

NEW CR 30-1 As Adopted

CIRCUIT RULE 30-1. THE EXCERPTS OF RECORD

30-1.1. Purpose

The Ninth Circuit requires the parties to file Excerpts of Record instead of the Appendix prescribed by FRAP 30. The primary purpose of the excerpts is to compile for the Court all parts of the record, but only those parts of the record, that are relevant and useful to the Court in deciding the appeal.

For purposes of these rules, the terms “Excerpts” and “Excerpts of Record” refer to any type of excerpts submitted by any party, including Supplemental Excerpts and Further Excerpts.

Advisory Committee Note to Rule 30-1.1

The Excerpts of Record should be a well-organized and accessible compendium of all the documents in the record that are necessary to understand and decide the issues on appeal. Although the Court has access to most of the district court record via PACER, that access is time consuming, and citations to the record serve as a distraction when reading the briefs. The parties should not expect the Court to search through the district court record for the documents that support their arguments on appeal. Therefore, unless a party is exempt from the excerpts-of-record requirement, citations directly to the record are not permitted except for purely background information, such as factual or procedural history, that is undisputed and provided only for general context.

30-1.2. Requirements

(a) The appellant or petitioner shall submit Excerpts of Record when submitting the opening brief unless the filer is exempt pursuant to Circuit Rule 30-1.3.

(b) The appellee or respondent shall submit Supplemental Excerpts of Record when submitting the answering brief only if the brief refers to documents or portions of documents not included in the initial Excerpts, or if no Excerpts of Record were filed because the appellant or petitioner is exempt pursuant to Circuit Rule 30-1.3.

- (c) A non-exempt appellant or petitioner shall submit Further Excerpts of Record when submitting the reply brief only if the brief refers to documents or portions of documents not included in the Excerpts or Supplemental Excerpts.
- (d) Any non-exempt party shall submit Supplemental Excerpts of Record when submitting a supplemental brief only if the brief refers to documents or portions of documents not included in any previously filed Excerpts.
- (e) All excerpts shall be separate from the brief and submitted electronically at the same time as the brief unless the filing party is exempt from the electronic-filing requirement.
- (f) On the same day the excerpts are submitted electronically, the filing party shall serve 1 paper copy of the excerpts on any other party that is not registered for electronic filing, but shall defer submission of paper copies of the excerpts to the Court until directed by the Clerk to do so.
- (g) If the filing party is exempt from the electronic-filing requirement, the filing party shall file 3 paper copies of the excerpts at the time the brief is submitted, bound separately from the brief, and serve 1 paper copy on each of the other parties.
- (h) Should the Court consider a case en banc, the Clerk will require counsel to submit additional paper copies of the excerpts.
- (i) In any petition for review challenging an order of removal in an immigration case, neither party need file Excerpts of Record.

30-1.3. No Excerpts Required for Pro Se Party

A party proceeding without counsel need not file excerpts. If such a party does not file excerpts, counsel for appellee or respondent must file Supplemental Excerpts of Record that contain all of the documents that are cited in the pro se opening brief or otherwise required by Rule 30-1.4, as well as the documents that are cited in the answering brief.

