17/14)*

e. ***(Abrogated 12/13/10)***

f. **<u>Procedural Motion</u>**

- means a motion that may be disposed of by the Clerk as specified in detail in Appendix A to these General Orders. *(Rev. 9/17/14)*

g. **<u>Designated Deputy Clerk</u>** *(Abrogated 9/17/14)*

h. **<u>Emergency Motion</u>**

- means a motion requesting action in 21 days or less, or any other motion which in the Court's judgment requires immediate consideration.

i. **<u>Oral Screening Calendar</u>**

- means a calendar consisting of cases deemed suitable for submission without oral argument that are presented orally to a three-judge screening panel.

j. **<u>Written Screening Calendar</u>**

- means a calendar consisting of cases deemed suitable for submission without oral argument that are submitted to a three-judge screening panel. *(Rev. 7/1/03)*

k. <u>COA Calendar</u>

- means a calendar consisting of requests for certificates of appealability and any motions for reconsideration of orders entered by previous COA panels. *(New 7/1/03; Rev. 9/17/14)*

l. <u>Motions Calendar</u>

- means a calendar consisting of substantive motions and original petitions requiring 2 or 3 judges in cases not assigned to a merits panel. *(New 9/17/14)*

6.2. <u>Assignment of Judges</u>

a. <u>Motions and Oral Screening Calendars</u>

The Court shall appoint, for each month, 2 panels composed of 3 members of the Court to serve on the motions and oral screening calendars, respectively. The motions panel members shall rotate throughout the month as the "lead judge," the "second judge," and the "third judge." Each active judge, except the Chief Judge, shall so serve. The Chief Judge and any senior judge may notify the Clerk that they wish to serve on such panels. Visiting judges shall not serve on motions or oral screening panels. *(Rev. 9/17/14)*

b. <u>Certificate of Appealability Calendars</u>

The Court shall appoint 2 judges to serve as the certificate of appealability ("COA") panel. The panel will meet for one day. A new panel will be appointed for each sitting week, depending on judges' availability. All active judges are

expected to serve on 2 panels per year. Senior judges may notify the Clerk that they are willing to serve on such panels. Visiting judges shall not be appointed to serve on a COA calendar. *(New 7/1/03; Rev. 9/17/14)*

c. Written Screening Calendars

The Court shall also appoint three-judge panels to serve on written screening calendars. The panel may consist entirely of senior judges. Such panels are selected at random by the Clerk's Office at the close of the calendar year, and shall serve together for the succeeding year. Any senior or active judge may notify the Clerk that he/she wishes to serve on the written screening calendar. *(Rev. 9/17/14)*

d. Scheduling of Motions and Oral Screening Calendars/ Procedure Governing Motions Panel Matters

The monthly motions panels and oral screening panels ("OSP") shall each sit for at least 3 days per month. Judges may opt to serve on the OSP or motions panel during the same month as an oral argument calendar. The panel may readjust the dates of its session. At the beginning of the calendar year, the Clerk shall establish presumptive dates for sessions of the motions and oral screening panels in conjunction with their prospective assignments to oral argument calendars. Emergency motions or other motions requiring expedited processing will be presented to the motions panel during the month when disposition is needed prior to the next panel sitting. Therefore, any prospective appointee unable to

serve on a motions panel during the entire month assigned shall arrange for a substitute and then notify the Clerk. Insofar as practicable, assignments shall be made in rotation. If a substantive motion is filed in a comeback case, the staff attorney shall contact the lead judge of the previous panel to ascertain whether the panel wishes to consider the motion. *(Rev. 7/1/03)*

Each panel may adjust the structure and dates of its sessions, provided that the panel ensures that: (1) it meets for a length of time sufficient to dispose of those motions or screening cases ready for presentation that month; and, (2) the length of time between panels allows the staff attorneys a sufficient period of time to prepare an adequate calendar; and (3) members of the panel serve for the entire month of their assignment. Exchange of a portion of the panel assignment shall be permitted only under exceptional circumstances.

The presiding judge of each panel should notify the Clerk of any changes in the scheduling of the sessions no later than the second week of the month preceding the scheduled panel assignment.

The procedure governing screening cases is set forth at G.O. 6.5. *(Rev. 9/17/14)*

6.3. <u>Delegation of Authority to Dispose of Motions</u>

The Clerk shall enter the receipt or filing of a motion and transmit it as described below.

a. Disposition of Motions by the Clerk

The Clerk may dispose of motions described in and subject to the conditions set forth in FRAP 11(b) and 42(b) and Circuit Rule 39-1.5 and 27-7. The Clerk also may dispose of motions enumerated in Appendix A or may in his or her discretion refer any of those motions to an Appellate Commissioner, circuit mediator, appropriate staff attorney, or a merits panel.

The Clerk may additionally enter orders that deny late requests for costs as untimely, respond to motions for late filing, and otherwise enter orders as set forth at Circuit Rule 39-1.5. Such orders are subject to reconsideration by the authoring judge. *(New 7/1/02; Rev. 12/13/10; 9/17/14)*

b. Motions in Cases Assigned to Oral Argument Panels

Except as noted above, all motions in cases that have been calendared for hearing by, or are under submission to, or have otherwise previously been assigned to a merits panel shall be submitted to that panel. The panel may delegate authority to the presiding judge or another judge on the panel to rule on procedural motions. Examples of procedural motions include motions to extend time to file petitions for panel rehearing and rehearing en banc, motions to stay mandate, and motions to file supplemental or amicus briefs. *(Rev. 9/17/14)*

c. **Motions in Cases Assigned to Screening Panels**

All motions filed after the staff attorney has identified a case to be placed on the screening calendar shall be directed to the Office of Staff Attorneys. *(Rev. 9/17/14)*

d. **Procedural Motions Filed During the Pendency of a Substantive Motion**

A procedural motion filed during the pendency of a substantive motion shall be referred to the court unit that is handling the substantive motion. *(Rev. 9/17/14)*

e. **Disposition of Motions by Appellate Commissioner**

The Court authorizes the Chief Judge to delegate to an Appellate Commissioner authority to issue for the Court non-dispositive orders in all appeals and petitions except those that would reverse a decision or order by a district judge or where the following relief is requested:

(1) a stay of a district court judgment,

(2) injunctive relief,

(3) bail,

(4) transcripts pursuant to 28 U.S.C. § 753(f),

(5) certification of a state law question,

(6) a certificate of appealability to appeal,

(7) leave to proceed in forma pauperis where a district court has denied or revoked such leave, *(Rev. 9/17/14)*

(8) reconsideration of an order issued by one or more judges.

Requests for the types of relief listed above shall be presented to a motions panel. If an Appellate Commissioner is inclined to recommend that dispositive action be taken, or that leave to proceed in forma pauperis be denied, or that a motion for appointment of counsel be denied, or that sanctions be granted, the matter shall be presented to a regularly scheduled motions panel. An Appellate Commissioner has authority to deny motions for summary disposition, to dismiss for lack of jurisdiction, and to dismiss for lack of prosecution. An Appellate Commissioner has the discretion to refer any motion to a regularly scheduled motions panel or merits panel in the first instance, regardless of the type of relief requested. In addition, an Appellate Commissioner shall have authority to decide motions for voluntary dismissal and stipulated remand.

