

March 25, 2024



Pursuant to 28 U.S.C. § 2071(b), comments are invited on proposed revisions to the following Circuit Rules:

- Circuit Rules 40-1 through 40-4 and 35-1 through 35-4 (Petitions for Panel Rehearing and Petitions for Rehearing En Banc)
- Circuit Rules 3-4, 10-3, 15-2 (Deadlines for Ordering Transcripts and Filing Mediation Questionnaires)
- Circuit Rules 25-5 and related provisions (Electronic Filing of Case Initiation Pleadings)
- Circuit Rules 28-1, 28-1.1, 30-1, 32-1 (Briefs and Excerpts of Record)

The revisions to Circuit Rule 40-1 through 40-4 and 35-1 through 35-4 (Petitions for Panel Rehearing and Petitions for Rehearing En Banc) conform those rules to the merger of FRAP 35 and 40 as of December 1, 2024, by abrogating the rules relating to FRAP 35 and combining those provisions with the rules relating to FRAP 40. No substantive changes to either set of rules has been proposed, although a few minor changes are proposed in order to conform with the new FRAP 40 and existing court practice. Because of the nature of these revisions, they are provided in both clean and redlined versions.

The revisions to all of the remaining rules are to clarify and conform those rules to existing court practice.

A table of all proposed changes is attached, in addition to redlined versions of all proposed revisions and a clean version of the revisions to Circuit Rules 40-1 through 40-4.

If ultimately approved by the Court, these rules would become effective December 1, 2023.

Please direct comments to Molly C. Dwyer, Clerk of Court, at Molly_Dwyer@ca9.uscourts.gov, and Susan V. Gelmis, Chief Deputy Clerk, at Susan_Gelmis@ca9.uscourts.gov.

Comments must be submitted no later than May 3, 2024.

PROPOSED AMENDMENTS TO NINTH CIRCUIT RULES

Effective (no earlier than) December 1, 2024		
Circuit Rule	Summary of Proposal	Related or Coordinated Amendments
35-1 through 35-4 En Banc Rehearing	Abrogate these to combine them with rules 40-1 through 40-4 in conjunction with FRAP merger of these rules	40-1 through 40-4, update all related cross references
40-1 through 40-4 Panel Rehearing	Incorporate en banc rehearing rules formerly connected to FRAP 35, which is being merged with FRAP 40	35-1 through 35-4, which will be abrogated
3-4, 10-3, 15-2 Deadlines	Shorten deadlines for ordering transcripts and filing mediation questionnaire to reflect recent changes to case opening deadlines per the court's new policy	
25-5 Electronic Filing	Eliminate exception to electronic filing requirement for case initiation filings in this court, consistent with Administrative Order Regarding ACMS, which requires that all filings submitted to this court by counsel must be electronically filed.	5-2, 21-2, 22-3 to clarify that only unrepresented litigants may file originating proceedings in paper format
28-1	Clarify that all counseled briefs must include a table of contents and table of authorities	
30-1	Clarify excerpt citations should use Arabic numerals for page numbers, add directions for citing to immigration CARs and criminal pre-sentence reports. Require captions and table of contents for pro se excerpts.	
28.1-1, 32-1	Clarify that handwritten and typewritten briefs are referring to pro se briefs	

CIRCUIT RULE 40-1. FORMAT; NUMBER OF COPIES

(a) Cover

The cover of a petition for rehearing filed under FRAP 40 must state whether the petition seeks panel rehearing, rehearing en banc, or both. *(New 12/1/24)*

(b) Format/Length of Petition and Response

The format of a petition for rehearing and any response is governed by FRAP 32(c)(2). The petition may not exceed 15 pages unless it complies with the alternative length limitation of 4,200 words. A response, when ordered by the Court, must comply with the same length limits as the petition.

If an unrepresented litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for rehearing need not comply with FRAP 32.

The petition or response must be accompanied by the completed certificate of compliance found at [Form 11](#). *(New 7/1/00; Rev. 12/1/16; Rev. 12/1/21; 12/1/24)*

(c) Number of Copies

If the petition is not required to be filed electronically, an original shall be filed. *(Rev. 12/1/09)*

(d) Copy of Panel Decision

The petition shall be accompanied by a copy of the panel's order, memorandum disposition or opinion being challenged. *(New 7/1/06; Rev. 12/1/24)*

Cross Reference:

- FRAP 32. Form of Briefs, Appendices, and Other Papers on page 132, specifically, FRAP 32(c)(2)
- Circuit Rule 28-1. Briefs, Applicable Rules on page 107

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 40-1

Litigants are reminded that a petition for panel rehearing and/or rehearing en banc must be received by the Clerk in San Francisco on the due date. See FRAP 25(a)(1) and (2)(A) and Circuit Rule 25-2; see also United States v. James, 146 F.3d 1183 (9th Cir. 1998). (Rev. 12/1/02; 12/1/09; 1/1/12; 12/1/24)

CIRCUIT RULE 40-2. OPPORTUNITY TO RESPOND BEFORE EN BANC REVIEW

The Court will not ordinarily order en banc review, either sua sponte or in response to a petition for such review, without giving the parties an opportunity to express their views whether en banc review is appropriate. (Rev. 12/1/09; 12/1/24)

CIRCUIT RULE 40-3. LIMITED EN BANC COURT

The en banc court, for each case or group of related cases taken en banc, shall consist of the Chief Judge of this circuit and 10 additional judges to be drawn by lot from the active judges and any eligible senior judges of the Court. In the absence of the Chief Judge, an 11th judge shall be drawn by lot, and the most senior active judge on the panel shall preside. (Rev. 1/1/06, 7/1/07)

The drawing of the en banc court will be performed by the Clerk or a deputy clerk of the Court in the presence of at least one judge.