30-1.4. Contents of the Excerpts of Record

- (a) Volume 1 of the Excerpts of Record shall include all decisions being appealed, reviewed, or collaterally challenged, whether oral or written, final or interim. Unless the entire set of excerpts will be submitted in a single volume of no more than 300 pages, Volume 1 of the Excerpts of Record shall not include any other material. This requirement applies to Volume 1 of any Supplemental or Further Excerpts of Record that contain such decisions not included in the initial Excerpts. The documents in the first volume of excerpts ordinarily shall be arranged by file date in reverse chronological order.
- (b) Except as provided in subsection (d), additional volumes of any excerpts shall not include any decisions referred to in subsection (a), but shall include all other parts, but only those parts, of the record that are relevant to deciding the appeal. The documents contained in these volumes of excerpts ordinarily shall be arranged in reverse chronological order.
- (c) If the excerpts contain the complete trial transcript, the filer may elect to submit the original reporter's transcript as a separate volume(s) of excerpts of no more than 300 pages each, but such volume(s) must be paginated consecutively in accordance with subsection 1.5(c). If documentary trial exhibits, such as written materials and photographs capable of production in PDF format, are relevant to deciding the appeal, they shall be included in the excerpts of record and placed together, either with any separate volume(s) of trial transcripts or at the end of the final volume of unsealed Excerpts of Record (just before the notice of appeal and docket sheet) or, if appropriate, in the final volume of sealed Excerpts. Submission of physical exhibits that are not capable of transmission in PDF format is governed by Circuit Rule 27-14.
- (d) When any Excerpts of Record include documents: (1) that are required to be sealed pursuant to statute or rule and submitted under Circuit Rule 27-13(d); or (2) that are being submitted provisionally under seal pursuant to Circuit Rule 27-13(e) or (f); those documents shall be submitted in a separate, final volume(s) of the excerpts. The documents contained in sealed or provisionally sealed volumes ordinarily shall be arranged in reverse chronological order. Pre-sentence reports and related sealed sentencing documents shall not be included in the excerpts, but shall instead be filed using the pre-sentence report filing event. *See* Circuit Rule 27-13(d).

(e) In social security appeals, the certified administrative record (CAR) shall not be included in the excerpts of record, but shall be submitted by the appellant in its entirety in a separate CAR filing event at the time the opening brief and initial excerpts are filed, unless appellant is exempt from the excerpts requirement, in which case it will be submitted by the appellee at the time the answering brief is filed.

(f) On appeal from a District Court, Bankruptcy Appellate Panel, Bankruptcy Court, or Tax Court case, the notice of appeal and lower court docket sheet shall be included at the end of the last volume in the non-sealed initial Excerpts of Record.

Advisory Committee Note to Rule 30-1.4

Volume 1 of the Excerpts of Record ordinarily should include:

- (a) the judgment or interlocutory order appealed from;*
- (b) any other orders or rulings, including the text of minute orders (copied into a separate sheet of paper or contained in a separate page from the district court docket sheet), sought to be reviewed;*
- (c) where an appeal challenges any ruling, order, finding of fact, or conclusion of law, and that ruling, order, finding, or conclusion was delivered orally, that specific portion of the reporter's transcript recording any discussion by court or counsel on which the assignment of error is alleged to rest;*
- (d) the entire sentencing transcript in any criminal appeal challenging the sentence;*
- (e) any jury instruction given or refused that presents an issue on appeal; and*
- (f) any relevant state court decisions in a habeas corpus proceeding.*

Circuit Rule 28-2.8 requires every assertion in briefs regarding matters in the record to be supported by a citation to the Excerpts of Record. Excerpts therefore must include, at a minimum, all documents cited by the briefs except for undisputed facts or procedural history offered only for general background.

Legal memoranda and briefs ordinarily are not relevant to the issues on appeal and, therefore, should be excluded from the excerpts. They may be relevant if a party asserts that an issue was waived, forfeited, or not exhausted, to support disputed assertions of procedural history, or in other similar circumstances.

If the briefs cite only certain pages of a long transcript or other document, parties may elect to include only portions of the transcript or document. But the parties should provide enough surrounding pages to provide relevant context and, where a

brief raises a sufficiency of the evidence or harmless error argument, the filer ordinarily should include the entire trial transcript.

If the brief is accompanied by a motion to withdraw pursuant to Anders v. California, the initial Excerpts of Record shall include the complete transcripts for the plea hearing or trial and the sentencing hearing. See Circuit Rule 4-1(c)(6).

In criminal cases, the excerpts shall include the final indictment or other charging document.

If the brief raises issues requiring consideration of trial exhibits, whether admitted or excluded, it is counsel's responsibility to provide those exhibits to the Court as part of the excerpts (if they are capable of submission in PDF format) or via separate transmission to the Court pursuant to Circuit Rule 27-14.