The Court also authorizes the Chief Judge to delegate to an Appellate Commissioner motions to proceed pro se by defendants in criminal appeals. Such motions shall be referred directly by the Clerk to an Appellate Commissioner, who shall consider whether the Court should exercise its discretion to allow self-representation under Circuit Rule 4-1(d). An Appellate Commissioner is authorized to hold a hearing in appropriate cases to apprise the defendant of the

Posted on April 7, 2016

dangers and disadvantages of self-representation on appeal, to confirm that defendant's request is knowing, intelligent, and unequivocal, and to consider whether self-representation would undermine a just and orderly resolution of the appeal. An Appellate Commissioner shall be authorized to consider such evidence as the Appellate Commissioner deems necessary and to make findings of fact. *(Rev. 12/13/10)*

If defendant decides to withdraw the request to proceed pro se, an Appellate Commissioner is authorized to enter the appropriate order. Otherwise, an Appellate Commissioner shall submit a report and recommendation concerning defendant's motion to a motions panel for further action. *(Rev. 12/13/10; 9/17/14)*

f. <u>Disposition of Single Judge Motions</u> *(Abrogated 9/17/14, see 6.3.b)*

g. <u>Disposition of Two and Three Judge Motions</u>

(1) The following motions may be presented to 2 judges rather than the full panel if only 2 are participating. Any judge participating may vote to grant relief and so order. If all judges present agree that relief will not be granted, they shall so order: *(Rev. 9/17/14)*

i. request for certificate of appealability;

ii. for leave to proceed in forma pauperis in civil cases;

iii. for temporary injunctive relief pending further consideration by the panel; and

iv. for transcripts at government expense.

(2) The following motions may be presented to no fewer than 2 judges rather than the full panel if only 2 are present. However, 2 judges must agree in order to either grant or deny the requested relief:

i. for injunctive relief pending appeal;

ii. petition for permission to appeal pursuant to 28 U.S.C. § 1292(b), Fed. R. Civ. P. 23(f), 28 U.S.C. § 1453, and 28 U.S.C. § 158(d); and *(Rev. 12/13/10)*

iii. for reconsideration of an Appellate Commissioner or chief circuit mediator order. *(Rev. 9/17/14)*

Therefore, the third judge must be present for consideration of the above motions if:

i. one of the other panel members is disqualified or is otherwise unavailable;

ii. the other panel members disagree about the disposition of the motion; or

iii. he or she is requested by the other panel members to participate.

(3) Three judges shall participate and decide by majority: *(Rev. 9/17/14)*

i. whenever a motion results in the disposition of the case; or

ii. the panel chooses to publish its order.

(4) If 2 judges determine that oral argument on a motion is necessary, the panel shall direct the staff attorney to make the necessary arrangements. If one of the judges is recused from consideration of the motion and a three-judge order is desirable, a judge or the staff attorney shall contact the Clerk and have a third judge drawn by lot from the available active judges. *(Rev. 9/17/14)*

(5) If one judge is recused or unavailable to consider a motion requiring the attention of 3 judges, the staff attorney shall contact the Clerk who shall draw a third judge by lot from the available judges. *(Rev. 9/17/14)*

6.4. Emergency Motions

a. General Procedure

The Clerk shall enter the receipt or filing of an emergency motion and immediately deliver it to the appropriate merits panel or motions attorney for processing.

For all emergency motions other than in state death penalty cases, the motions attorney, after confirming the nature of the emergency with counsel for the parties when appropriate, shall immediately bring the emergency motion to the attention of the lead judge of the motions panel. The lead judge, in his or her discretion, may convene the panel. If the lead judge is unavailable, the motions attorney shall immediately bring the motion to the attention of the second judge, and if that judge is unavailable, then to the third judge. Should judges who are not

serving on the motions panel be needed to consider an emergency motion, the Clerk shall be directed to select them by lot.

b. <u>Emergency Motions Requiring Same Day or Next Day Action</u>

Pursuant to Circuit Rule 27-3, the moving parties shall contact the Clerk's Office in San Francisco prior to filing a motion requesting emergency relief. Upon such notification, the Clerk shall refer the parties to the appropriate motions unit and the motions attorney will facilitate the filing of such a motion and any responses. Pursuant to G.O. 6.3.b, all motions filed in cases assigned to merits panels shall be referred to that panel.

Upon the receipt of a motion requesting emergency relief before the next scheduled motions panel, the motions attorney shall bring the motion to the attention of the appropriate motions panel before the date by which relief is requested. The motions attorney shall contact members of the motions panel in accordance with G.O. 6.4.a. If no member of the motions panel is available, the motions attorney shall contact the Clerk who shall select judges by lot from among the available judges.

Any judge contacted by the Clerk or a motions attorney regarding an emergency motion requesting relief within a 48-hour period may construe the motion as a request for temporary relief pending further consideration by the motions panel and grant or deny such relief. However, if the grant or denial of

such temporary relief would effectively dispose of the motion or the appeal, the judge shall obtain the concurrence of at least one other judge. The second judge should be a member of the motions panel or, if unavailable, a judge selected at random by the Clerk.

Temporary relief should not be granted where relief is not needed before the next regularly scheduled meeting of the motions panel or where the record indicates the moving party has been unreasonably dilatory in seeking relief.

No more than 2 judges are required to participate in a telephone conference dealing with an emergency motion unless the decision involves the disposition of the case.

In the event a single judge is drawn at random to dispose of an emergency motion, and that judge decides to convene a panel and no members of the motions panel are available, the Clerk shall draw the needed panel members by lot. After such a panel has disposed of the emergency, the panel shall be dissolved unless directed by the Chief Judge to retain the matter.

Pursuant to the above guidelines, emergency motions in a case not assigned to a merits panel are to be directed to the motions attorneys who will promptly present the matter to a judge on the motions panel or if unavailable, to a judge drawn at random by the Clerk. If an off-panel judge or a divisional Clerk's Office

Posted on April 7, 2016

receives an emergency motion requesting same or next day relief, the motion shall be referred immediately to the motions attorney unit for processing.

Pursuant to the Advisory Note to Circuit Rule 27-3, the Court maintains a 24-hour emergency telephone line which shall be monitored by the motions attorneys. When informed of an emergency situation by way of a telephone message, the motions attorneys shall follow the procedures described above and immediately contact the designated motions panel or, if unavailable, a judge selected at random by the Clerk and proceed pursuant to his or her instructions. *(Rev. 12/13/10; 9/17/14)*

c. Motions for Stay of Deportation or Removal in Petitions for Review

1. Temporary Stay

Upon the filing of an initial motion or request for stay of removal or deportation, the order of removal or deportation is temporarily stayed until further order of the Court. A briefing schedule will not be set until the motion for stay is resolved. Any existing briefing schedule will be deemed vacated upon the filing of such a motion. *(Rev. 9/17/14)*

2. Supplemental Motion

If the initial motion for stay of removal or deportation fails to discuss the merits of the petition for review or to identify the potential hardships faced by the

petitioner due to deportation or removal during the pendency of the petition, petitioner may, within 14 days from the filing of the initial motion, file a supplemental motion for stay. The Court will ordinarily not issue any orders directing or inviting the filing of a supplemental motion.

3. **Response**

The electronic certified administrative record shall be filed with the Court within 56 days from the filing of the motion for stay, with copies of the record served simultaneously on both parties. The respondent shall file its response to the motion for stay within 84 days from filing of the original request or motion. Any dispositive motions respondent seeks to file are due at the same time the response is due.

