



Guide to Briefs and Excerpts of Record in the Ninth Circuit

Complying with Revised Ninth Circuit Rules
and Avoiding Common Filing Errors

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Briefs, Briefly

Content and organization generally governed by FRAP 28 and Ninth Circuit Rule 28-2

Format governed by FRAP 32

Length limits generally governed by Ninth Circuit Rule 32-1

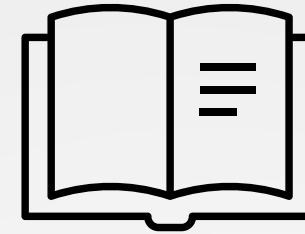
Structure of a Principal Brief

- Cover page
- Disclosure statement
- Table of contents
- Table of authorities
- Jurisdictional statement
- Statement of issues
- Bail or detention status statement
- Statement of case and facts
- Summary of argument
- Argument, with standard of review
- Conclusion
- Statement of related cases
- Certificate of compliance
- Certificate of service
- Addendum

- FRAP 32(a)(2)
- FRAP 26.1, 28(a)(1)
- FRAP 28(a)(2)
- FRAP 28(a)(3)
- FRAP 28(a)(4), CR 28-2.2
- FRAP 28(a)(5)
- CR 28-2.4
- FRAP 28(a)(6)
- FRAP 28(a)(7)
- FRAP 28(a)(8), CR 28-2.5
- FRAP 28(a)(9)
- CR 28-2.6
- FRAP 32(g), CR 32-1(e)
- FRAP 25(d), CR 25-5(f)
- CR 28-2.7

**Body
of
Brief**

Brief Formatting Basics

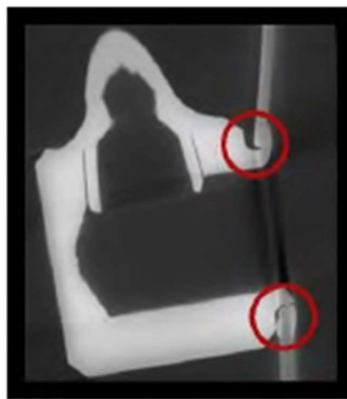


- **14-point size font** with serifs (including footnotes)
 - Alternative: monospaced font of ≤ 10.5 characters per inch
- **Double-spaced text**
- **1-inch margins**
- **Signatures** in “s/[typed name]” format
- Paper copies must be **single-sided** and **bound** on the **left side**

New Rule for Visual Images in Briefs

- Use images for demonstrative purposes
- Don't use images to replace quotations
- Words in image intended to be read must be added to Certificate of Compliance ([Form 8](#))
- Paraphrase image's text in preceding or subsequent sentences
- Include a citation to excerpts of record

Ninth Circuit Rule 32-1(f)
coming December 1, 2022



Tank 4's weld



Zest's Inserts



DESSLoc Inserts

Sample Visual Image in Brief: Screenshot of Text

The plea agreement indicates he pled guilty to Count Twenty-One, in violation of 18 U.S.C. § 1951(a) and 18, U.S.C. § 2. ER-118.

3 **II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS**
4 A. Guilty Plea. The defendant knowingly and voluntarily agrees to plead guilty to the
5 following charge as set forth in the Criminal Indictment:
6 Count One (1): Conspiracy to Interfere with Commerce by Robbery, in violation of 18 U.S.C.
7 § 1951
8 Count Five (5): Interfere with Commerce by Robbery, in violation of 18 U.S.C. § 1951(a) and
9 18, U.S.C. § 2
10 Count Nineteen (19): Interfere with Commerce by Robbery, in violation of 18 U.S.C. § 1951(a)
11 and 18, U.S.C. § 2
12 Count Twenty-One (21): Interfere with Commerce by Robbery, in violation of 18 U.S.C. §
13 1951(a) and 18, U.S.C. § 2
14 Count Twenty-Two (22): Brandishing a Firearm During a Crime of Violence, charged in
15 Twenty-One, in violation of 18 U.S.C. § 924(c)(1)(A)(ii) and 18, U.S.C., § 2

The judgment explicitly states the convictions are for “Aiding and Abetting,” also citing 18 U.S.C § 2. ER-17.

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 1951; and 18 USC § 2	Interference with Commerce by Robbery and Aiding and Abetting	1/5/2015	19
18 USC § 1951; and 18 USC § 2	Interference with Commerce by Robbery and Aiding and Abetting	1/7/2015	21
18 USC § 924(c)(1)(A) (ii); and 18 USC § 2	Brandishing a Firearm During a Crime of Violence and Aiding and Abetting	1/7/2015	22

Despite the record documents establishing Mr. Hernandez-Lopez was convicted of aiding and abetting Hobbs Act robbery, the

Sample Visual Image in Brief: Screenshot of Handwritten Text

bargaining agreement, and the interview included steward

Amanda Ray to represent Harter. 1-ER-190 ¶ 47.