The Court prefers excerpts that are organized in reverse chronological order (subject to the provisions relating to the contents of first and sealed volumes), beginning with the most recently filed document or set of documents. For this purpose, transcripts, including trial transcripts, should be placed by hearing date, except that hearings or trials that span multiple dates or sessions should appear in chronological order for that hearing or trial, using the first day of the hearing or trial as the relevant date. Alternative organization of the excerpts is acceptable if better suited to a particular case.

30-1.5. Index and Format

(a) Except as noted in section (b) below, each set of Excerpts of Record shall be accompanied by a separately bound Table of Contents ("Index Volume") of all documents contained in all numbered volumes of the set, including any separate volumes of trial transcript pursuant to Circuit Rule 30-1.4(c). The Index Volume shall list each document in order, including a citation to where the document may be found in the lower court record, and its location in the volume and page number in the excerpts. When listing the documents in the Index, parties should provide descriptive labels. For example, "Exhibit 12 - 2018 Deposition of Jeanne Smith" is more helpful than "Exhibit 12 to motion for summary judgment." The individual numbered volumes of excerpts shall no longer include tables of contents.

(b) No volume may exceed 300 pages, including the caption (cover) page. If an entire set of excerpts, including Index and caption page, totals 300 pages or less, they may submitted together in one single volume.

- (c) With the exception of the Index Volume, the pages of each set of excerpts shall be numbered consecutively across all volumes in the set. All pages of each volume shall be included in the consecutive numbering, including but not limited to caption pages, pages used as dividers, blank pages, and certificates of service. The page numbering shall begin with the caption page of the first volume counted as number 1, and every subsequent page across all volumes (including any separate transcript volumes) shall be consecutively numbered. Alternative numbering formats—e.g., using roman numerals or starting each volume with page 1—may not be used. Although caption pages must be included in the consecutive numbering, the page number need not be printed on caption pages. The Index Volume shall be numbered separately when not included in a single volume pursuant to subsection (b).
- (d) Each volume must contain a caption (cover) page styled as described in FRAP 32(a), except that the wording "Excerpts of Record" (or "Supplemental Excerpts of Record" or "Further Excerpts of Record") shall be substituted for "Brief." The caption page of each volume, including the index, shall include the volume number ("Volume 2 of 6" or "Index Volume," for example).
- (e) The paper copies of all volumes, including the Index Volume and any separate reporter's transcript volumes, shall be bound securely on the left. Paper copies shall be printed on letter-sized light-colored paper with black ink or colored ink where appropriate and the caption pages shall be white. Paper copies of any excerpts may be printed on both sides of the paper, but only if the method of binding allows each volume to lie completely flat when open, such as comb, spiral, coil, or wire binding, and the weight of the paper is sufficient to prevent bleeding through when marked on one side in ink or highlighter.

30-1.6. Citation to the Excerpts of Record

Parties shall cite to the initial Excerpts of Record in the following format: [volume number]-ER-[page number(s)]. If only one volume exists, the volume number shall be omitted. Multi-volume examples: 1-ER-12, 4-ER-874–76. Single-volume example: ER-26–32. The same format applies to Supplemental Excerpts of Record except that "SER" applies rather than "ER." The same format applies to Further Excerpts of Record except that "FER" applies rather than "ER." Multiple parties on the same side of an appeal who are submitting separate excerpts must include a unique identifier in the citation, such as 1-JonesER-59. Citations to the administrative record in social security cases shall be CAR-[page number].

30-1.7. Prisoner Appeals Without Counsel

In cases involving appeals by prisoners not represented by counsel, the clerk of the district court shall, within 21 days from the receipt of the prisoner's written request, forward to the prisoner copies of the documents comprising the Excerpts of Record so that the prisoner can prepare the briefs on appeal. If the prisoner was granted leave to proceed in forma pauperis at the district court or on appeal, the copies will be produced at no charge to the prisoner.