If the electronic certified administrative record is filed in accordance with the schedule established pursuant to this subsection, the Court will not entertain any written or oral motions for extension of time to respond to a motion for stay. If the administrative record cannot be filed within the deadline established by this subsection, respondent shall file a written motion for extension of time to file both the administrative record and the response to the motion for stay, and shall state with particularity the reason for the delay in producing the record and the expected date of completion of the record. Once the electronic administrative record is filed,

no further extensions of time to file a response to the stay motion will be entertained. *(Rev. 9/17/14)*

4. <u>Reply</u>

The petitioner may file a reply to the response within 7 days from service of the response. *(Rev. 12/13/10)*

5. <u>Orders to Show Cause</u>

If the Court determines that it may lack jurisdiction over the petition for review, an order ordinarily will be issued directing the petitioner to show cause why the petition should not be dismissed for lack of jurisdiction. Other than the deadline for filing the electronic certified administrative record, the time limits set forth in this order will not apply and the order to show cause will establish the applicable time limits for responding to the order and to the motion for stay of removal if one is pending. The temporary stay will continue in effect pending resolution of the jurisdictional issue or until further order of the Court.

6. <u>Non-Opposition</u>

If respondent files a notice of non-opposition to the stay motion in lieu of the response provided for in subsection (3) above, the temporary stay shall continue in effect during the pendency of the petition for review or until further order of the Court. If the respondent files a notice of non-opposition, a new briefing schedule

will be established upon receipt of the notice of non-opposition. If the respondent does not file a response to the stay motion within the time limits set forth in subsection (3), the absence of a timely response will be treated as a notice of non-opposition and will be subject to the terms of this subsection. Respondent may, at any time during the pendency of the petition for review, move to lift the temporary stay. Any such motion to lift the stay, along with any response filed by petitioner within 10 days after service of the motion, will be presented to the next available motions panel for disposition. *(Rev. 12/13/10)*

7. Other Petitions for Review

If a petition for review is filed without a request for a stay of deportation or removal, a briefing schedule shall be established upon the filing of the petition. The administrative record will be due 56 days from the filing of the petition rather than 40 days as provided in FRAP 17.

Note: *Pursuant to this Court's decision in DeLeon v. INS, 115 F.3d 643 (9th Cir. 1997), a final order of deportation or removal is automatically temporarily stayed upon the filing of a motion or request for stay of deportation or removal in a petition for review of such an order. This temporary stay is in effect whether or not the Court issues an order confirming such stay. See id. The Court will not ordinarily issue such an order confirming the stay, although it may issue an order to show cause relating to jurisdictional questions or issues pertaining to the sufficiency of the stay request and/or the payment of fees. With regard to further briefing on the merits of the stay, petitioner may file a supplemental motion within 14 days. See Abbassi v. INS, 143 F.3d 513 (9th Cir. 1998).*

6.5. Screening Calendars

a. Selection and Criteria of Cases for Screening Calendars

Cases that are eligible for submission without oral argument under FRAP 34(a) may be assigned to screening calendars by the Clerk's Office. Additionally, they should meet all of the following criteria: *(Rev. 9/17/14)*

(1) The result is clear.

(2) The applicable law is established in the Ninth Circuit based on circuit or Supreme Court precedent.

After the Clerk assigns a case to the screening calendar, the Clerk's Office forwards the case materials to the staff attorneys. The staff attorneys then place each screening case on either an oral screening calendar or a written screening calendar. *(Rev. 7/1/02; 7/1/03*)

b. Oral Screening Panel Presentations

1. Disposition of Cases

The staff attorneys shall prepare proposed memorandum dispositions for the cases that they place on the oral screening calendars. An authoring judge will be designated for each case presented to the oral screening panel, and the writing assignment will rotate among the 3 panel members.

The staff attorneys shall orally present the proposed dispositions to the screening panels at periodically scheduled sessions. After the staff attorneys have

presented each case, the panel members discuss the proposed disposition and make any necessary revisions. If the 3 panel members unanimously agree with the disposition, the designated authoring judge shall direct the presenting attorney to certify the proposed disposition for filing pursuant to G.O. 6.9. *(Rev. 1/1/00)*

Disposition of cases and/or motions presented at the oral screening panel ordinarily will be by unpublished memorandum or order. If, in the judgment of a panel, a decision warrants publication, the resulting order or opinion shall be included in the daily pre-publication report and specifically flagged as a decision arising from an oral screening panel. *(Rev. 7/1/02; 1/1/07; 9/17/14)*

2. <u>Rejection of Cases</u>

All 3 judges must agree that the case is suitable for the screening program before a case is disposed of by a screening panel. Any one judge may reject a case from screening. Judges normally shall reject any case that does not meet the screening criteria, as outlined above in G.O. 6.5.a. *(Rev. 12/13/10)*

If a case is rejected from screening, it shall be scheduled on the next available argument calendar. The proposed disposition and the rejecting judge's reasons for rejecting the case shall be sent to the Calendar Unit for forwarding to the oral argument panel assigned to the case. *(Rev. 12/13/10)*

3. **Petitions for Rehearing**

The Clerk shall forward each petition for rehearing in any case disposed of by an oral screening panel to the appropriate staff attorney. If a petition for rehearing en banc is filed in any case disposed of at an oral screening panel, the relevant procedures set forth in Chapter V shall apply. *(Rev. 3/24/04; 9/17/14)*

c. **Written Screening Panels**

When a written screening panel indicates that it is ready for case assignments, staff shall send the requested number of cases taken from the cases designated as those eligible for screening pursuant to G.O. 6.5(a). The authoring judge is responsible for forwarding the written disposition to the Clerk's Office for filing. *(Rev. 7/1/03; 9/17/14)*

1. **Rejection by Judges**

Any one judge may reject a case from the written screening calendar. Judges shall reject any case that does not meet the screening criteria, as outlined above in G.O. 6.5.a. If a case is rejected, a replacement case will be sent by staff. If a case is rejected from the written screening calendar, it shall be scheduled on the next available argument calendar. The draft disposition, and the rejecting judge's reasons for rejecting the case, along with any bench memorandum, shall be sent to the Calendar Unit for forwarding to the oral argument panel assigned to the case. *(Rev. 7/1/03)*

2. Dispositions

Dispositions ordinarily will be by memorandum. If the panel has not issued a separate order submitting the case, a footnote should be included in the disposition indicating that the panel unanimously agrees that the case should be submitted on the briefs pursuant to FRAP 34(a). *(Rev. 7/1/02; 7/1/03; 9/17/14)*

d. Written Screening Calendars *(Abrogated 3/24/04)*

6.6. Recalcitrant Witness Appeals

Upon receipt of a notice of appeal in which review is sought under 28 U.S.C. § 1826, the Clerk shall docket the appeal and immediately deliver the notice of appeal to the motions unit. A motions attorney shall immediately review the notice of appeal to ascertain whether the appeal properly falls within the purview of 28 U.S.C. § 1826.