If a judge whose name is drawn for a particular en banc court is disqualified, recused, or knows that he or she will be unable to sit at the time and place designated for the en banc case or cases, the judge will immediately notify the Chief Judge who will direct the Clerk to replace the judge. (Rev. 1/1/06; 12/1/24)

In appropriate cases, the Court may order a rehearing by the full court following a hearing or rehearing en banc.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULES 40-2 TO 40-3

- (1) ***Petition for Rehearing En Banc.*** *When the clerk receives a timely petition for rehearing en banc, copies are sent to all active judges. Cases are rarely reheard en banc.*

If no petition for rehearing en banc has been submitted and the panel votes to deny rehearing, an order to that effect will be prepared and filed.

If a petition for rehearing en banc has been made, any judge may, within 21 days from receipt of the en banc petition, request the panel to make known its recommendation as to en banc consideration. Upon receipt of the panel's recommendation, any judge has 14 days to call for en banc consideration, whereupon a vote will be taken. If no judge requests or gives notice of an intention to request en banc review within 21 days of the receipt of the en banc petition, the panel may enter an order denying rehearing and

rejecting the petition for rehearing en banc.

Any active judge who is neither recused nor disqualified is eligible to vote. A judge who takes senior status during a vote is not eligible to vote. A senior judge is not eligible to be drawn to serve on the en banc court, subject to two exceptions: (1) a judge who takes senior status during the pendency of an en banc case for which the judge has already been chosen as a member of the en banc court may continue to serve on that court until the case is finally disposed of; and (2) a senior judge may elect to be eligible, in the same manner as an active judge, to be selected as a member of the en banc court when it reviews a decision of a panel of which the judge was a member.

The En Banc Coordinator notifies the judges when voting is complete. If the call fails, the En Banc Coordinator notifies the judges and the panel resumes control of the case. The panel then enters an appropriate order denying en banc review. The order will not specify the vote tally. (Rev. 12/1/24)

- (2) Grant of Rehearing En Banc.** *When the Court votes to rehear a matter en banc, the Chief Judge will enter an order so indicating. The vote tally is not communicated to the parties. The three-judge panel opinion is vacated. (Rev. 1/1/00)*

After the en banc court is chosen, the judges on the en banc court decide whether there will be oral argument or additional briefing. If there is to be oral argument, the Chief Judge (or the next senior active judge as the case may be) will enter an order designating the date, time, and place of argument. If no oral argument is to be heard, the Chief Judge will designate a date, time, and place for a conference of the en banc court. That date will ordinarily be the submission date of the case. If any issues have been isolated for specific attention, the order may also set forth those issues and additional briefing may be ordered. (Rev. 1/03; 12/1/09; 12/1/24)

Cross Reference:

- FRAP 32. Form of Briefs, Appendices, and Other Papers on page 132, specifically, FRAP 32(c)(2)

CIRCUIT RULE 40-4. PUBLICATION OF PREVIOUSLY UNPUBLISHED DISPOSITION

An order to publish a previously unpublished memorandum disposition in accordance with Circuit Rule 36-4 extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. If the mandate has issued, the petition for rehearing shall be accompanied by a motion to recall the mandate. (Rev. 1/96; 12/1/24)

CIRCUIT RULE 40-1. FORMAT; NUMBER OF COPIES

(a) Cover

The cover of a petition for rehearing filed under FRAP 40 must state whether the petition seeks panel rehearing, rehearing en banc, or both. (New 12/1/24)

~~(a)~~(b) Format/Length of Petition and Response

The format of a petition for ~~panel~~ rehearing ~~or rehearing en banc~~ and any response is governed by FRAP 32(c)(2). The petition may not exceed 15 pages unless it complies with the alternative length limitation of 4,200 words. A response, when ordered by the Court, must comply with the same length limits as the petition.

If an unrepresented litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for ~~panel~~ rehearing ~~or for rehearing en banc~~ need not comply with FRAP 32.