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CIRCUIT RULE 17-1. EXCERPTS OF RECORD ON REVIEW OR ENFORCEMENT OF AGENCY ORDERS

Review of agency decisions shall be in accordance with FRAP 17, except that preparation and filing of the Excerpts of Record in such cases shall be in accordance with Circuit Rule 30-1. Each reference in Circuit Rule 30-1 to the district court and to the clerk of the district court shall be read as a reference to the agency. No Excerpts of Record are required in a petition for review of a final order in an immigration case. (New 12/1/20)

17-1.1 through 17-1.9 [Abrogated 12/1/20]

17-1.1. Purpose

Parties are required to prepare excerpts of record unless Circuit Rule 17-1.2 applies. The purpose of the excerpts of record is to provide each member of the panel with those portions of the record necessary to reach a decision. The parties shall ensure that, in accordance with the limitations of Circuit Rule 17-1, those parts of the record necessary to permit an informed analysis of their positions are included in the excerpts. (Rev. 12/1/09)

17-1.2. Parties Exempt from Excerpts Requirement

- (a) Unrepresented Parties: Petitioners and respondents proceeding without counsel need not file excerpts, supplemental excerpts and further excerpts of record.
- (b) Petitioners challenging a Board of Immigration Appeals order need not file the initial excerpts and further excerpts; respondent need not file supplemental excerpts. (New 1/1/05; Rev. 12/1/09)

Cross Reference:

- Circuit Rule 28-2. Contents of Briefs on page 110, specifically, 28-2.7. Addendum to Briefs on page 111

17-1.3. Petitioner's Initial Excerpts of Record

The petitioner shall, unless exempt pursuant to Circuit Rule 17-1.2, submit the initial excerpts of record at the time petitioner's opening brief is submitted. The excerpts shall be separate from the brief and submitted electronically unless petitioner is exempt from the electronic filing requirement. On the same day the excerpts are submitted electronically, petitioner shall serve 1 paper copy of the excerpts on any other party that is not registered for electronic filing, but shall defer submission of the paper copies of the excerpts to the Court until directed by the Clerk to do so. If petitioner is exempt from the electronic filing requirement, petitioner shall file 3 paper copies of the excerpts at the time the brief is submitted, but separately from the brief, and serve 1 paper copy on each of the other parties. (Rev. 12/1/09; 6/1/19; 12/1/19)

17.1.4. Required Contents of the Excerpts of Record

- (a) When review or enforcement of an agency order is sought, the excerpts of record shall include:
- (i) the agency docket sheet, if there is one;
 - (ii) the agency order to be reviewed;
 - (iii) any opinion, findings of fact or conclusions of law filed by the agency, board, commissioner or officer which relates to the order to be reviewed;
 - (iv) except as provided in Circuit Rule 17.1.4(b), where an issue raised in the petition is based upon a challenge to the admission or exclusion of evidence, that specific portion of the reporter's transcript recording any discussion by court or counsel involving the evidence, offer of proof, ruling or order, and objections at issue;
 - (v) except as provided in Circuit Rule 17.1.4(b), where an issue raised in the petition is based upon a challenge to any other ruling, order, finding of fact, or conclusion of law, and that ruling, order, finding or conclusion was delivered orally, that specific portion of the reporter's transcript recording any discussion by court or counsel in which the assignment of error is alleged to rest;
 - (vi) where an issue raised in the petition is based on a written exhibit (including affidavits), those specific portions of the exhibit necessary to resolve the issue;
 - (vii) (vii) any other specific portions of any documents in the record that are cited in petitioner's briefs and are necessary to the resolution of an issue on review; and (Rev. 12/1/09)
 - (viii) where the petition is from the grant or denial of a motion, those specific portions of any affidavits, declarations, exhibits or similar attachments submitted in support of or in opposition to the motion that are essential to the resolution of an issue on review.
- (b) In addition to the items required by Circuit Rule 17.1.4(a), where the petition seeks review of an agency adjudication regarding the grant or denial of benefits, the excerpts of record shall also include the entire reporter's transcript of proceedings before the administrative law judge. (Rev. 1/1/05)