If the appeal is within the purview of section 1826, the motions attorney shall immediately notify the presiding judge on the motions panel that is scheduled to sit on the thirtieth day after the notice of appeal was filed. The presiding judge, with the assistance of the motions attorney, shall establish a briefing schedule that will assure that the appeal can be decided within 30 days of the filing of the notice of appeal. That panel shall hear and decide the appeal regardless of whether a motion for extension of time beyond the 30-day period is granted. *(Rev. 9/17/14)*

6.7. Criminal Justice Act Vouchers

All vouchers must be accompanied by one copy of a completed CJA Information Summary Form. As noted in the CJA Information Summary Form, counsel may also submit a detailed explanation along with the form to substantiate the amount requested.

The Clerk shall review each appellate voucher, make computation corrections, make comments concerning the voucher and its compliance with pertinent statutory and administrative guidelines, and send the voucher to an Appellate Commissioner for certification of such compensation as an Appellate Commissioner deems reasonable and appropriate under the Criminal Justice Act.

The Clerk shall inform counsel of the procedures and criteria for requesting compensation. The Chief Judge may designate one or more judges, in addition to the administrative unit judges, to rule on excess CJA fee requests. *(Rev. 9/17/14)*

6.8. Applications for Extraordinary Writs (Exclusive of Habeas Corpus)

a. General Procedures

An application for extraordinary writ, whether addressed to an individual judge or to the Court, shall be deemed addressed to the Court. Subject to the following provisions, such an application shall be processed by the Clerk and the staff attorney in the same fashion as a motion referred to a motions panel.

If the panel determines that the writ should not be granted, it shall deny the application forthwith. Such summary denial shall not be regarded as a decision on the merits. Otherwise, the panel shall direct that an answer and reply may be filed within the times fixed by the Court. The panel may also issue a stay or injunction pending further consideration of the application. Further proceedings thereafter shall be had as provided in FRAP 21(b).

After receipt of the answer and reply, or expiration of the times set therefor, the application will be sent to a new motions panel unless the first panel directs otherwise. The panel may grant or deny the application or set it for oral argument. The panel may hear oral argument or direct that the application be calendared in accordance with the provisions set forth in Chapter 3. *(Rev. 9/17/14)*

b. <u>Emergency Procedures</u> *(Abrogated 9/17/14, see G.O. 6.4.a and 6.4.b)*

6.9. <u>Certification of Orders and Memoranda Dispositions</u>

A judge may direct the Clerk, a staff attorney, a circuit mediator, or an Appellate Commissioner to file an order or a memorandum disposition that has been approved by the judge or judges whose name(s) appears therein. In appropriate circumstances, the judge may send confirmation to the Clerk following such certification. Separate written confirmation is not necessary when the judge transmits an order to the Clerk by electronic mail. *(Rev. 1/1/00)*

An Appellate Commissioner may direct the Clerk or a staff attorney to file an order or other document that has been approved by an Appellate Commissioner. *(Rev. 9/17/14)*

6.10. **Motions for Clarification and Petitions for Reconsideration or Rehearing** *(Abrogated 7/1/03)*

6.11. **Motions for Reconsideration En Banc**

Any motion or petition seeking en banc review of an order issued by a motions or oral screening panel shall be processed as a motion for reconsideration en banc. The Clerk shall forward a motion for reconsideration en banc of a motion previously considered by a motions or oral screening panel to the appropriate staff attorney for processing. If the motion was decided by published order or opinion, the motion will be circulated to all active judges. In cases involving judgments of death, the Clerk shall forward all motions for reconsideration en banc to Associates.

The motion shall be referred by the staff attorney to the panel which entered the order in issue. The panel may follow the relevant procedures set forth in Chapter 5 in considering the motion for rehearing en banc, or may reject the suggestion on behalf of the Court. *(Rev. 3/24/04; 12/13/10; 9/17/14)*

Chapter VII: MEDIATION OFFICE

7.1 Purpose and Staffing

The Circuit Mediation Program was established pursuant to FRAP 33 and Circuit Rule 33-1. The goals of the program are to facilitate the voluntary resolution of appeals in order to reduce the Court's workload and to offer parties an alternative to litigation to resolve their disputes.

The circuit mediators are employed by the Court to facilitate the resolution of cases and perform such other duties as the Court directs. They are experienced attorneys who have extensive training and experience in negotiation, mediation and Ninth Circuit practice and procedure. In facilitating the resolution of disputes, the mediators act as adjuncts to the Court and perform a traditional judicial function.

7.2 Authority to Enter Orders

The mediators are certified as deputy clerks and may enter orders as described in Appendix A. They may also issue other procedural orders that facilitate the goals of the program, including orders that require parties (or party representatives with settlement authority), counsel and any other person subject to the jurisdiction of the Court to participate in settlement discussions. These discussions may take place in person, by telephone, or through written communications. Counsel shall be so advised, and discussions shall be arranged in

such a manner as to avoid burdensome time and expense requirements upon the parties and attorneys.

A motion or petition for reconsideration, rehearing, modification or clarification of an order entered by a mediator should be referred initially to that mediator. If the mediator declines to reconsider, the motion or petition will be referred to the chief circuit mediator. Orders of the chief circuit mediator are subject to review by a panel of no fewer than 2 judges. *(Rev. 12/13/10)*

7.3 <u>Cases Subject to Mediation</u>

The mediators may act on their own initiative in any matter pending before the Court that has not been assigned to a panel. Where a panel has been assigned, they may act only with the permission and at the direction of the panel.

The Mediation Questionnaire is the primary means by which the mediators identify cases for inclusion in the mediation program. Counsel in any matter pending before the Court may contact the mediation office to seek assistance in pursuing the voluntary resolution of a case. Only in extraordinary circumstances and with permission of the chief circuit mediator will the mediators participate in negotiations involving pro se litigants. *(Rev. 12/13/10)*

Any panel may refer a case to the mediation program at any time. Upon referral of a case, the mediator assigned to the case may enter orders related to the

mediation function. In cases assigned to a merits panel, the panel may defer or vacate submission pending the outcome of mediation.

7.4 Confidentiality

Mediation confidentiality is governed by Circuit Rule 33-1. The mediation office may adopt additional procedures to protect confidentiality. *(Rev. 9/17/14)*

7.5 Imposition of Sanctions

The chief circuit mediator may enter orders to show cause regarding sanctions to address issues that arise in the mediation program. Sanctions may be appropriate if a participant willfully fails to comply with any properly issued order, including an order to attend a telephone or in-person settlement conference. Any response to the order to show cause shall be referred to the chief circuit mediator, who may discharge it or refer it to an Appellate Commissioner or a panel for further action. *(Rev. 9/17/14)*

7.6 Processing of Selected Cases

The Clerk will refer all FRAP 42(b) motions to the mediation office when the office has conducted or scheduled a conference with the parties. The Clerk will notify the mediation office before assigning to a calendar a case that has been selected for mediation. However, absent an order staying the matter, it will be assigned in the regular course. *(Rev. 12/13/10)*

Chapter VIII: DEATH PENALTY PROCEDURES

8.1 Capital Case Coordinator

a. Selection

The Chief Judge shall appoint an active or senior judge to serve as the Capital Case Coordinator for a particular case or for all capital cases in which an execution date has been set. *(Rev. 3/24/04; 9/17/14)*

b. Principal Duties

The Capital Case Coordinator shall:

(1) respond to questions from judges and Court staff regarding death penalty rules and procedures;

(2) *(Abrogated 9/17/14)*

(3) if necessary, establish deadlines for filing dispositions with respect to applications for leave to file second or successive 2254 petitions or 2255 motions or related civil proceedings as defined in Circuit Rule 22-3; *(Rev. 12/13/10)*