The petition or response must be accompanied by the completed certificate of compliance found at [Form 11](#). (New 7/1/00; Rev. 12/1/16; Rev. 12/1/21; [12/1/24](#))

~~(b)~~(c) Number of Copies

If the petition is not required to be filed electronically, an original shall be filed. (Rev. 12/1/09)

~~(c)~~(d) Copy of Panel Decision

The petition ~~for panel or en banc rehearing~~ shall be accompanied by a copy of the panel's order, memorandum disposition or opinion being challenged. (New 7/1/06; [Rev. 12/1/24](#))

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 40-1

Litigants are reminded that a petition for panel rehearing and/or rehearing en banc must be received by the Clerk in San Francisco on the due date. See FRAP 25(a)(1) and (2)(A) and Circuit Rule 25-2; see also *United States v. James*, 146 F.3d 1183 (9th Cir. 1998). (Rev. 12/1/02; 12/1/09; 1/1/12; [12/1/24](#))

~~CIRCUIT RULE 40-2. PUBLICATION OF PREVIOUSLY UNPUBLISHED DISPOSITION~~

~~An order to publish a previously unpublished memorandum disposition in accordance with Circuit Rule 36-4 extends the time to file a petition for rehearing to 14 days after the date of the~~

~~order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. If the mandate has issued, the petition for rehearing shall be accompanied by a motion to recall the mandate. (Rev. 1/96)~~

CIRCUIT RULE 40-2. OPPORTUNITY TO RESPOND BEFORE EN BANC REVIEW

The Court will not ordinarily order en banc review, either sua sponte or in response to a petition for such review, without giving the parties an opportunity to express their views whether en banc review is appropriate. (Rev. 12/1/09; 12/1/24)

CIRCUIT RULE 40-3. LIMITED EN BANC COURT

The en banc court, for each case or group of related cases taken en banc, shall consist of the Chief Judge of this circuit and 10 additional judges to be drawn by lot from the active judges and any eligible senior judges of the Court. In the absence of the Chief Judge, an 11th judge shall be drawn by lot, and the most senior active judge on the panel shall preside. (Rev. 1/1/06, 7/1/07)

The drawing of the en banc court will be performed by the Clerk or a deputy clerk of the Court in the presence of at least one judge.

If a judge whose name is drawn for a particular en banc court is disqualified, recused, or knows that he or she will be unable to sit at the time and place designated for the en banc case or cases, the judge will immediately notify the Chief Judge who will direct the Clerk to replace the judge. (Rev. 1/1/06; 12/1/24)

In appropriate cases, the Court may order a rehearing by the full court following a hearing or rehearing en banc.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULES 40-2 TO 40-3

(1) *Petition for Rehearing En Banc.* When the clerk receives a timely petition for rehearing en banc, copies are sent to all active judges. Cases are rarely reheard en

banc.

If no petition for rehearing en banc has been submitted and the panel votes to deny rehearing, an order to that effect will be prepared and filed.

If a petition for rehearing en banc has been made, any judge may, within 21 days from receipt of the en banc petition, request the panel to make known its recommendation as to en banc consideration. Upon receipt of the panel's recommendation, any judge has 14 days to call for en banc consideration, whereupon a vote will be taken. If no judge requests or gives notice of an intention to request en banc review within 21 days of the receipt of the en banc petition, the panel may enter an order denying rehearing and rejecting the petition for rehearing en banc.

Any active judge who is neither recused nor disqualified is eligible to vote. A judge who takes senior status during a vote is not eligible to vote. A senior judge is not eligible to be drawn to serve on the en banc court, subject to two exceptions: (1) a judge who takes senior status during the pendency of an en banc case for which the judge has already been chosen as a member of the en banc court may continue to serve on that court until the case is finally disposed of; and (2) a senior judge may elect to be eligible, in the same manner as an active judge, to be selected as a member of the en banc court when it reviews a decision of a panel of which the judge was a member.

The En Banc Coordinator notifies the judges when voting is complete. If the call fails, the En Banc Coordinator notifies the judges and the panel resumes control of the case. The panel then enters an appropriate order denying en banc review. The order will not specify the vote tally. (Rev. 12/1/24)

- (2) **Grant of Rehearing En Banc.** When the Court votes to rehear a matter en banc, the Chief Judge will enter an order so indicating. The vote tally is not communicated to the parties. The three-judge panel opinion is vacated. (Rev. 1/1/00)

After the en banc court is chosen, the judges on the en banc court decide whether there will be oral argument or additional briefing. If there is to be oral argument, the Chief Judge (or the next senior active judge as the case may be) will enter an order designating the date, time, and place of argument. If no oral argument is to be heard, the Chief Judge will designate a date, time, and place for a conference of the en banc court. That date will ordinarily be the submission date of the case. If any issues have been isolated for specific attention, the order may also set forth those issues and additional briefing may be ordered. (Rev. 1/03; 12/1/09)

CROSS REFERENCE:

- FRAP 32. Form of Briefs, Appendices, and Other Papers on page 132, specifically, FRAP 32(c)(2)

CIRCUIT RULE 40-4. PUBLICATION OF PREVIOUSLY UNPUBLISHED DISPOSITION

An order to publish a previously unpublished memorandum disposition in accordance with Circuit Rule 36-4 extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. If the mandate has issued, the petition for rehearing shall be accompanied by a motion to recall the mandate. (Rev. 1/96; 12/1/24)

Rules Related to En Banc FRAP Revisions

CIRCUIT RULE 35-1. PETITION FOR REHEARING EN BANC

(Abrogated 12/1/24)

