

June 30, 2025



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

- CR 21-3 (Certificate of Interested Parties in Mandamus Petitions)
 - CR 22-1 (Certificate of Appealability)
 - CR 27-1 (Form and Length of Motions)
 - CR 27-13 (Sealed Documents)
 - CR 28-1 (Contents of Briefs)
 - CR 30-1 (Excerpts of Record)
 - CR 31-1 (Number of Briefs for Pro Se Parties)
 - CR 36-2 (Criteria for Publication)
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These proposed minor, non-substantive revisions would clarify existing rules and align them with recent updates and court practices.

The redlined proposed revisions are attached, along with a table of the proposed changes.

If ultimately approved by the Court, these rules would become effective no earlier than December 1, 2025.

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 August 15, 2025.

PROPOSED AMENDMENTS TO NINTH CIRCUIT RULES

Effective (no earlier than) December 1, 2025		
Circuit Rule	Summary of Proposal	Related or Coordinated Amendments
21-3 (Certificate of Interested Parties in Mandamus Petitions) 28-1 (Contents of Briefs)	Aligns with new Circuit Rule 26.2-1 (Disclosure Statements)	26.1-1
22-1 (Certificate of Appealability)	Clarifies that requests for a Certificate of Appealability (COA) must meet the length and format requirements of Circuit Rule 27-1.	27-1
Advisory Note to 27-1 (Form and Length of Motions)	Encourages, but does not require, table of contents and authorities for lengthy motions	
27-13 (Sealed Filings)	Defines the process for ex parte filings and requires notices of sealing to reference the specific statute or rule mandating the sealing.	
30-1, 31-1 Excerpts of Record, Pro Se Briefs	Removes the requirement for additional copies of paper filed briefs and excerpts unless ordered by the court. Also clarifies binding requirements for paper copies of <u>electronically filed excerpts</u> .	
36-2 (Criteria for Publication)	Removes the mandatory publication requirement after Supreme Court reversal and remand, allowing discretion based on circumstances	

Miscellaneous Proposed Revisions

Circuit Rule 21-3. ~~Certificate of Interested Parties~~ Disclosure Statement

Petitions for writs of mandamus or prohibition, and for other extraordinary writs, ~~are subject to the~~~~shall include the corporate~~ disclosure ~~statement~~ statement ~~requirements of Circuit Rule 26.1-1 and~~ by FRAP 26.1, including the manner and timing and contents of such statements. [and the statement of related cases required by Circuit Rule 28-2.6.]

Circuit Rule 22-1. Certificate of Appealability (COA)

(a) General Procedures. Appeals from the district court's denial of relief in either a 28 U.S.C. § 2254 or a § 2255 proceeding are governed by the procedures set forth in FRAP 4 and 22(b). A request for a certificate of appealability ("COA") must first be considered by the district court. If the district court grants a COA, that court shall state which issue or issues satisfy the standard set forth in 28 U.S.C. § 2253(c)(2). The court of appeals will not act on a request for a COA if the district court has not ruled first. (*Rev. 1/1/04; 12/1/09; 12/1/18*)

(d) Denial in Full by District Court. If the district court denies a COA as to all issues, appellant may file a request for a COA that complies with Circuit Rule 27-1 in the court of appeals within 35 days of the filing of a notice of appeal or amended notice of appeal, or the district court's denial of a COA in full, whichever is later. The notice of appeal must be timely filed pursuant to 28 U.S.C. § 2107 and FRAP 4(a), regardless of whether appellant files a request for COA. If appellant does not file a COA request with the court of appeals after the district court denies a COA in full, the court of appeals will deem the notice of appeal to constitute a request for a COA. (*Rev. 1/1/04; 12/1/09; 12/1/18*)

Cross Reference: (*New 1/1/04; Rev. 12/1/09*)

- FRAP 27. Motions on page 91

- Circuit Rule 11-4. Retention of Physical Exhibits in the District Court, Transmittal of Clerk's Record on Request on page 41, specifically, 11-4.2. Retention of Physical Exhibits in the District Court on page 41
- Circuit Rule 27-1. Filing of Motions on page 93
- FRAP 32. Form of Briefs, Appendices, and Other Papers on page 134, specifically, FRAP 32(a)(5)(6)(7)