(4) establish deadlines for requesting an en banc vote with respect to applications for leave to file second or successive 2254 petitions or 2255 motions or related civil proceedings; *(Rev 3/24/04; 12/13/10)*

(5) establish, in his or her discretion, a period for exchange of memoranda, which either may be a separate period, or may occur contemporaneously with the period established for voting; *(New 3/24/04)*

(6) establish the procedure and time schedule for polling the judges with respect to applications for leave to file second or successive 2254 petitions or 2255 motions or related civil proceedings in which an en banc vote has been requested. The Capital Case Coordinator shall inform the Clerk of the procedure and time schedule. Each judge shall be responsible for informing the Capital Case Coordinator and Clerk how he or she may be contacted; and *(Rev. 12/13/10; 9/17/14)*

(7) direct the Clerk, under appropriate circumstances, to draw a stand-by en banc court to serve in the event that a majority of the eligible non-recused judges votes in favor of rehearing en banc; and *(New 3/24/04; Rev. 9/17/14)*

(8) for good cause under exigent circumstances, suspend the operation of the general orders pertaining to this Chapter. *(New 3/24/04)*

c. <u>Deadline for Voting</u> *(Abrogated 9/17/14)*

8.2 <u>Duties of En Banc Coordinator</u>

When a panel recommends or a judge requests an en banc vote on a first petition or motion as defined in Circuit Rule 22-2 and no execution date has been

set, the En Banc Coordinator shall supervise the en banc process in accordance with G.O. 5.1.b.2. *(Rev. 12/13/10)*

8.3 Duties of Chief Judge

The Chief Judge shall supervise the administration of all matters before a death penalty en banc court, except that the Capital Case Coordinator may decide procedural matters not involving an issue before the en banc court. *(Rev. 12/13/10)*

Chapter IX: JUDICIAL PROCEDURES

9.1 Reports by Judges on Cases Under Submission

Each judge shall periodically report to the Chief Judge the number of cases under submission assigned to the reporting judge for the preparation of dispositions, the number of such cases in which dispositions have been written and are in circulation, and the length of time such cases have been under submission and, where applicable, in circulation. Each judge shall also report the number of three-judge district court cases to which the judge has been assigned. The authoring judge shall report orally to the Court concerning the status of cases in which dispositions have not been circulated within 6 months of submission and cases in which dispositions have not been filed within 9 months of submission. Authoring judges shall be notified by the Clerk's Office one month prior to the Court meeting of cases within this category.

9.2 Priorities for Consideration of Proposed Dispositions

Judges shall normally act upon proposed dispositions submitted by other judges as soon as reasonably convenient after such dispositions have been received, and in any event, before initiating research or preparation of a proposed disposition in another case. If either of the other judges on a panel is unable to act

upon a proposed disposition within 7 days of its receipt, the judge shall so notify the author within that time.

9.3 Delay by Visiting Judges

If a visiting judge fails to prepare a disposition within 3 months after the preparation thereof is assigned, the presiding member of the panel shall write to the judge and request that he or she prepare and circulate the disposition. If a visiting judge, sitting with a panel of this Court, fails to act upon a proposed disposition prepared by another member of the panel within one month after such proposed disposition has been transmitted to members of the panel, the presiding member of the panel shall write to the judge and request that he or she act on the matter.

9.4 Seniority of Visiting Judges

A visiting judge shall be accorded full seniority in the listing of names in the disposition and in all other respects, except that a member of the Court shall preside at Court sessions and shall assign cases for the preparation of dispositions.

9.5 Individual Public Expression of Views

If a member of the Court wishes to express an opinion publicly on pending legislation or other matters in which, because of the nature of the matter, it might be mistakenly assumed that the opinion expressed is that of the Court, it shall be made clear, in expressing such opinion, that the opinion expressed is that of such

member only. Any member so expressing an opinion in writing shall also consider the advisability of sending copies to the other members of the Court.

9.6 <u>Three-Judge District Court Assignments</u> *(Abrogated)*

Chapter X: MEETING OF COURT & EXECUTIVE COMMITTEE

10.1. Executive Committee of the Court

a. Membership

The Executive Committee of the Court shall consist of the Chief Judge, a circuit judge who is eligible to become Chief Judge during the expected tenure of the current Chief Judge and, if there be more than one, the one among them who is designated by the Chief Judge, the 3 administrative unit judges, a senior judge drawn by lot from among those senior judges willing to be considered, and 3 other active judges drawn by lot from among those active judges willing to be considered. Judges drawn by lot shall serve staggered terms of 3 years. A judge shall not be eligible to serve again for 2 years following the expiration of his or her term of service on the committee, unless that judge becomes eligible to serve as chief, next in line to be chief, or administrative judge.

Attendance at meetings is required unless excused by the Chief Judge. Four members shall constitute a quorum. The Chief Judge shall chair¬ the Executive Committee. Judges drawn by lot who are also eligible to serve on the Judicial Council shall elect to serve on either the Executive Committee or the Council.

(Rev. 10/4/06; 9/17/14)

b. <u>Authority</u>

The Executive Committee shall have the authority to act for the Court on all administrative matters except:

(1) workload issues, including the number of sittings, size of calendars, and requests for new judgeships;

(2) changes in procedures for deciding cases;

(3) rules;

(4) bankruptcy judge and federal public defender appointments;

(5) major personnel decisions;

(6) major decisions concerning court buildings, space planning and utilization;

(7) those matters the Executive Committee determines are appropriate for de novo discussion by the full Court.

The Executive Committee shall review and may make recommendations to the Court on items 1, 2, 3, 5, 6 and 7.

c. <u>Meetings</u>

The Executive Committee shall meet 4 to 6 times annually, unless canceled by the Chief Judge. Special Executive Committee meetings may be called by the Chief Judge at any time, or upon the written request of a majority of the members of the Executive Committee. *(Rev. 12/13/10)*

d. Agendas and Minutes

The agenda and minutes of the Executive Committee will be distributed promptly to the full Court.

10.2. Court Meetings

a. Time, Place, and Judicial Participation

Court of appeals meetings shall be held at such times and places as the Chief Judge shall determine. Generally, 4 meetings shall be held each year. Special court meetings may be called by the Chief Judge at any time, and shall be called by the Chief Judge upon the written request of a majority of the active judges. Meetings shall be conducted pursuant to the most recent edition of Roberts Rules of Orders, except to the extent that those rules conflict with statute, applicable court rules, or these General Orders.

All active judges are expected to attend court meetings unless excused by the Chief Judge. A majority of the active judges shall constitute a quorum. Except as otherwise provided by law, senior judges who elect to attend court meetings, unless excused by the Chief Judge, may vote. Those senior judges who do not so elect may not vote, even where permitted by law to do so. *(Rev. 9/17/14)*

b. Agenda and Non-Agenda Items

(i) A written agenda shall be prepared and distributed to each member of the Court in advance of each court meeting. The agenda items will

include any of those items listed in G.O. 10.1.b. 1-7 that are ready for consideration by the Court, and any other actions taken by the Court Executive Committee if 7 or more active or senior judges request such consideration 14 days prior to the court meeting, or within a reasonable time if circulation of the agenda is delayed.