17.1.5. Items Not to Be Included in the Excerpts of Record

The excerpts of record shall not include briefs or other memoranda of law unless necessary to the resolution of an issue on review, and shall include only those pages necessary therefor. (Rev. 12/1/09)

Cross Reference:

- Circuit Rule 17-2. Sanctions for Failure to Comply with Circuit Rule 17-1 on page 57

17-1.6. Form of the Excerpts of Record

If the excerpts exceed 75 pages, the first volume of the excerpts of record shall be limited to specific portions of the transcript containing any oral statements of decisions, the orders to be reviewed, and any reports, opinions, memoranda or findings of fact or conclusions of law prepared by the agency, board, commissioner or officer that relate to the orders to be reviewed. All additional documents shall be included in subsequent volumes of the excerpts. (New 7/1/07)

The form of the excerpts shall otherwise be governed by Circuit Rule 30-1.6, with references in Circuit Rule 30-1.6 to appellant and the district court to be read as references to petitioner and agency, respectively. (Rev. 7/1/07)

17-1.7. Respondent's Supplemental Excerpts of Record

The provisions for respondent's supplemental excerpts shall be governed by Circuit Rule 30-1.7, with references in Circuit Rule 30-1.7 to appellee to be read as references to respondent.

17-1.8. Further Excerpts of Record

The provisions for further excerpts shall be governed by Circuit Rule 30-1.8, with references in Circuit Rule 30-1.8 to appellant to be read as references to petitioner.

17-1.9. Additional Copies of the Excerpts of Record

Should the Court of Appeals consider a case en banc, the Clerk of the Court of Appeals will require counsel to submit an additional 10 copies of the excerpts of record. (Rev. 7/95; 12/1/19)

CIRCUIT RULE 17-2. SANCTIONS FOR FAILURE TO COMPLY WITH CIRCUIT RULE 17-1

[Abrogated 12/1/20]

If materials required to be included in the excerpts under these rules are omitted, or irrelevant materials are included, the Court may take one or more of the following actions:

- (e) strike the excerpts and order that they be corrected and resubmitted;
- (d) order that the excerpts be supplemented;
- (e) if the Court concludes that a party or attorney has vexatiously or unreasonably increased the cost of litigation by inclusion of irrelevant materials, deny that portion of the costs the Court deems to be excessive; and/or

~~(f) impose monetary sanctions.~~

~~Counsel will be provided notice and have an opportunity to respond before sanctions are imposed.~~

CIRCUIT RULE 28-2. CONTENTS OF BRIEFS

28-2.8. Record References

Every assertion in the briefs regarding matters in the record, except for undisputed facts offered only for general background, shall be supported by a reference to the location in citation to the Excerpts of Record, unless the filer is exempt from the excerpts requirement where the matter is to be found. (Rev. 7/1/98; 12/1/09; 12/1/20)

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 28-2.8

~~Sanctions may be imposed for failure to comply with this rule, particularly with respect to record references. See Mitchel v. General Elec. Co., 689 F.2d 877 (9th Cir. 1982). Because every record-related citation other than undisputed facts offered only for general background shall be supported by the Excerpts of Record, citations directly to the underlying record are otherwise prohibited.~~ (Rev. 12/1/20)

CIRCUIT RULE 30-2. SANCTIONS FOR FAILURE TO COMPLY WITH CIRCUIT RULE 30-1

[Abrogated 12/1/20]

~~If materials required to be included in the excerpts under these rules are omitted, or irrelevant materials are included, the Court may take one or more of the following actions:~~

- ~~(g) strike the excerpts and order that they be corrected and resubmitted;~~
- ~~(h) order that the excerpts be supplemented;~~
- ~~(i) if the Court concludes that a party or attorney has vexatiously or unreasonably increased the cost of litigation by inclusion of irrelevant materials, deny that portion of the costs the Court deems to be excessive; and/or~~
- ~~(j) impose monetary sanctions.~~