Circuit Rule 27-1. Filing of Motions

(1) Form and Length of Motions

- (a) *[Abrogated 7/1/06]*
- (b) If electronic filing of the motion, response or reply is not required, the Court requires an original of that filing. The Clerk may direct a party to submit additional paper copies of a motion, response and/or reply when paper copies would aid the Court's review of the motion. (Rev. 7/1/02; 12/1/09)
- (c) The provisions of FRAP 27(d)(1) otherwise govern the format of motions. (New 1/1/06)
- (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)

Circuit Advisory Committee Note to Rule 27-1

When filing lengthy motions or responses to motions (more than 10 pages or 2500 words), it is helpful to the Court and opposing parties if the filer includes a table of contents and a table of authorities. Those tables will not be included in the word count limits applicable to motions.

Circuit Rule 27-13. Sealed Documents

Introduction

This Court has a strong presumption in favor of public access to documents. Therefore, except as provided in (d) below, the presumption is that every document filed in or by this Court (whether or not the document was sealed in the district court) is in the public record unless this Court orders it to be sealed.

Accordingly, unless a case or document falls within the scope of (d) below, this Court will permit it to be filed under seal only if justified by a motion to seal the document from public view. *See* (e), (f), (g), and (h) below. The Court will not seal a case or a document based solely on the stipulation of the parties.

When an entire case was sealed in district court, the case will be docketed provisionally under seal in this Court, and within 21 days of filing the notice of appeal, a party must file a motion to continue the seal or the seal may be lifted without notice. *See* (g) below. When a document was sealed in the district court, the document will be filed provisionally under seal, and must be accompanied by a notice under subsection (d), a motion to seal under subsection (e), or a notice under subsection (f). The document will remain provisionally sealed until the Court rules on any motion to seal.

Documents in Social Security and Immigration cases, including administrative records, are not filed under seal in this Court. However, remote electronic access to documents is limited by rule to the parties to the case, though the documents will be available for public viewing in the Clerk's Office. *See* Fed. R. Civ. P. 5.2(c); Fed. R. App. P. 25(a)(5). This same rule, however, presumes that the orders and dispositions will be publicly available.

Definitions

(1) **Sealed Document:** There is no public access via PACER. Once submitted, access to the document is restricted to the Court but is served on all parties separately by the filer.

(2) **Ex Parte Document:** There is no public access via PACER and the document is not served on other parties. Access to the document is restricted to the Court.

(32) **Sealed Case:** There is no public access via PACER. Access to the docket and all documents filed in the case is restricted to case participants and the Court.

Form of Documents

All documents shall be submitted electronically unless the filer is exempt from the electronic filing requirement. Each document or volume of documents submitted under seal shall include the words “UNDER SEAL” on its cover and/or first page. Any publicly filed redacted version of a sealed document shall include the word “REDACTED” on the cover and/or first page of the document.

Because documents submitted under seal will not be viewable to the parties via the Appellate Electronic Filing System noticing, any notice or motion submitted under seal and any document associated with such notice or motion shall be served on opposing counsel in paper form or, with consent, via email. *See* Circuit Rule 25-5(f)(2).

Rather than moving to file the entire excerpts of record under seal, a party shall submit any document(s) it wishes to seal as a separate volume. *See* Circuit Rule 30-1.4(d).

Presentence Reports, Grand Jury Transcripts, and Sealed Filings Mandated by Statute or Procedural Rule

When a statute or procedural rule requires that a brief or other document be filed under seal (*see, e.g.*, 18 U.S.C. § 5038(c), 3509(d); Fed. R. Crim. P. 6(e)), or when a party is filing an original, revised, or amended presentence report, its attachments, and any confidential sentencing memoranda, a motion under subsection (e) is not required.

Instead, the document(s) shall be submitted under seal in accordance with subsection (c), and accompanied by a notice of filing under seal that references this rule and the pertinent statute or procedural rule. Except for presentence reports and related filings submitted with those reports as described below, any notice of sealing based on a statute or procedural rule must be accompanied by a copy of the referenced statute or procedural rule.