(ii) *(Abrogated 9/17/14)*

(iii) Any matter not on the agenda may be considered at a court meeting upon the agreement of two-thirds of the active judges present. *(Rev. 9/17/14)*

c. <u>Minutes</u>

Proposed minutes of court meetings shall be distributed to the active judges for correction. Any corrections shall be suggested to the Court Executive within 10 days of the distribution date. Upon the expiration of that period, the minutes shall become final. The final minutes of court meetings shall be distributed to all members of the Court.

10.3. <u>Mail Votes</u>

Between meetings, the Court may act by mail vote. On the request of any active judge, any matter submitted for a mail vote shall be withdrawn and, at the discretion of the Chief Judge, either set for a teleconference meeting or placed on the agenda for the next scheduled court meeting.

Chapter XI: DUTIES of ADMINISTRATIVE UNIT JUDGES

11.1 Duties of the Administrative Unit Judge

The duties of the administrative unit judges are to: *(Rev. 12/13/10)*

(1) Serve as members of the Court Executive Committee.

(2) *(Abrogated 9/17/14)*

(3) On the designation of the Chief Judge, rule on excess CJA fee requests from unit. *(Rev. 9/17/14)*

(4) Be attentive to Court of Appeals support services and facilities within unit (includes reviewing space needs, facility improvements, arrangements for visiting judges chambers, and security), and make recommendations to the Chief Judge. *(Rev. 9/17/14)*

(5) If requested by the Chief Judge, attend installation of district, bankruptcy and magistrate judges (or secure a representative from unit). *(Rev. 9/17/14)*

(6) Represent Court at admission to our bar ceremonies within unit.

(7) Oversee project involving cameras used during circuit court arguments within unit.

(8) Maintain contact with Court of Appeals judges within unit and report on their needs.

(9) Serve as liaison with bar associations within unit and arrange meetings with Lawyer Representatives and Court of Appeals judges.

(10) *(Abrogated 9/17/14)*

(11) *(Abrogated 9/17/14)*

(12) *(Abrogated)*

(13) *(Abrogated 9/17/14)*

(14) *(Abrogated 9/17/14)*

(15) Perform other duties, as requested, by the Chief Judge or the Court.

Chapter XII: MISCELLANEOUS PROVISIONS

12.1. <u>Seal and Process</u> *(Abrogated 9/17/14)*

12.2. <u>Use of Court, Conference, and Robing Rooms</u> *(Abrogated 9/17/14)*

12.3. <u>Information Concerning Presentation of Oral Argument</u> *(Abrogated 9/17/14)*

12.4. <u>Bar Admission Fees</u>

a. <u>Bar Admission Fees</u>

The admission fee to the bar of this Court is set at $230.00 (effective 11/01/11). The fee is waived for attorneys who are employed by the federal government or community public defender program; such attorneys are conditionally admitted. If the attorney leaves government service but wishes to practice before the Court, that attorney must then satisfy the fee requirement. Court employees are exempt from the admission fee. *(Rev. 9/17/14)*

b. <u>Expenditures from the Attorney Admission Fund</u>

All expenditures must be in accordance with the Plan for Administration of the Attorney Admission Fund.

The circuit executive or the Clerk, may authorize expenditures from the Fund for items contained in the approved annual budget and for revolving fund expenditures that do not exceed $1,500 per item. Any single expenditure for a budgeted or revolving fund item exceeding $1,500 requires the additional approval of the Chief Judge or the Chair of the Committee.

The Chief Judge is authorized to approve expenditures from the Fund in any amount within the Chief Judge's annual budget limit. The Chief Judge may delegate this authority to the circuit executive or to the Clerk. See Plan for Administration of Attorney Admission Fund.

12.5. <u>Discipline of Attorneys Admitted to Practice in This Court</u>

The Clerk shall periodically check the lists forwarded to the Court concerning state disbarments and suspensions against the roll of attorneys practicing before this Court and issue the order described at Circuit Rule 46-2(c). The order shall warn the attorney that failure to respond in a timely fashion will result in removal from the roll of admitted attorneys without further notice. A motions attorney, upon receipt of the response thereto, shall present the matter to a current motions panel for appropriate action pursuant to Circuit Rule 46-2. If the attorney fails to respond to the order to show cause, the Clerk shall order that the attorney be removed from the roll of attorneys eligible to practice before the Court.

If the Court becomes aware of a violation of the applicable rules of professional conduct or a failure to comply with the rules or orders of this Court, or of any other conduct unbecoming a member of its bar, the Court may assign a docket number to the proceedings and take such disciplinary action as it deems necessary pursuant to FRAP 46 and Circuit Rule 46-2. *(Rev. 9/17/14)*

12.6. Use of General Orders

These General Orders pertain primarily to the Court's internal functioning and therefore do not have standing as rules of the Court. Nevertheless, such orders shall be regarded as public records and shall be available, during office hours, for public inspection at the offices of the Clerk of this Court and all district courts of the circuit. The orders shall also be posted on the Court's website. The Clerk shall provide each member of the Court and visiting judge with a loose-leaf book containing the General Orders. Copies of the General Orders may be purchased, upon request, from the Court of Appeals Clerk's Office in San Francisco. *(Rev. 12/13/10)*

12.7. Distribution of Briefs, Records, and Exhibits After Use

Since copies of briefs, memoranda, and records, after argument or consideration, may contain comments and notations by the judges, such documents generally are not to be made available to anyone other than Court personnel. However, original Clerk's records, original and any paper copies of reporter's transcripts, and exhibits shall be returned to the district court. *(Rev. 9/17/14)*

12.8. Prisoner Mail

When mail addressed by the Clerk to a prisoner in a state or federal institution is returned undelivered, the Clerk shall forward the returned mail to the appropriate state or United States Attorney. The Clerk shall include a letter with

the returned mail instructing the attorney to use all reasonable means to effect delivery to the prisoner and to submit to the Clerk proof of such efforts and the results thereof within 14 days.

Mail addressed by a prisoner to a member of the Court shall be opened by the Clerk who shall act on any procedural matter as appropriate. All substantive matters shall be forwarded to the Court.

12.9. Sua Sponte Imposition of Sanctions

a. Sanctions Imposed Against Counsel or a Party

Sanctions may be imposed against counsel or a party for conduct that violates the Federal Rules of Appellate Procedure, the Circuit Rules, orders or other instructions of the Court, the rules of professional conduct or responsibility in effect where counsel maintains his or her principal office or as authorized by statute. If sanctions appear to be warranted, the following procedures shall apply.

