

June 24, 2022



Pursuant to 28 U.S.C. § 2071(b), comments are invited on proposed revisions to Circuit Rule 32-1, Visual Images for Demonstrative Purposes in Briefs; Circuit Rule 3-1, Filing the Appeal; and Circuit Rule 29-2, Amicus Curiae Briefs relating to Petitions for Rehearing. The proposed changes to Rule 32-1 and new accompanying Advisory Committee Note are intended to clarify whether and how visual images may be used in briefs for demonstrative purposes. The remaining proposed Rule changes are minor and are designed to clarify that filing fees in BAP appeals are paid to the Court of Appeals, and that Amicus Curiae briefs submitted under Rule 29-2 do not require a motion if all parties have consented. If ultimately approved by the Court, these rules would become effective December 1, 2022.

Please direct comments to Molly C. Dwyer, Clerk of Court, at [Molly\\_Dwyer@ca9.uscourts.gov](mailto:Molly_Dwyer@ca9.uscourts.gov), and Susan V. Gelmis, Chief Deputy Clerk, at [Susan\\_Gelmis@ca9.uscourts.gov](mailto:Susan_Gelmis@ca9.uscourts.gov). Comments must be submitted no later than August 5, 2022.

## **CIRCUIT RULE 32-1. LENGTH AND FORM OF BRIEFS, CERTIFICATE OF COMPLIANCE**

- (a) **Principal Briefs:** The opening and answering briefs filed by appellant and appellee, respectively, may not exceed 14,000 words. *(New 12/1/16)*
- (b) **Reply Brief:** The reply brief filed by appellant may not exceed half of the length set forth in (a) above. *(New 12/1/16)*
- (c) **Exclusions:** The portions of the brief required by FRAP 32(f) are excluded from the length limit calculation. *(New 12/1/16)*
- (d) **Form:** FRAP 32(a)(1) – (6) otherwise governs the brief’s form. *(New 12/1/16)*
- (e)** **Certificate of Compliance:** A brief using a word count calculation of its length must be accompanied by [Form 8](#), found on the Court’s website. *(New 12/1/16)*
- (e)(f)** **Visual Images Used for Demonstrative Purposes:** Visual images, such as photographs, illustrations, tables, and screenshots of text or images, may be reproduced in briefs using any method that results in a good copy of the original. When images are taken from the record, they must be followed by a citation to the page citation in the excerpts of record. Where words in a visual image are intended to be read by the court, those words must be manually counted and added to the certificate of compliance required under FRAP 32(a)(7)(C) and Circuit Rule 31-1(e). Visual images in briefs must comply with the 1-inch margin requirement of FRAP 32(a)(4). All other font size and formatting rules set forth under FRAP 32 do not apply to visual images that are included in briefs, but any text intended to be read by the court must be legible.
- (f)(g)** **Handwritten or Typewritten Briefs:** A handwritten or typewritten opening or answering brief may not exceed 50 pages. A handwritten or typewritten reply brief may not exceed 25 pages. *(New 12/1/16)*

*(Rev. 12/1/02; Rev. 12/1/16; Rev. 12/1/22)*

### CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 32-1

*Demonstrative visual images should be used for illustrative purposes and not to replace quotations from the record. Parties should paraphrase the text from the image in the preceding or subsequent sentence to explain its relevance to the legal issues before the court.*

*Some images, such as screenshots of handwritten notes or transcript excerpts, or tables used to convey information, are intended to be read by the court. In such cases, the words in the image must be counted and added to the certificate of compliance. Because FRAP 32’s font size and formatting rules are essential to readability, and because those rules do not apply to visual*

images, screenshots of text should be used sparingly, and screenshots of lengthy excerpts of text are strongly disfavored and may cause a brief to be rejected by the Clerk.

In other cases, a visual image is intended to show the court that something exists, or what something looks like, and any words in the picture or screenshot are incidental and need not be counted. For example, where a brief includes a photograph of an intersection that has a stop sign, the word “stop” need not be added to the brief’s word count.

Finally, some visual images fall somewhere in between. For example, with respect to a screenshot of a judgment of conviction included to resolve a dispute about which controlled substance was at issue, the pertinent words identifying the controlled substance must be counted, but other incidental words in the judgment need not be counted. (New 12/1/22)

Form 8, certificate of compliance, would be revised to read as follows:

“This brief contains XX words, including XX words manually counted in any visual images, and excluding the items exempted by Fed. R. App. P. 32(f).”

### **CIRCUIT RULE 3-1. FILING THE APPEAL**

In appeals from the district court, appellant's counsel shall simultaneously submit to the clerk of the district court the notice of appeal, the filing fee, and the appellate docket fee. In appeals from the ~~bankruptcy appellate panel and the~~ Tax Court, the notice of appeal and fees shall be submitted to the Clerk of the ~~court from which the appeal is taken~~ Tax Court. In appeals from the bankruptcy appellate panel, the notice of appeal shall be submitted to the Clerk of the bankruptcy appellate panel and the fees shall be submitted to the Clerk of the Court of Appeals. Petitions for review and applications to enforce federal agency orders, and fees for those petitions and applications, shall be submitted to the Clerk of the Court of Appeals. If the fees are not paid promptly, the Court of Appeals Clerk will dismiss the case after transmitting a warning notice. (Rev. 12/1/09; 12/1/22)

### **CIRCUIT RULE 29-2. BRIEF AMICUS CURIAE SUBMITTED TO SUPPORT OR OPPOSE A PETITION FOR PANEL OR EN BANC REHEARING OR DURING THE PENDENCY OF REHEARING**

**(b) Motion for Leave to File.** The motion must be accompanied by the proposed brief and include the recitals set forth at FRAP 29(a)(3) and Circuit Rule 29-3.

### **CIRCUIT RULE 29-3. MOTIONS FOR LEAVE TO FILE AMICUS CURIAE BRIEFS**

A motion for leave to file an amicus brief shall state that movant endeavored to obtain the consent of all parties to the filing of the brief before moving the Court for permission to file the proposed brief. (New 1/1/12)

#### ***CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 29-3***

*FRAP 29(a) and Circuit Rule 29-2(a) permits the timely filing of an amicus curiae brief without leave of the Court if all parties consent to the filing of the brief; obtaining such consent relieves the Court of the need to consider a motion. (New 1/1/12; Rev. 12/1/22)*