

January 23, 2026



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

- Circuit Rule 28-1 (Briefs, Applicable Rules)
- Circuit Rule 39-1 (Costs and Attorneys Fees on Appeal)
- Circuit Rule 46-5 (Restrictions on Practice by Former Court Employees)

The revisions to Circuit Rule 28-1 would clarify the requirements for letter briefs ordered by the court.

The revisions to Circuit Rule 39-1 would clarify the process for transferring a request for attorneys' fees to the district court or agency.

The revision to Circuit Rule 45-6 would clarify the scope of the rule and when a motion for exemption must be filed by a former court employee.

If ultimately approved by the Court, these rules would become effective no earlier than June 1, 2026.

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 February 23, 2026.

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. When a brief in letter format is permitted, the brief must comply with the requirements set forth in the order permitting the letter brief. The lines of text in a letter brief do not need to be double-spaced unless so specified in the order. Briefs not complying with FRAP and these rules may be stricken by the Court. (Rev. 12/1/24; Rev. 6/1/26)

CIRCUIT RULE 39-1. COSTS AND ATTORNEYS FEES ON APPEAL

39-1.6. Request for Attorneys Fees

39-1.7. Opposition to Request for Attorneys Fees

39-1.8. Request for Transfer to District Court or Agency

At the request of any party who is or may be eligible for attorneys fees on appeal ~~to this Court may~~, made within the time permitted in Circuit Rule 39-1.6, or on the court's initiative, file a motion to transfer consideration of attorneys fees on appeal may be transferred to the district court or administrative agency from which the appeal was taken. (Rev. 6/1/26)

CIRCUIT RULE 46-5. RESTRICTIONS ON ~~PRACTICE BY~~ FORMER COURT EMPLOYEES PARTICIPATING IN CASES

No former employee of the Court shall participate or assist, by way of representation, consultation, or otherwise, in any case that was pending in the Court during the employee's period of employment. It shall be the responsibility of any former employee, as well as the persons employing or associating with a

former employee in the practice of law before this Court, to ensure compliance with this rule.

An attorney or other former employee who ~~is a former employee may apply to the Court for an exemption. The application must demonstrate that the attorney~~ had no direct or indirect involvement with the case during employment with the Court, and ~~that the attorney who~~ was not employed or assigned in the chambers of any judge who participated in the case during the attorney or other former employee's employment with the Court, may seek an exemption. To do so, the attorney or other former employee must file a completed Form 35 Certificate of Exemption under Circuit Rule 46-5 in the case at issue. -(Rev. 1/1/11; Rev. 7/1/13; Rev.6/1/26)

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 46-5

The rule is intended to avoid the appearance of impropriety if a former court employee were to work on a matter that was pending in the court during the employee's period of employment. With respect to attorneys employed or assigned in the chambers of any judge, an application for an exemption shall show that the judge did not participate in ruling on any motion or other aspect of the case, including making, responding to, or voting on an en banc call during the employee's period of employment. (New 7/1/13)