~~Counsel will be provided notice and have an opportunity to respond before sanctions are imposed.~~

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CIRCUIT RULE 32-2. REQUESTS TO EXCEED THE PAGE OR TYPE-VOLUME LIMITS

- (a) **Motions:** The Court ~~looks with~~ disfavors ~~on~~ motions to exceed the applicable page or type-volume limits. Except in capital cases, such motions will be granted only upon a showing of diligence and substantial extraordinary and compelling need, such as in a multi-defendant criminal case involving a lengthy trial. A motion for permission to exceed the applicable page or type-volume limits must be filed on or before the brief's due date and must be accompanied by a declaration stating in detail the reasons for the motion. (Rev. 12/1/20)

Any such motions shall be accompanied by a single copy of the brief that the applicant proposes to file and a **Form 8** certification as required by Circuit Rule 32-1 as to the word count. The cost of preparing and revising the brief will not be considered by the Court in ruling on the motion.

- (b) **When Longer Briefs are Allowed Automatically:** If no order lengthening the page or type-volume limit has been obtained previously, the Court will allow an extra 5 pages or 1,400 words to separately represented parties that are filing a joint brief. That same longer limit also will be provided to a party or parties that file a single brief answering or replying to either (1) multiple briefs or (2) a longer joint brief filed pursuant to this subsection. Briefs submitted under this subsection must be accompanied by **Form 8**. (New 7/1/16)

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 32-2

Motions to exceed the word limit will not be granted absent extraordinary and compelling circumstances. The Court already provides more generous word limits than provided by FRAP and most other Circuits. In almost all cases, the limits provided suffice even for multiple or complex issues. Most overlength briefs could be shorter and unnecessarily burden the Court.

If the Court does not grant a motion for leave to file a longer brief, or grants the motion only in part, the Court ordinarily will provide the party or parties ~~a reasonable interval~~ 7 days after the entry of the order to file a compliant brief as directed by the Court. Any order that decides a motion will also make adjustments to the due date(s) for any further briefing.

Rule 32-2(b) encourages separately represented parties to file a joint brief to avoid burdening the Court with repetitive presentations of common facts and issues. The routine lengthening of page or type-volume provided by the rule is intended to accommodate the additional length that may be necessary to permit preparation of a joint brief. A litigant responding to the opposing party's brief as well as an amicus curiae brief filed under FRAP 29(a) is also eligible to file a longer brief automatically.

If a brief that exceeds the usual length limits is submitted by a party or parties ineligible for relief under Rule 32-2(b), the Clerk will ~~provide the parties with an interval within which to file~~reject the brief if it is not accompanied by a motion under Rule 32-2(a). (Rev. 1/1/07; Rev. 7/1/16; Rev. 12/1/20)

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CIRCUIT RULE 3-2. REPRESENTATION STATEMENT

- (a) No FRAP 12(b) Representation Statement is required in: (1) criminal cases; (2) appeals arising from actions filed pursuant to 28 U. S. C. §§ 2241, 2254, and 2255; and (3) appeals filed by pro se appellants.
- (b) In all other cases, a party filing an appeal shall attach to the notice a Representation Statement that identifies all parties to the action along with the names, addresses and telephone numbers of their respective counsel, if knownany. (Rev. 7/94; 12/1/20)

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 3-2

The representation statement is critically important and should, to the extent possible, include appellate counsel for all parties, whether or not they were counsel in the lower court. It is used by the Court to determine the contents of the caption, which parties and counsel will be added to the appellate docket, who will receive notice of the appeal and initial schedule, and who will be required or permitted to submit filings in the appeal. When any party or counsel is not accurately listed in the docket, significant problems, such as lack of notice or waiver of arguments, can result. Because the representation statement is filed by appellants (and none is required in pro se or criminal appeals), the Court expects and requires that all parties will carefully review the Court's caption and listing of counsel and parties at the outset of every appeal and will notify the Court immediately of any corrections or updates. (New 12/1/2020)