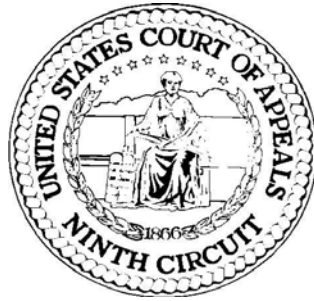


June 7, 2016



Pursuant to 28 U.S.C. § 2071(b), comments are invited on revisions to Circuit Rule 5-2, Number of Copies and Length; Circuit Rule 21-2, Format of Extraordinary Writs and Answers; Circuit Rule 21-4, Answers to Petitions; Circuit Rule 27-1, Filing of Motions; Circuit Rule 29-2, Post Disposition Amici Briefs; Circuit Rule 32-1, Length and Form of Briefs; Circuit Rule 32-3, Page/Word Count Conversion Formula; Circuit Rule 32-4, Briefs and Excerpts of Record in Capital Cases; Circuit Rule 40-1, Format and Number of Copies for Petitions for Rehearing; and adoption of new Circuit Rule 28.1-1, Sequence, Content, Form and Length of Cross-Appeal Briefs. The proposed changes respond to anticipated modifications to the Federal Rules of Procedure that will reduce the length limits for briefs and mandate a word count length limit for other pleadings. The amendments to the circuit rules (1) maintain the current length limits for briefs and (2) retain a page count length for documents other than the exception of petitions for rehearing. The revisions also eliminate the seldom used line count length limit.

Comments are also invited on the proposed revision to Circuit Rule 47-1, Effective Date of Rules. The revision changes one of the effective dates to December 1, which is the effective date for federal rules. This amendment would permit coordination of circuit rule modifications with corresponding federal rule modifications.

Please direct comments to Molly C. Dwyer, Clerk of Court at Molly_Dwyer@ca9.uscourts.gov, Susan V. Gelmis, Chief Deputy Clerk at Susan_Gelmis@ca9.uscourts.gov, and Cole Benson, Supervising Deputy Clerk at Cole_Benson@ca9.uscourts.gov. Comments must be submitted no later than August 2, 2016.

Circuit Rule 5-2

Number of Copies and Length

- (a) Number of Copies: ~~The parties Petitioner shall~~ must file an original in paper format of a petitions, cross-petition, answer, and any supporting papers and appendices filed pursuant to FRAP 5 unless the petition, cross-petition, or answer is submitted via Appellate CM/ECF. ~~If the answer is not required to be filed electronically, respondent shall file an original in paper format.~~ (Rev. 12/1/16)
- (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)

Cross-reference: Circuit Rule 32-3(2), Page/Word Count Conversion Formula for Briefs and Other Documents

Circuit Rule 21-2

Format of Extraordinary Writs and Answers Format;

Number of Copies; Length

- (a) Format: Petitions for writs of mandamus, prohibition or other extraordinary relief directed to a district judge, ~~or~~ magistrate judge, or bankruptcy judge ~~shall~~ must bear the title of the appropriate court and ~~shall~~ may not bear the name of the judge as respondent in the caption. Petitions ~~shall~~ 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 ~~shall~~ 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; 12/1/16)
- (b) Number of Copies: The parties ~~petitioner shall~~ must file an original in paper format of the petition, an answer, if ordered, and any supporting papers and addendum unless the petition or answer is submitted via Appellate CM/ECF (New 7/1/00; Rev. 12/1/09; Rev. 7/1/13; Rev. 12/1/16)

(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)

Cross-reference: Circuit Rule 32-3(2), Page/Word Count Conversion Formula for Briefs and Other Documents

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Circuit Rule 21-4

Answers to Petitions

No answer to such a petition may be filed unless ordered by the Court. Except in emergency cases, the Court will not grant a petition without a response. ~~If the answer is not required to be filed electronically, respondent shall file an original of the answer. (Rev. 12/1/09)~~ (Rev. 12/1/16)

Circuit Rule 27-1

Filing of Motions

(1) Form and length of motions (Rev. 12/1/16)

(a) *Abrogated 7/1/06*

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(d) Except by permission of the Court, a motion or a response to a motion may not exceed 20 pages. A reply to a response may not exceed 10 pages. The documents listed at FRAP 27(a)(2)(B) and 32(f) are excluded from the length limit calculation. (New 12/1/16)