Any judge or an Appellate Commissioner may issue an order to show cause that directs a litigant to pay a sanction in the amount determined by the Court or to show cause why such sanctions would be unwarranted. The order shall state the grounds for such sanctions, the authority under which such sanctions are authorized, whether the sanction would be imposed against counsel, a party or both, and the date upon which a response shall be filed. Any reply to a response shall be filed within 10 days from service of the response. Upon review of the

response and reply, if any, the judge or Appellate Commissioner may discharge the order or may refer the response to the merits panel or motions panel for a determination as to the propriety of sanctions. All dispositions in which orders to show cause have been issued shall specifically address any response or failure to respond to the order. *(Rev. 12/13/10)*

A motions or merits panel may issue an order to show cause that directs a litigant to pay a sanction in the amount determined by the Court or to show cause why such sanctions would be unwarranted. The order shall state the grounds for such sanctions, the authority under which such sanctions are authorized, whether the sanction would be imposed against counsel, a party or both, and the date upon which a response shall be filed. Any reply to a response shall be filed within 10 days from service of the response. Upon review of the response and reply, if any, the panel may deem the order to be discharged or may impose the sanction. *(Rev. 12/13/10)*

Any order relating to the sanction or discipline of any attorney shall be referred to an Appellate Commissioner so that the order can be entered into the Court's internal attorney admissions and discipline database. This includes an order directing counsel to show cause why sanctions should not be imposed; an order discharging such an order to show cause; and an order imposing sanctions or discipline. *(New 3/26/08; Rev. 9/17/14)*

b. <u>Court Reporter Sanctions</u>

If a court reporter has failed to prepare previously designated transcripts, and has not responded to a prior warning order, the Clerk may prepare an order to show cause regarding sanctions for an Appellate Commissioner. Copies of the order shall be provided to the chief district judge, appropriate district court personnel, and the reporter regulatory agency. Upon review of the response, an Appellate Commissioner may either discharge the order or refer the response to a merits panel or motions panel for a determination regarding the imposition of sanctions.

When it comes to the attention of a motions panel that a reporter has failed to prepare previously designated transcripts, the panel shall order the reporter to show cause why sanctions should not be imposed or may refer the matter to the Clerk. If the motions panel orders the reporter to show cause, the panel shall review the response and shall either deem the order to be discharged or order the imposition of a fine.

When it comes to the attention of a merits panel that a reporter has failed to prepare previously designated transcripts, the panel shall order the reporter to show cause why sanctions should not be imposed. If the appeal is ordered off the calendar, the panel shall refer the matter to the Clerk. If the merits panel orders the reporter to show cause, the panel shall review the response and shall either deem the order to be discharged or order the imposition of a sanction. *(Rev. 9/17/14)*

12.10. Communication From Other Courts Regarding Cases

a. Communications Regarding Dispositions and Extraordinary Writs

When a district judge, magistrate judge, bankruptcy appellate panel judge or bankruptcy judge is aware of a mistake in a disposition by this Court involving an appeal from that judge's decision, has reason to believe that the affected parties may not point out the mistake, and believes that justice will be disserved if the mistake is not corrected, the judge may bring the mistake to the attention of this Court by way of a letter addressed to the Clerk of Court. The Clerk shall distribute the letter to the members of the panel or as is otherwise appropriate. The judge shall provide copies of the letter to all parties to the appeal. *(Rev. 12/13/10)*

When a district judge, magistrate judge, bankruptcy appellate panel judge or bankruptcy judge wishes to comment on a pending petition for a writ of mandamus or other extraordinary relief that arises out of that judge's cases prior to the entry of an order requiring a response, the judge may send a letter to the Clerk of Court for distribution to the panel that will review the petition. The judge shall provide copies to the parties. *(Rev. 12/13/10)*

b. Petitions for Rehearing

When a district judge, magistrate judge, bankruptcy appellate panel judge or bankruptcy judge wishes to comment formally on a filed disposition before the mandate has issued, the judge may send a written communication to the Clerk of

Court. The Clerk shall file the communication and distribute it to the panel before whom the petition for rehearing is pending, and, if there is a pending petition for rehearing en banc, to all judges on the Court. The judge shall provide copies of the letter to all parties to the appeal. *(Rev. 12/13/10)*

c. <u>Closed Cases</u>

When a district judge, magistrate judge, bankruptcy appellate panel judge or bankruptcy judge wishes to comment formally to the Court of Appeals on a decision or other matter that is no longer pending, the judge shall send a written communication to the Clerk of Court. The Clerk shall distribute the communication to all judges on the Court of Appeals. This does not restrict other informal comments on closed cases which are otherwise permitted. *(Rev. 12/13/10)*

12.11. <u>Suspension of General Orders</u>

Any active judge may request that the Court vote to suspend a provision or provisions of these orders, except to the extent that any suspension would be prohibited by law. The request shall be directed to the Chief Judge. The Chief Judge shall place the matter on the agenda for the next court meeting. If time constraints demand a more immediate resolution of the matter, the Chief Judge shall call for a mail vote. The call shall include a time limit set at the Chief Judge's discretion within which the judges must submit their votes. Any proposed

suspension must be approved by the number of votes that equals or exceeds two-thirds of the eligible judges. Any proposed suspension shall state the period for which the suspension will apply.

12.12. <u>Confidentiality</u>

No past or present officer or employee of the Court may divulge or make available information relating to a matter pending before the Court during or prior to the term of that individual's service that is both learned as a result of that individual's official duties and not part of the public records of the Court, unless the disclosure is made:

(a) To a person who is a judge or an officer or employee of the Court at the time the disclosure is made, or was a judge or an officer or employee of the Court at the time the information was obtained;

(b) Pursuant to a statute, rule or order of the Court, or authorization from a judge;

(c) Pursuant to a valid order or subpoena issued by a body competent to issue such an order or subpoena; or

(d) To report an alleged criminal violation to an appropriate law enforcement official.

For the purposes of this section, "information relating to a matter" shall include information:

(a) That is received by the Court pursuant to a protective order or under seal;

(b) Learned in connection with any case which has been or is before the Court which a judge expressly marks "confidential" or states is to be kept confidential pursuant to this section;

(c) That relates to the deliberative processes of the Court in a case that is in the process of being decided or has already been decided. Examples of such information are:

(1) Draft opinions prepared in connection with the preparation by the Court of a final opinion;

(2) Internal memoranda, in draft or final form, prepared in connection with a draft or final opinion or argument of a case before the Court; and

(3) The substance or occurrence of conversations among judges or between a judge and officers or employees of the Court concerning the substance of the case which the Court is in the process of deciding, is about to decide, or has decided.

Posted on April 7, 2016

12.13. Confidentiality and Disposition of Judges' Personal Papers and Property upon Death

Judges are encouraged to leave instructions concerning the disposition of confidential court documents, personal papers, potential archival material, and in-chambers personal property (collectively, "chambers materials"). In this context, the term "document" includes any means by which communication is stored, including material stored electronically. Examples of potential archival material other than confidential court documents include the judge's commission, honorary recognitions, photographs, and public speeches.

The instructions should provide for appropriate and reasonable measures to protect the confidentiality of internal court communications and documents. Judges are encouraged to consult with the Clerk of Court and court archivist in formulating their instructions and, when formulated, to communicate the instructions concerning disposition of chambers materials to the Clerk of Court.

Judges may elect to leave chambers materials to the Court, an educational, historical society, or other institution, but should condition the gift on safeguarding confidential court communications and documents for a reasonable period of time. In formulating a time restriction, judges should prohibit release of any document that concerns pending cases, including cases that are pending before another court via certiorari, transfer, or remand. Judges should also consider (1) the need for confidentiality of court communications; (2) the confidentiality and privacy

interests of colleagues; (3) historians' needs for access; and (4) the public's need for transparency in government. Judges may elect to instruct the court to destroy chambers materials on death, but are encouraged to consult with the Clerk of Court and court archivist to ascertain whether the Court may be interested in preserving specific archival material or personal property not distributed to heirs.

