

March 30, 2023



Pursuant to 28 U.S.C. § 2071(b), comments are invited on proposed revisions to Circuit Rule 9-1.2, Release Pending Appeal; and Circuit Rule 27-14, Motion to Transmit Physical Exhibits.

The revisions to:

Circuit Rule 9-1.2 (Release in Criminal Cases) and the new accompanying Advisory Committee Note abrogates subsection (e), the continuation of bail pending resolution of a motion for bail pending appeal, and directs parties to use the court's existing emergency motions procedures where relief is needed within 21 days.

The Advisory Committee Note to Circuit Rule 27-14 (Motions to Transmit Physical Exhibits) clarifies the number of copies of physical exhibits required generally, and the formatting of digital exhibits.

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](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 May 31, 2023.

## **CIRCUIT RULE 9-1. RELEASE IN CRIMINAL CASES**

### **9-1.2. Release Pending Appeal**

- (a) A motion for bail pending appeal or for revocation of bail pending appeal, made in this Court, shall be accompanied by the district court's bail order, and, if the movant questions the factual basis of the order, a transcript of the proceedings had on the motion for bail made in the district court. If unable to obtain a transcript of the bail proceedings, the movant shall state in an affidavit the reason why the transcript has not been obtained. (*Rev. 12/1/09*)
- (b) A movant for bail pending appeal shall also attach to the motion a certificate of the court reporter containing the name, address, and telephone number of the reporter who will prepare the transcript on appeal and the reporter's verification that the transcript has been ordered and that satisfactory arrangements have been made to pay for it, together with the estimated date of completion of the transcript. A motion for bail which does not comply with part (b) of this rule will be prima facie evidence that the appeal is taken for the purpose of delay within the meaning of 18 U.S.C. § 3143(b).
- (c) Unless otherwise directed by the Court, the non-moving party shall file an opposition or statement of non-opposition to all motions for bail or revocation of bail pending appeal of a judgment of conviction within 10 days of service of the motion. (*Rev. 1/1/2003; 12/1/09*)
- (d) Unless otherwise directed by the Court, the movant may file an optional reply within 7 days of service of the response. (*Rev. 1/1/2003; 12/1/09*)
- ~~(e) If the appellant is on bail at the time the motion is filed in this Court, that bail will remain in effect until the Court rules on the motion. (*Rev. 1/1/01—changed from (d) to (e)*) (*Abrogated 12/1/23*)~~

#### *CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 9-1.2*

*Former subsection (e) provided an automatic temporary extension of bail for appellants who were on bail at the time of filing their motion for bail pending appeal in this court. Effective 12/1/23, when subsection (e) was abrogated, any extension of bail pending resolution of a motion for bail pending appeal must be approved by judges. A motion for bail pending appeal that seeks relief within 21 days must comply with all requirements of Circuit Rule 27-3.*

## *CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 27-14*

*The parties should be aware that frequently this Court does not have access to trial exhibits because the district courts typically return them to the parties. Therefore, the parties are encouraged during the course of the district court proceedings to file documentary exhibits electronically and, when practicable, to photograph or otherwise electronically replicate physical exhibits in a manner that permits the exhibits' inclusion on the electronic district court docket. The parties may consider including portions of relevant documentary exhibits that were admitted and/or offered and excluded in the excerpts of record. To the extent that the Court finds additional exhibits relevant, the Court may direct the parties to provide the exhibits.*

*When the Court grants a motion to transmit physical exhibits or otherwise requests physical exhibits to be provided, ordinarily 4 copies of the exhibits, if duplication is possible, are required to be transmitted to the Court within 7 days of the Court's order. The Court requires all individual video camera recordings, be they in single or multi-camera video exhibits, such as security videos, to be transcoded to standard .mp4 video files near or better than the native quality of the source files. Where possible, USB format is preferred over CD or DVD format.*