~~Where a petition for rehearing en banc is made pursuant to FRAP 35(b) in conjunction with a petition for panel rehearing, a reference to the petition for rehearing en banc, as well as to the petition for panel rehearing, shall appear on the cover of the petition. (Rev. 12/1/09)~~

~~When the opinion of a panel directly conflicts with an existing opinion by another court of appeals and substantially affects a rule of national application in which there is an overriding need for national uniformity, the existence of such conflict is an appropriate ground for petitioning for rehearing en banc. (Rev. 12/1/09)~~

CIRCUIT RULE 35-2. OPPORTUNITY TO RESPOND

(Abrogated 12/1/24)

~~Where a party petitions for hearing or rehearing en banc, the Court will not order a hearing or rehearing en banc without giving the other parties an opportunity to express their views whether hearing or rehearing en banc is appropriate. Where no petition for en banc review is filed, the Court will not ordinarily order a hearing or rehearing en banc without giving counsel an opportunity to respond on the appropriateness of such a hearing. (Rev. 12/1/09)~~

CIRCUIT RULE 35-3. LIMITED EN BANC COURT

(Abrogated 12/1/24)

~~The en banc court, for each case or group of related cases taken en banc, shall consist of the Chief Judge of this circuit and 10 additional judges to be drawn by lot from the active judges of the Court. In the absence of the Chief Judge, an 11th active judge shall be drawn by lot, and the most senior active judge on the panel shall preside. (Rev. 1/1/06, 7/1/07)~~

~~The drawing of the en banc court will be performed by the Clerk or a deputy clerk of the Court in the presence of at least one judge and shall take place on the first working day following the date of the order taking the case or group of related cases en banc.~~

~~If a judge whose name is drawn for a particular en banc court is disqualified, recused, or knows that he or she will be unable to sit at the time and place designated for the en banc case or cases, the judge will immediately notify the Chief Judge who will direct the Clerk to draw a replacement judge by lot. (Rev. 1/1/06)~~

~~In appropriate cases, the Court may order a rehearing by the full court following a hearing or rehearing en banc.~~

Cross Reference:

- ~~FRAP 40. Petition for Panel Rehearing on page 158~~

~~CIRCUIT ADVISORY COMMITTEE NOTE TO RULES 35-1 TO 35-3~~

~~(1) — **Calculation of Filing Deadline.** Litigants are reminded that a petition for rehearing en banc must be received by the clerk in San Francisco on the due date. See FRAP 25(a)(1) and (2)(A) and Circuit Rule 25-2; see also *United States v. James*, 146 F.3d 1183 (9th Cir. 1998). (Rev. 12/1/02; 12/1/09; 1/1/12)~~

~~(2) — **Petition for Rehearing En Banc.** When the clerk receives a timely petition for rehearing en banc, copies are sent to all active judges. If the panel grants rehearing it so advises the other members of the Court, and the petition for rehearing en banc is deemed rejected without prejudice to its renewal after the panel completes action on the rehearing. Cases are rarely reheard en banc.~~

~~If no petition for rehearing en banc has been submitted and the panel votes to deny rehearing an order to that effect will be prepared and filed.~~

~~If a petition for rehearing en banc has been made, any judge may, within 21 days from receipt of the en banc petition, request the panel to make known its recommendation as to en banc consideration. Upon receipt of the panel's recommendation, any judge has 14 days to call for en banc consideration, whereupon a vote will be taken. If no judge requests or gives notice of an intention to request en banc consideration within 21 days of the receipt of the en banc petition, the panel will enter an order denying rehearing and rejecting the petition for rehearing en banc.~~

~~Any active judge who is not recused or disqualified and who entered upon active service before the request for an en banc vote is eligible to vote. A judge who takes senior status after a call for a vote may not vote or be drawn to serve on the en banc court. This rule is subject to two exceptions: (1) a judge who takes senior status during the pendency of an en banc case for which the judge has already been chosen as a member of the en banc court may continue to serve on that court until the case is finally disposed of; and (2) a senior judge may elect to be eligible, in the same manner as an active judge, to be selected as a member of the en banc court when it reviews a decision of a panel of which the judge was a member.~~

~~The En Banc Coordinator notifies the judges when voting is complete. If the recommendation or request fails of a majority, the En Banc Coordinator notifies the judges and the panel resumes control of the case. The panel then enters an appropriate order denying en banc consideration. The order will not specify the vote tally.~~

~~(3) — **Grant of Rehearing En Banc.** When the Court votes to rehear a matter en banc, the Chief Judge will enter an order so indicating. The vote tally is not communicated to the parties. 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. 1/1/00)~~

~~After the en banc court is chosen, the judges on the panel decide whether there will be oral argument or additional briefing. If there is to be oral argument, the Chief Judge (or the next senior active judge as the case may be) will enter an order designating the date, time and place of argument. If no oral argument is to be heard, the Chief Judge will designate a date, time, and place for a conference of the en banc court. That date will ordinarily be the submission date of the case. If any issues have been isolated for specific attention, the order may also set forth those issues and additional briefing may be ordered. (Rev. 1/03; 12/1/09)~~

Cross Reference:

- ~~FRAP 32. Form of Briefs, Appendices, and Other Papers on page 132, specifically, FRAP 32(e)(2)~~
- ~~FRAP 40. Petition for Panel Rehearing on page 158~~

CIRCUIT RULE 35-4. FORMAT; NUMBER OF COPIES

(Abrogated 12/1/24)

(a) ~~Format/Length of Petition and Response~~

~~The format and length of a petition for rehearing en banc and any response shall be governed by Circuit Rule 40-1(a).~~

~~The petition or response must be accompanied by the completed certificate of compliance found at Form 11. (New 7/1/00; Rev. 12/1/21)~~

(b) ~~Number of Copies~~

~~If the petition is not required to be filed electronically, a petition for rehearing en banc shall be filed in an original. (Rev. 12/1/09)~~

CIRCUIT RULE 41-2. TIMING OF MANDATE

In cases disposed of by an order of a motions panel, a mandate will issue 7 days after the time to file a motion for reconsideration expires pursuant to Circuit Rule 27-10, or 7 days after entry of an order denying a timely motion for such relief, whichever is later. (New 1/1/04; Rev. 12/1/09)

Cross Reference:

- ~~FRAP 35. En Banc Determination on page 145, specifically, FRAP 35(e)~~
- FRAP 40. Petition for **Panel** Rehearing on page **Error! Bookmark not defined.**, specifically, FRAP 40(a)(1)

Deadline Rules

CIRCUIT RULE 3-4. MEDIATION QUESTIONNAIRE

(New 12/1/09)

- (a) The Court encourages the parties in Ninth Circuit civil appeals to engage in mediation. To that end, except as provided in section (b) below, within 57 days of the docketing of a civil appeal, the appellant(s) shall, and the appellee(s) may, complete and submit **Form 7**, the Ninth Circuit Mediation Questionnaire. The Clerk shall transmit the Mediation Questionnaire to counsel with the time scheduling order. Counsel shall return it according to the instructions contained in the Mediation Questionnaire. The sole purpose of the Mediation Questionnaire is to provide information about new appeals to the Court's Mediation Office. *(Rev. 12/1/24)*

Appellant's failure to comply with this rule may result in dismissal of the appeal in accordance with Circuit Rule 42-1.

- (b) The requirement for filing a Mediation Questionnaire shall not apply to:
- (1) an appeal in which the appellant is proceeding without the assistance of counsel;
 - (2) an appeal from an action filed under 28 U.S.C. §§ 2241, 2254, 2255; and,
 - (3) petitions for a writ under 28 U.S.C. § 1651.

CIRCUIT RULE 10-3. ORDERING THE REPORTER'S TRANSCRIPT

10-3.1. Civil Appeals

(a) **Appellant's Initial Notice**

Unless the parties have agreed on which portions of the transcript to order, or appellant intends to order the entire transcript, appellant shall serve appellee with a notice specifying which portions of the transcript appellant intends to order from the court reporter, as well as a statement of the issues the appellant intends to present on appeal. In the alternative, appellant shall serve on appellee a statement indicating that appellant does not intend to order any transcripts. This notice and statement shall be served on appellee within 7+0 days of the filing of the notice of appeal or within 7+0 days of the entry of an order disposing of the last timely filed motion of a type specified in FRAP 4(a)(4). *(Rev. 12/1/09; 12/1/24)*

(b) **Appellee's Response**

Within 7+0 days of the service date of appellant's initial notice, appellee may respond to

appellant's initial notice by serving on appellant a list of any additional portions of the transcript that appellee deems necessary to the appeal. (Rev. 12/1/09; 12/1/24)

(c) No Transcripts Necessary

If the parties agree that no transcripts are necessary, appellant shall file in the district court a notice stating that no transcripts will be ordered, ~~and provide copies of this notice to the court reporter and the Court of Appeals.~~ (Rev. 12/1/24)

(d) Ordering the Transcript

Within ~~1430~~ days of the filing of the notice of appeal, appellant shall file a transcript order in the district court, using the district court's transcript designation form and shall provide a copy of the designation form to the court reporter. (Rev. 12/1/09; 12/1/24)

In ordering the transcripts, appellant shall either order all portions of the transcript listed by both appellant and appellee or certify to the district court pursuant to subsection (f) of this rule that the portions listed by appellee in the response to appellant's initial notice are unnecessary.

(e) Paying for the Transcript

On or before filing the designation form in the district court, appellant shall make arrangements with the court reporter to pay for the transcripts ordered. The United States Judicial Conference has approved the rates a reporter may charge for the production of the transcript and copies of a transcript. Appellant must pay for the original transcript. The transcript is considered ordered only after the designation form has been filed in the district court and appellant has made payment arrangements with the court reporter or the district court has deemed the transcripts designated by appellee to be unnecessary and appellee has made financial arrangements. Payment arrangements include obtaining authorization for preparation of the transcript at government expense.

(f) Paying for Additional Portions of the Transcript

If appellee notifies appellant that additional portions of the transcript are required pursuant to Circuit Rule 10-3.1(b), appellant shall make arrangements with the court reporter to pay for these additional portions unless appellant certifies that they are unnecessary to the appeal and explains why not.

