Changes to Ninth Circuit Rules effective January 1, 2015

1. **Circuit Rule 31-2.2 and Circuit Advisory Committee Note to Rule 31-2.2.** Incorporated procedure for streamlined extensions of time into Circuit Rules, replacing former telephonic procedure.

CIRCUIT RULE 31-2. TIME FOR SERVICE AND FILING

31-2.2. Extensions of Time for Filing Briefs

(a) Streamlined Extensions of Time: If a party has not previously filed a motion for an extension of time to file an opening, answering, reply or cross-appeal brief under subsection (b) of this rule, that party may obtain a single streamlined extension of time to file that brief not to exceed 30 days. The streamlined extension of time is not available:

(1) if a case has been previously expedited;

(2) when a Notice of Oral Argument has issued; or

(3) for any brief filed in a Preliminary Injunction Appeal (Ninth Circuit Rule 3-3), an Incarcerated Recalcitrant Witness Appeal (28 U.S.C. § 1826; Ninth Circuit Rule 3-5) or a Class Action Fairness Act appeal (28 U.S.C. § 1453(c)).

Parties registered for electronic filing may request a streamlined extension of time online via the Appellate ECF system using the "File Streamlined Request to Extend Time to File Brief" event. A request must be made on or before the brief's due date.

Parties not registered for electronic filing may request a streamlined extension of time by completing Form 13 and placing the form in the mail to the Clerk on or before the brief's due date.

The Clerk will approve requests that comply with the rule and will provide the parties with a new schedule. The Clerk will inform parties not eligible for relief under this subsection as to the appropriate method to obtain relief. *(Rev. 1/1/15)*

(b) Written Motions for Extension of Time to File a Brief: In all other cases, an extension of time may be granted only upon written motion supported by a showing of diligence and substantial need. *(Rev. 1/1/15)*

The motion shall be filed at least 7 days before the expiration of the time prescribed for filing the brief, and shall be accompanied by a declaration stating: *(Rev. 12/1/09)*

(1) when the brief is due;

(2) when the brief was first due;

(3) the length of the requested extension;

(4) the reason an extension is necessary;

(5) movant's representation that movant has exercised diligence and that the brief will be filed within the time requested;

(6) whether any other party separately represented objects to the request, or why the moving party has been unable to determine any such party's position; and

(7) that the court reporter is not in default with regard to any designated transcripts. *(Rev. 12/1/09)*

A conclusory statement as to the press of business does not constitute a showing of diligence and substantial need. *(Rev. 1/96)*

Cross Reference: *(Rev. 12/1/09; Rev. 1/1/15)*

- Circuit Rule 11-1. Filing the Reporter's Transcript on page 38, specifically, 11-1.2. Notice of Reporter Defaults on page 39
- Circuit Rule 27-11. Motions; Effect on Schedule on page 100
- Circuit Advisory Committee Note to Rule 32-2 (impact of motion for leave to file overlength brief on schedule) on page 133

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 31-2.2

If a party files a motion for a first extension of time to file a brief on or before the due date for the brief, and the Court does not rule on the motion until shortly before the due date, or on or after the due date for the brief, the Court ordinarily will grant some additional time to file the brief even if the Court does not grant the motion in full. Multiple motions for extension of time to file a brief are disfavored, however, and the Court may decline to grant relief if a successive motion fails to demonstrate diligence and substantial need.

If the Court does not act on a motion for extension of time to file a brief before the requested due date, the Court nonetheless expects the moving party to file the brief within the time requested in the motion. The brief should be accompanied by a letter stating that a motion for an extension of time is pending.

The streamlined extension of time is available only for opening, answering, reply and cross-appeal briefs. A request to extend any other deadline must be made by way of written motion. The streamlined extension of time is intended to be the sole extension of time to file a brief; parties should file a written motion if 30 days is not sufficient time to prepare the brief. If a streamlined extension of time is approved, any further request for an extension of time to file a brief must be made in writing pursuant to Circuit Rule 31-2.2(b). The Clerk's approval of a party's streamlined extension of time to file an initial brief does not prevent that party from obtaining a streamlined extension of time to file a subsequent brief.

The streamlined extension of time replaces the former 14-day telephonic extension of time. (New 01/01; Rev. 12/1/09; Rev. 1/1/15)

2. **Circuit Rule 32-5.** Clarifying length limits for form briefs by unrepresented litigants.

CIRCUIT RULE 32-5. UNREPRESENTED LITIGANTS

An opening form brief filed by an unrepresented party pursuant to Ninth Circuit Rule 28-1(c) shall not exceed 40 double-spaced pages. The limit includes answers to the questions listed in the form brief and any supplemental argument offered in the brief. The limit excludes any attached copies of court documents, statutory material, covers, tables of contents and/or authorities, and the certificate of service. If an opening form brief is filed, the reply brief need not comply with the technical requirements set forth at FRAP 28(c) but shall not exceed 20 double-spaced pages. The materials excluded from the length limit for opening briefs shall also be excluded from the calculation of a reply brief's length. The brief of an unrepresented party who elects not to file a form brief must comply with FRAP 28 and 32 and Ninth Circuit Rules 28-2 and 32-1 to 32-2. *(Rev. 1/1/15)*