The interview was not recorded: instead Dokken and Ray both took notes of Harter's responses. ECF 48, ¶¶ 48a1, 48a2, 48a3, 44b, 44c. The interview consisted of pre-written questions, with Harter's answer written onto Dokken's and Ray's individual records. 1-ER-104–105 ¶¶ 48a3, 48b. These notes form the initial basis of Harter's complaints against the USPS and his Union.

Ray's notes states that Harter was asked, "How did you get there?" Harter responded, "flew down, drove back." Dokken's first set of notes stated that Harter responded, "flew down and drove back." Dokken sent this first note to the OIG.

10. How did you get there?	flew down and drove back
----------------------------	--------------------------

1-ER-106 ¶ h. At a later point, however, Dokken changed the record to add the words "T" and "through Wyoming." 1-ER-107 ¶ k1. The USPS did not provide Dokken's first OIG version to the Union. 1-ER-108 ¶ n.

10. How did you get there?	flew down and I drove back up through Wyoming
----------------------------	---

Sample Visual Image in Brief: Photographs with Incidental Text

Indeed, counterfeits of any well-known brand one can think of are readily available for sale on Redbubble:



8-ER-1774-1834.

Excerpts of Record

Ninth Circuit Rule 30-1

Purpose:

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

Excerpts of Record Basics: Who Files What

Excerpts of Record

- Filed by Appellant with Opening Brief
- Must include, at least:
 - ✓ All decisions being appealed, reviewed, or challenged
 - ✓ Notice of Appeal
 - ✓ Lower court docket sheet
 - ✓ Everything cited in Opening Brief, except purely background info

Supplemental Excerpts of Record

- Filed by Appellee with Answering Brief
- Include anything additional referenced in Answering Brief
- If pro se Appellant did not file Excerpts, must include everything cited in Opening and Answering Briefs or otherwise required in initial Excerpts

Further Excerpts of Record

- Filed by Appellant with Reply Brief
- Include anything additional referenced in Reply Brief

Excerpts of Record Formatting Basics



Each volume begins with a caption (cover) page



Each volume limited to 300 pages



Excerpts must have an index (table of contents)



Pages must be numbered consecutively

Changes to Ninth Circuit Rule 30-1

Citations to Excerpts

Old Rule	New Rule as of December 1, 2020
No specific format for citations to excerpts	<ul style="list-style-type: none">• Multi-volume excerpts must be cited as [volume #]-ER-[page #] (ex: 1-ER-12, 4-ER-874-76)• Single volume excerpts cited as ER-[page #]• Supplemental excerpts cited as “SER”• Further excerpts cited as “FER”• Unique identifiers used to cite separate sets of excerpts by parties on same side

Ninth Circuit Rule 30-1.6

Changes to Ninth Circuit Rule 30-1

Index (Table of Contents)

Old Rule	New Rule as of December 1, 2020
<ul style="list-style-type: none">• Index included in each volume• Unclear whether each volume must include a complete index or only the index for that volume	<ul style="list-style-type: none">• Index for any multi-volume set of excerpts must be a separately bound Index Volume and cannot be included in numbered volumes• Index must be a complete table of contents for that entire set of excerpts

Ninth Circuit Rule 30-1.5(a)

Changes to Ninth Circuit Rule 30-1

Page Numbering

Old Rule	New Rule as of December 1, 2020
<ul style="list-style-type: none">• Page numbers begin after index• Option to use separate sets of consecutive page numbers between tabs	<ul style="list-style-type: none">• Page numbers begin with caption (cover) page of Volume 1 as page 1• <u>All</u> pages of each volume (including caption pages, blank pages, tabs, and certificates) included in consecutive page numbering, except separate Index Volume

Ninth Circuit Rule 30-1.5(c)

Changes to Ninth Circuit Rule 30-1

Volume 1

Old Rule	New Rule as of December 1, 2020
Volume 1 contains all orders to be reviewed, oral statements of decisions, reports, opinions, memoranda, etc. by lower court judge(s) related to issues being appealed	Volume 1 of multi-volume excerpts contains all written or oral decisions being appealed, reviewed, or collaterally challenged, and <i>nothing</i> else (Clarified to allow strict enforcement of rule)

Ninth Circuit Rule 30-1.4(a)

Changes to Ninth Circuit Rule 30-1

Notice of Appeal and Transcripts

Old Rule	New Rule as of December 1, 2020
<ul style="list-style-type: none">• Notice of Appeal placed at beginning of Volume 2• Trial transcripts and exhibits placed by hearing date only	<ul style="list-style-type: none">• Notice of Appeal placed at end of excerpts, just before docket sheet• Option to submit trial transcripts and documentary trial exhibits as separate volume(s) at end of excerpts

Ninth Circuit Rules 30-1.4(f) & (c)