If such a certificate is filed in the district court, with copies to the court reporter and this Court, the district court shall determine which party shall pay for which portions of the transcript. Appellant may ask the Court of Appeals for an extension of time to make arrangements with the court reporter to pay for the transcripts pending the district court's resolution of the issue.

10-3.2. Criminal Appeals

(a) Early Ordering of the Transcript in Criminal Trials Lasting 10 Days or More

Where criminal proceedings result in a trial lasting 10 days or more, the district court may authorize the preparation of the transcript for the appeal and payment of the court reporter after the entry of a verdict but before the filing of a notice of appeal. In addition to filing a CJA Form 24 (Authorization and Voucher for Payment of Transcript) in the district court, appointed counsel shall certify to the district court that defendant is aware of the right to appeal, and that the defendant has instructed counsel to appeal regardless

of the nature or length of the sentence imposed. *(Rev. 12/1/09)*

Retained counsel must make a similar certification to the district court along with financial arrangements with the court reporter to pay for the transcripts before obtaining early preparation authorization.

The Court of Appeals waives the reduction on transcript price for transcripts ordered pursuant to this subsection from the date of the initial order to the date the transcripts would otherwise be ordered, i.e., 7 days from the filing of the notice of appeal. *(Rev. 12/1/02; 12/1/09)*

The parties shall comply with all other applicable parts of Circuit Rule 10-3.2(b) - (f).

(b) Appellant's Initial Notice

Unless parties have agreed on which portions of the transcript to order or appellant intends to order the entire transcript, appellant shall serve appellee with a notice listing the portions of the transcript appellant will order from the court reporter, as well as a statement of the issues the appellant intends to present on appeal. In the alternative, the appellant shall serve appellee with a statement indicating that no transcripts will be ordered. This notice and statement shall be served on appellee within 7 days of the filing of the notice of appeal or within 7 days of the entry of an order disposing of the last timely filed motion of a type specified in FRAP 4(b). *(Rev. 12/1/02; 12/1/09)*

(c) Appellee's Response

Within 7 days of the service of appellant's initial notice, the appellee may serve on the appellant a response specifying what, if any, additional portions of the transcript are necessary to the appeal. *(Rev. 12/1/09)*

(d) Ordering the Transcript

Within ~~1421~~ days from the filing of the notice of appeal, appellant shall file a transcript order in the district court using the district court's transcript designation form and shall provide a copy of this designation form to the court reporter. Appellant shall order all the portions of the transcript listed by both appellant and appellee, or certify to the district court pursuant to subsection (f) of this rule that the portions of the transcript listed by appellee in the response to appellant's initial notice are unnecessary. *(Rev. 12/1/09; 12/1/24)*

(e) Paying for the Transcript

Where appellant is represented by retained counsel, counsel shall make arrangements with the court reporter to pay for the transcripts on or before the day the transcript designation form is filed in the district court. Appellee shall make financial arrangements when the district court has deemed the transcripts designated by appellee to be unnecessary and appellee desires production of those transcripts.

Where the appellant is proceeding in forma pauperis, appellant shall prepare a CJA Voucher Form 24 and submit the voucher to the district court along with the designation form.

In either case, failure to make proper arrangements with the court reporter to pay for the ordered transcripts may result in sanctions pursuant to FRAP 46(c).

(f) Paying for Additional Portions of the Transcript

If appellee notifies appellant that additional portions of the transcript are required

pursuant to Circuit Rule 10-3.2(c), appellant shall make arrangements with the court reporter to pay for these additional portions unless appellant certifies that they are unnecessary to the appeal and explains why not.

If such a certificate is filed in the district court, with copies to the court reporter and this Court, the district court shall determine which party shall pay for which portions of the transcript. Appellant may ask the Court of Appeals for an extension of time to make arrangements with the court reporter to pay for the transcripts pending the district court's resolution of the issue. *(Rev. 7/97)*

CIRCUIT RULE 15-2. MEDIATION QUESTIONNAIRE IN AGENCY CASES

(New 12/1/09)

- (g) The Court encourages the parties in Ninth Circuit agency cases to engage in mediation. To that end, except as provided in section (b) below, within 57 days of the docketing of the petition for review, the petitioner(s) shall, and the respondent(s) may, complete and submit Form 7, the Ninth Circuit Mediation Questionnaire. The Clerk shall transmit the Mediation Questionnaire to counsel with the time scheduling order. Counsel shall return it according to the instructions contained in the Mediation Questionnaire. The sole purpose of the Mediation Questionnaire is to provide information about new petitions to the Court's Mediation Office. *(Rev. 12/1/24)*

Petitioner's failure to comply with this rule may result in dismissal of the petition in accordance with Circuit Rule 42-1.

- (h) The requirement for filing a Mediation Questionnaire shall not apply to:
- (1) a petition in which the petitioner is proceeding without the assistance of counsel; and
 - (2) a petition for review of an order of the Board of Immigration Appeals.