It is the policy of the court that no heir or personal representative shall release documents concerning pending cases to a third party. It is also the policy of the court that no heir or personal representative release confidential court documents or destroy chambers material without first notifying the Clerk of Court and providing reasonable time for the Court to review the proposed release or planned destruction. Judges are encouraged to implement this policy through testamentary or other instructions. (*New 6/17/2015*)

12.14. Purpose and Effect of General Orders

These General Orders are meant to guide the internal operations of the court and do not invest any rights in third parties. *(New 9/17/14)*

APPENDIX A Disposition of Motions by the Clerk

Pursuant to Circuit Rule 27-7, the Court has delegated the authority to decide the following motions to deputized court staff. Unless otherwise noted, a motion can be acted upon by a deputy clerk, staff attorney, circuit mediator or Appellate Commissioner. Orders are subject to reconsideration pursuant to Circuit Rule 27-10.

(1) to file lesser number of paper briefs; *(Rev. 9/17/14)*

(2) to file handwritten or typewritten brief or for exemption from the electronic filing requirement; *(Rev. 12/13/10)*

(3) to consolidate;

(4) to file late amicus brief; *(Rev. 12/13/10)*

(5) to hold oral argument in a specific location;

(6) to substitute party under FRAP 43(a) or (c);

(7) to grant unopposed motions to substitute federal agencies;

(8) to file addendum or appendix;

(9) to transfer records and briefs to new appeal;

(10) to adopt brief;

(11) to stay appellate proceedings (may grant only if based on pending court or agency action and periodic status reports are required; if based on settlement negotiations, may grant only if stay is limited to 6 months);

(12) for withdrawal or substitution of counsel in civil cases, excluding habeas cases; *(Rev. 9/17/14)*

(13) to supplement or correct record or brief; *(Rev. 12/13/10)*

(14) for extension of time;

(15) to file oversized brief;

(16) *(Abrogated 12/13/10)*;

(17) to permit the district court to correct clerical mistake in district court judgment;

(18) to remand in civil cases to enable district court to rule on post-judgment motion (Clerk may grant if unopposed and if movant has complied with FRAP 12.1; Clerk may deny if movant has not complied with FRAP 12.1); *(Rev. 12/13/10)*

(19) to intervene as of right in agency review proceedings;

(20) to strike brief;

(21) to expedite;

(22) to transfer under 28 U.S.C. § 2112(a) (if non-discretionary);

(23) to deny a motion to proceed in forma pauperis as unnecessary when pauper status continues under FRAP 24(a);

(24) to grant a motion to withdraw a previously filed motion;

(25) *(Abrogated 3/23/16)*

(26) to grant, or deny without prejudice to a renewed motion that corrects a defect, appellant's unopposed motion to voluntarily dismiss a case and denying as moot other pending motions; *(Rev. 9/17/14)*

(27) to grant or deny an unopposed motion to voluntarily dismiss a civil appeal or petition for review without prejudice to reinstatement upon the occurrence of stated conditions if the order provides that a motion to reinstate must be filed within 28 days after the occurrence of those; *(Rev. 9/17/14)*

(28) to deny without prejudice to refiling, motions to be relieved as appointed counsel in a criminal appeal when the motion fails to comply with Circuit Rule 4-1(c); *(Rev. 9/17/14)*

(29) to correct the caption or add parties when the motion seeks to remedy a clerical error by this Court.

The Clerk has discretion to refer any of the above motions to an Appellate Commissioner, a circuit mediator, an appropriate staff attorney for presentation to a motions or screening panel, or a merits panel. *(Rev. 9/17/14)*

The Clerk is authorized to enter orders referring to the merits panel motions:

(30) to file an amicus brief;

(31) to grant or to deny oral argument; *(Rev. 9/17/14)*

(32) to set aside waiver of oral argument;

(33) to join in oral argument;

(34) to submit without oral argument;

(35) to take judicial notice;

(36) for imposition of sanctions;

(37) filed after a pattern of frivolous, repetitive motions has been established.

The Clerk may issue for the Court the following orders:

(38) sua sponte order to show cause or to provide information on jurisdiction or summary disposition; *(Rev. 12/13/10)*

(39) sua sponte order to show cause in attorney discipline matter under FRAP 46(b) and to strike from the attorney roll those attorneys who voluntarily resign or who fail to respond to an order to show cause;

(40) order granting National Labor Relations Board's unopposed motion to withdraw application without prejudice, denying as moot other pending motions, and providing for no costs if it appears that none were incurred by appellee or respondent;

(41) order granting National Labor Relations Board's unopposed application for enforcement upon stipulation and denying as moot other pending motions;

(42) order granting National Labor Relations Board's motion for entry of default (unless opposed on grounds other than timely filing of answer) and denying as moot other pending motions;

(43) order denying National Labor Relations Board's motion for entry of default where respondent has timely answered application for enforcement;

(44) *(Abrogated 9/17/14)*

(45) *(Abrogated 9/17/14)*

(46) orders granting timely motions for reinstatement of a civil appeal or petition previously dismissed or remanded without prejudice to reinstatement upon the occurrence of a stated condition or event; *(Rev. 12/13/10)*

(47) order dismissing an appeal for want of prosecution under Circuit Rule 42-1 and dismissing any pending motions as moot;

(48) *[abrogated 12/13/10]*;

(49) *[abrogated 12/13/10]*.

The Clerk has discretion to refer any of the above motions to an Appellate Commissioner, a circuit mediator, an appropriate staff attorney for presentation to a motions or screening panel, or a merits panel. *(Rev. 9/17/14)*

The circuit mediators and staff attorneys shall have the same authority to act on procedural motions as the Clerk, and shall additionally be authorized to issue the following orders for the Court: *(Rev. 9/17/14)*

(50) orders granting unopposed motions for attorney fees;

(51) orders staying appellate proceedings based on pending settlement negotiations for more than 6 months if periodic status reports are required;

(52) orders granting stipulations or unopposed motions to remand cases to administrative agencies (in immigration cases by agreement of the parties the order may include a stay of removal during remand); *(New 1/1/05)*

(53) orders granting stipulations or unopposed motions to remand a case to the district court for consideration, approval and/or implementation of a settlement agreement (remand may be without prejudice to reinstatement upon occurrence of stated condition or event); *(Rev. 12/13/10)*

(54) orders denying untimely petitions for permissive interlocutory appeals; *(Rev. 12/13/10)*

(55) orders denying untimely motions for reconsideration of a motions or oral screening panel order. If the mandate has issued, then the reason for the denial will be because it is untimely and because the mandate has issued. In either case, if the staff attorney believes that the motion for reconsideration, although untimely,

deserves review, he/she shall forward the motion to the panel with the customary proposed recommendation); *(Rev. 10/10/07; 9/17/14)*

(56) orders dismissing duplicative notices of appeal when the record is clear that 2 or more appeals have been taken from the same order or judgment; *(Rev. 12/13/10)*

(57) Staff attorneys are authorized to enter orders referring to the merits panel motions: *(Rev. 12/13/10; 9/17/14)*

(a) to dismiss an appeal for lack of jurisdiction that involves legal issues intricately bound up in the merits of the appeal; *(Rev. 12/13/10)*

(b) involving issues pending before an en banc panel; *(Rev. 12/13/10)*

(c) to certify issues to a state court; *(Rev. 12/13/10)*

(d) to withdraw as appointed counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), in criminal cases and set a due date for a pro se supplemental brief. *(Rev. 12/13/10)*

The mediator or staff attorney has discretion to refer any of the above motions to an Appellate Commissioner or a motions panel. *(Rev. 9/17/14)*