Cross-Reference: Circuit Rule 32-3(2), Page/Word Count Conversion Formula for Briefs and Other Documents

Circuit Rule 28.1-1

Sequence, Content, Form and Length of Cross-Appeal Briefs; Certificate of Compliance

- (a) Sequence, Content and Form: The sequence, form and content of briefing are governed by FRAP 28-1.1(b) – (d) and 32(a)(1), (3) and (4) - (6). (New 12/1/16)
- (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. (New 12/1/16)
- (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. (New 12/1/16)
- (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. (New 12/1/16)
- (e) Exclusions: The materials listed at FRAP 32(f) are excluded from the length limit. (New 12/1/16)
- (f) Certificate of compliance: A brief using a word count length calculation must be accompanied by Form 8 found on the court’s website. (New 12/1/16)
- (g) Handwritten or Typewritten Briefs: Handwritten or typewritten briefs filed in cross-appeals may not exceed 40 pages for principal and response/reply briefs; 46 pages for principal/response briefs; and 20 pages for reply briefs. (New 12/1/16)

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

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(c) Format/Length

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(2) A brief submitted while a petition for hearing is pending ~~shall~~ may not exceed 15 pages unless it complies with the alternative length limits of 4,200 words ~~or 390 lines of monospaced text~~. Motions for leave to file an oversize brief are disfavored. (*Rev. 12/1/16*)

(3) Unless otherwise ordered by the Court, a brief submitted after the Court has voted to rehear a case en banc ~~shall~~ may not exceed 25 pages unless it complies with the alternative length limits of 7,000 words ~~or 650 lines of monospaced text~~. Motions for leave to file an oversize brief are disfavored. (*Rev. 12/1/16*)

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 limit. (*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) Handwritten or typewritten briefs: A handwritten or typewritten opening or answering brief may not exceed 40 pages. A handwritten or typewritten reply brief may not exceed 20 pages. (New 12/1/16)

~~All briefs submitted under Circuit Rule 28-4 or Circuit Rule 32-4 must include a certificate with language identical to and a format substantially similar to Form 8 in the Appendix of Forms attached to these rules. (Rev. 12/1/02)~~

Circuit Rule 32-3
~~Briefs Filed Pursuant to Court Order~~
Page/Word Count Conversion Formula for
Briefs and Other Documents

All briefs filed pursuant to court order must conform to the format requirements of FRAP 32(a)(1) - (6). (Rev. 12/1/16)

If an order or rule of this Court sets forth a page limit for a brief or other document, the affected party may comply with the limit by

(1) filing a monospaced brief of the designated number of pages, or

~~(2) filing a monospaced brief for which the number of lines divided by 26 does not exceed the designated page limit, or~~

~~(2)~~(3) filing a monospaced or proportionately spaced brief or other document in which the word count divided by 280 does not exceed the designated page limit. (Rev. 12/1/16)

Circuit Rule 32-4

Briefs and Excerpts of Record in Capital Cases

Briefs: The requirements of FRAP 32(a)(1) – (6) ~~shall~~ apply to appeals from district court judgments which finally dispose of a capital case, except that the following ~~page or~~ type volume limitations ~~shall~~ also apply:

(1) ~~A a proportionally spaced principal brief may~~ must not exceed 21,000 words and a reply brief may ~~must~~ not exceed 9,800 words.

(2) ~~Briefs prepared in monospaced typeface shall either: (a) not exceed 75 pages (1,950 lines) for a principal brief and 35 pages (910 lines) for a reply brief, or (b) conform to the word count set forth in (1) above.~~

The length limit excludes the materials listed at FRAP 32(f). The brief must be accompanied by the Form 8 certificate of compliance. (Rev. 12/1/16)

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Circuit Rule 40-1

Format; Number of Copies

(a) Format/Length of Petition and Answer

The format of a petition for panel rehearing or rehearing en banc and any answer ~~shall be~~ is governed by FRAP 32(c)(2). The petition ~~shall~~ may not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words ~~or 390 lines of text~~. An answer, when ordered by the Court, ~~shall~~ must comply with the same length ~~limitations~~ as the petition. (Rev. 12/1/16)

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Circuit Rule 47-1

Effective Date of Rules

The Clerk shall cause these rules to be republished on ~~December~~ January 1 and June ~~July~~ 1 following their adoption, unless otherwise directed by the Court.