Electronic Filing Rules

CIRCUIT RULE 25-5. ELECTRONIC FILING

(New Rule 12/1/09, Rev. 7/1/13, 3/23/16; 12/1/18; 12/1/24)

(a) Participation.

All attorneys and court reporters are required to submit all filings electronically using the Court's Appellate Electronic Filing System unless the Court grants a request to be exempted from the requirement. Filers seeking an exemption must complete the Appellate Electronic Filing System Exemption Form found on the Court's website. If an exempt filer registers for the Appellate Electronic Filing System, that registration will abrogate the exemption. (Rev. 7/1/13)

Use of the Appellate Electronic Filing System is voluntary for all parties proceeding without counsel.

If a technical malfunction prevents access to the Appellate Electronic Filing System for a protracted period, the Court by special order may permit paper filings pending restoration of electronic access.

(b) Documents that may be submitted either electronically or in paper format.

(Abrogated 12/1/24)

- ~~(1) — Petitions for review of agency orders under FRAP 15(a) and Circuit Rule 15-1;~~
- ~~(2) — Applications for enforcement of agency orders under FRAP 15(b) and Circuit Rule 15-1;~~
- ~~(3) — Petitions for permission to appeal under FRAP 5 and Circuit Rule 5-2;~~
- ~~(4) — Petitions for writs of mandamus or prohibition under FRAP 21 and Circuit Rule 21-1; and~~
- ~~(5) — Applications for leave to file second or successive petitions under 28 U.S.C. § 2254 or motions under 28 U.S.C. § 2255 and Circuit Rule 22-3. (Rev. 7/1/13)~~

CIRCUIT RULE 5-2. NUMBER OF COPIES AND LENGTH

(a) **Number of Copies:** ~~The Unrepresented~~ parties must file an original in paper format of a petition, cross-petition, answer, and any supporting papers and appendices filed pursuant to FRAP 5(a) or 6(c). ~~unless the~~ petition, cross-petition, or answer filed by counsel must be submitted via the Appellate Electronic Filing System. (New Rule 7/1/00; Rev. 12/1/09; Rev. 7/1/13; Rev. 12/1/16; 12/1/24)

(b) Length: Except by permission of the Court, a petition, cross-petition, or answer filed under FRAP 5 may not exceed 20 pages. The documents listed at FRAP 5(b)(1)(E) and 32(f) are excluded from the length limit calculation. *(New 12/1/16)*

CIRCUIT RULE 21-2. FORMAT OF EXTRAORDINARY WRITS AND ANSWERS; NUMBER OF COPIES; LENGTH

(a) Format: Petitions for writs of mandamus, prohibition or other extraordinary relief directed to a district judge, magistrate judge, or bankruptcy judge must bear the title of the appropriate court and may not bear the name of the judge as respondent in the caption. Petitions must include in the caption: the name of each petitioner; the name of the appropriate court as respondent; and the name of each real party in interest. Other petitions for extraordinary writs must include in the caption: the name of each petitioner and the name of each appropriate adverse party below as respondent. *(Rev. 7/1/00; Rev. 12/1/16)*

(b) Number of Copies: ~~The Unrepresented~~ parties must file an original in paper format of the petition, an answer, if ordered, and any supporting papers and appendices, ~~unless the~~ petition or answer filed by counsel must be submitted via the Appellate Electronic Filing System. *(New 7/1/00; Rev. 12/1/09; Rev. 7/1/13; Rev 12/1/16; 12/1/24)*

(c) Length: Except by permission of the Court, a petition, or answer, if ordered, may not exceed 30 pages. The documents listed at FRAP 21(a)(2)(C) and FRAP 32(f) are excluded from the length limit calculation. *(New 12/1/16)*

CIRCUIT RULE 22-3. APPLICATIONS FOR AUTHORIZATION TO FILE SECOND OR SUCCESSIVE 28 U.S.C. § 2254 PETITION OR § 2255 MOTION - ALL CASES; STAY OF EXECUTION - CAPITAL CASES

(a) Applications. An applicant seeking authorization to file a second or successive 28 U.S.C. § 2254 petition or 28 U.S.C. § 2255 motion in the district court must file an application in the court of appeals demonstrating entitlement to such leave under sections 2254 or 2255. *See Form 12.* ~~Unrepresented parties must file a~~ An original in paper format of the application. must be filed with the Clerk of the court of appeals unless the An application filed by counsel must be submitted via the Appellate Electronic Filing System. No filing fee is required. If an application for authorization to file a second or successive section 2254 petition or section 2255 motion is mistakenly submitted to the district court, the district court shall refer it to the court of appeals. If an unauthorized second or successive section 2254 petition or section 2255 motion is submitted to the district court, the district court may, in the interests of justice, refer it to the court of appeals. *(Rev. 12/1/09; Rev. 7/1/13; Rev. 7/1/16; Rev. 12/1/18; Rev. 12/1/24)*

The applicant must:

(1) include [Form 12](#) if submitted by an applicant not represented by counsel;

(2) include the proposed section 2254 petition or section 2255 motion that the applicant seeks to file in the district court;

(3) state as to each claim presented whether it previously has been raised in any state or federal court and, if so, the name of the court and the date of the order disposing of such claim(s); and

(4) state how the requirements of sections 2244(b) or 2255 have been satisfied.