Changes to Ninth Circuit Rule 30-1

Social Security Administrative Record

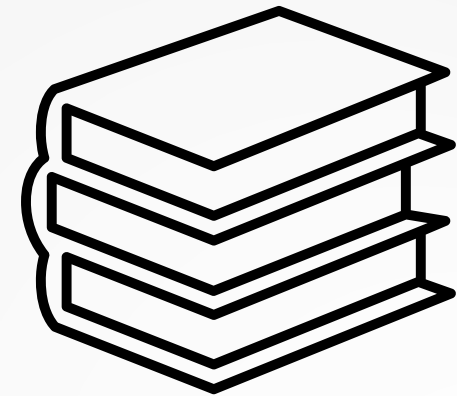
Old Rule	New Rule as of December 1, 2020
Social security certified administrative record included in excerpts	Social security certified administrative record filed separately from excerpts

Ninth Circuit Rule 30-1.4(e)

Ideal Organization of Multi-Volume Excerpts

(Excerpts that Exceed 300 Pages and/or Include Sealed Materials)

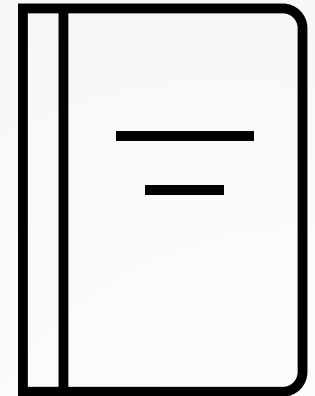
- **Volume 1**
 - All written/oral decisions being appealed, reviewed, or challenged, in reverse chronological order (newest first)
- **Volumes 2 through _**
 - All other parts of record (pleadings, etc.), in reverse chronological order (newest first)
- **Transcript volumes**
 - Transcripts, placed by hearing date in regular chronological order (oldest first)
 - Documentary trial exhibits, at end
- **Last non-sealed volume**
 - Transcripts, continued
 - Documentary trial exhibits, continued
 - Notice of appeal
 - Docket sheet
- **Sealed, final volume(s)**
 - All sealed parts of excerpts, in reverse chronological order (newest first)



Ninth Circuit Rule 30-1.4

Ideal Organization of Single-Volume Excerpts

- **No more than 300 pages** in total, including caption and index pages
- **Index** may be included, counted in page numbering (i.e., page 2)
- All parts of record in **reverse chronological order** (newest first)
- **Transcripts** placed by hearing date
- **Notice of appeal** at end, just before docket sheet
- **Docket sheet** last



Ninth Circuit Rules 30-1.4 and 30-1.5(b)

Sealed Excerpts of Record



- Format as **final volume(s)** of excerpts, containing only sealed documents
 - ✓ Exception: seal Volume 1 if the entire contents of Volume 1 are sealed instead of formatting it as the final volume
- Arrange in **reverse chronological order** (newest first)
- Must be accompanied by:
 - ✓ **Notice of Sealing** pursuant to Cir. Rule 27-13(d); or
 - ✓ **Motion to Seal** pursuant to Cir. Rule 27-13(e); or
 - ✓ **Notice of Intent to Unseal** pursuant to Cir. Rule 27-13(f)
- File **Pre-Sentence Report** and related sealed sentencing documents separately from excerpts

Ninth Circuit Rules 27-13 and 30-1.4(d)

Common Errors in Briefs & Excerpts

- **Brief's citations** are not in [volume #]-ER-[page #] format
- **Page numbering** of excerpts does not include all pages
 - ✓ All pages of each volume, except a separate Index Volume, must be included in the consecutive pagination, including caption pages and certificates
 - ✓ Index must be counted in pagination if included in a single volume set of excerpts
- **Volume 1** includes pleadings and other documents not permitted to be in Volume 1
- **Notice of Appeal** is not located at end of excerpts with docket sheet
- **Binding** multiple volumes of paper format excerpts together
 - ✓ Each volume must be separately bound, including a separate Index Volume
- **Paper brief** copies missing certificate ([Form 18](#)) that they are identical to electronic version

Physical Exhibits

Ninth Circuit Rule 27-14

Procedure:

1. Party files motion to transmit exhibits
2. Court rules on motion after briefing completed
3. Movant sends 4 copies of exhibits to court

Tips:

- Do not include physical exhibits in Excerpts of Record
- Use USB flash drives (vs CD/DVD) when possible
- Avoid formats requiring proprietary software unless you provide proprietary software
 - ✓ Formats playable in free media player software (such as VLC Media Player) are preferable

Resources

Rules:

<https://www.ca9.uscourts.gov/rules/>

Appellate Practice Guide (including [Shell Brief](#)):

<https://www.ca9.uscourts.gov/guides/appellate-practice-guide/>

Sample Excerpts:

<https://www.ca9.uscourts.gov/efiling/faqs/er/#ecfers-sample>

Frequently Asked Questions about Excerpts of Record:

<https://www.ca9.uscourts.gov/efiling/faqs/er/>

Email:

questions@ca9.uscourts.gov