(b) Attachments. If reasonably available to the applicant, the application must include copies of all relevant state court orders and decisions. *(Rev. 12/1/09; Rev. 7/1/16)*

(c) Service. (1) Capital Cases: In capital cases, the applicant must serve a copy of the application, attachments, and proposed section 2254 petition/section 2255 motion on the respondent, and must attach a certificate of service to the application filed with the Court. *(Rev. 7/1/16)*

(2) Noncapital Cases: In noncapital cases, service of the application on the respondent is not required. *(New 7/1/16)*

(d) Response. (1) Capital Cases: In capital cases where an execution date is scheduled and no stay is in place, respondent shall respond to the application and file supplemental attachments as soon as practicable. Otherwise, in capital cases, respondent shall respond and file supplemental attachments within 14 days of the date the application is served. *(Rev. 12/1/09)*

(2) Noncapital Cases: In noncapital cases, no response is required unless ordered by the Court. Respondent may include supplemental attachments with its response. *(Rev. 7/1/16)*

(e) Decision. The application will be determined by a three-judge panel. In capital cases where an execution date is scheduled and no stay is in place, the Court will grant or deny the application, and state its reasons therefore, as soon as practicable.

(f) Stays of Execution. If an execution date is scheduled and no stay is in place, any judge may, if necessary, enter a stay of execution, *see* Circuit Rule 22-2(e), but the question will be presented to the panel immediately. If the Court grants leave to file a second or successive application, the Court shall stay the applicant's execution pending disposition of the second or successive petition by the district court. *(Rev. 12/1/18)*

Miscellaneous Briefs and Excerpts Clarifications

BRIEFS

Circuit Rule 28-1. Briefs, Applicable Rules

- (a) Briefs shall be prepared and filed in accordance with the Federal Rules of Appellate Procedure except as otherwise provided by these rules. *See* FRAP 28, 29, 31 and 32. All briefs submitted by counsel, including supplemental briefs, must contain a table of contents and a table of authorities pursuant to FRAP 28, unless the court directs or permits the brief to be in letter format. Briefs not complying with FRAP and these rules may be stricken by the Court. *(Rev. 12/1/24)*
- (b) Parties must not append or incorporate by reference briefs submitted to the district court or agency or this Court in a prior appeal, or refer this Court to such briefs for the arguments on the merits of the appeal. *(New Rule 7/1/00)*
- (c) Appellants proceeding without assistance of counsel may file the informal form briefs provided by the Clerk in lieu of the briefs described in FRAP 28(a) and (c), and need not comply with the technical requirements of FRAP. *(Rev. 1/96; 12/1/19)*

Circuit Rule 28.1-1. Sequence, Content, Form, and Length of Cross-Appeal Briefs; Certificate of Compliance

(New 12/1/16)

- (a) **Sequence, Content, and Form:** The sequence, form, and content of briefing are governed by FRAP 28.1(b) – (d) and 32(a)(1), (3), and (4) – (6).
- (b) **Principal Brief:** The length of appellant’s principal brief under FRAP 28.1(c)(1) and appellant’s response and reply brief under FRAP 28.1(c)(3) may not exceed 14,000 words.
- (c) **Principal and Response Brief:** The length of appellee’s principal and response brief under FRAP 28.1(c)(2) may not exceed 16,500 words.
- (d) **Reply Brief:** The length of appellee’s reply brief under FRAP 28.1(c)(4) may not exceed half of the length limit set forth in (b) above.
- (e) **Exclusions:** The materials listed at FRAP 32(f) are excluded from the length limit.
- (f) **Certificate of Compliance:** A brief using a word count length calculation must be accompanied by [Form 8](#) found on the Court’s website.

- (g) **Handwritten or Typewritten Briefs:** Handwritten or typewritten briefs filed by unrepresented litigants in cross-appeals may not exceed 50 pages for principal and response/reply briefs; 59 pages for principal/response briefs; and 25 pages for reply briefs. (*Rev. 12/1/24*)

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*)
- (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 a visual image is taken from the record, it must be followed by a citation to its location in the excerpts of record. Where words in a visual image are intended to be read by the court, those words must be legible and must be manually counted and added to the certificate of compliance required under FRAP 32(g) and Circuit Rule 32-1(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. (*New 12/1/22*)
- (g) **Handwritten or Typewritten Briefs Filed by Unrepresented Litigants:** 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. 12/1/24*)

EXCERPTS OF RECORD

Circuit Rule 30-1. The 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. If a pro se party elects to file excerpts of record or other appendices to their brief, the excerpts must include a caption page pursuant to Circuit Rule 30-1.5(d) and a table of contents pursuant to Circuit Rule 30-1.5(a).

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. Arabic numerals should be used for numbers, rather than Roman numerals. Citations to several nonsequential pages should use the complete citation format, such as “2-ER-51, 2-ER-98.” Citations to the administrative record in social security cases and immigration petitions for review shall be CAR-[page number]. Citations to presentence report documents shall be PSR-[page number].