In cases in which any presentence report is referenced in the brief, the party first filing that brief must file under seal the presentence report, the documents attached to the report, and any sentencing memoranda filed under seal in the district court. The report and documents shall be filed on the same day as the brief that references the report and documents, using the presentence report electronic document filing type, without an accompanying notice of filing under seal. These documents shall not be included in the excerpts of record. The party submitting the presentence report and related sealed memoranda shall separately notify the opposing party by email (or first class mail if the opposing party is exempt from

electronic filing) of the specific documents submitted, and shall provide a copy upon request.

. . .

Motion or Notice to Maintain a Case Under Seal

A party who wants a case that was fully sealed in the district court to remain fully sealed on appeal shall file a motion to continue the seal within 21 days of the filing of the notice of appeal. The motion must explain with specificity why it is necessary for the entire case to be sealed on appeal and why no less restrictive alternatives are available.

When the seal is required by statute or procedural rule, a motion is not required; instead, a party must file a notice that references this rule and the pertinent statute or rule within 21 days of the filing of the notice of appeal. [Such notice of sealing must be accompanied by a copy of the referenced statute or procedural rule.](#)

Absent a motion or notice, the seal may be lifted without notice and the case in full will be made available to the public.

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) Unless otherwise required by Circuit Rule 26.1-1, the brief should not include a Disclosure Statement pursuant to FRAP 28(a).
- (d) 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)*

Pro Se Briefs and Excerpts of Record – Eliminate Paper Copies

Circuit Rule 30-1.2. Requirements

- a) The appellant or petitioner shall submit Excerpts of Record when submitting the opening brief unless the filer is exempt pursuant to Circuit Rule 30-1.3.
- b) The appellee or respondent shall submit Supplemental Excerpts of Record when submitting the answering brief only if the brief refers to documents or portions of documents not included in the initial Excerpts, or if no Excerpts of Record were filed because the appellant or petitioner is exempt pursuant to Circuit Rule 30-1.3.
- c) A non-exempt appellant or petitioner shall submit Further Excerpts of Record when submitting the reply brief only if the brief refers to documents or portions of documents not included in the Excerpts or Supplemental Excerpts.
- d) Any non-exempt party shall submit Supplemental Excerpts of Record when submitting a supplemental brief only if the brief refers to documents or portions of documents not included in any previously filed Excerpts.
- e) All excerpts shall be separate from the brief and submitted electronically at the same time as the brief unless the filing party is exempt from the electronic-filing requirement.
- f) On the same day the excerpts are submitted electronically, the filing party shall serve 1 paper copy of the excerpts on any other party that is not registered for electronic filing, but shall defer submission of paper copies of the excerpts to the Court until directed by the Clerk to do so.
- g) If the filing party is exempt from the electronic-filing requirement, the filing party shall file ~~3 paper copies~~ an original paper copy of the excerpts at the time the brief is submitted, bound separately from the brief, and serve 1 paper copy on each of the other parties. No additional paper copies should be submitted unless requested by the Court.
- h) Should the Court consider a case en banc, the Clerk will require counsel to submit additional paper copies of the excerpts.
- i) In any petition for review challenging an order of removal in an immigration case, neither party need file Excerpts of Record.

Clarification of Binding of Excerpts of Record

30-1.5. Index and Format

- | (e) The paper copies of ~~each~~ volumes, including the Index Volume and any separate reporter's transcript volumes, shall be bound securely on the left. Paper copies shall be printed on letter-sized light-colored paper with black ink or colored ink where appropriate and the caption pages shall be white. Paper copies of any excerpts may be printed on both sides of the paper, but only if the method of binding allows each volume to lie completely flat when open, such as comb, spiral, coil, or wire binding, and the weight of the paper is sufficient to prevent bleeding through when marked on one side in ink or highlighter.

Circuit Rule 31-1. Number of Briefs

Parties submitting a brief electronically shall defer submission of paper copies of the brief until directed by the Clerk to do so, but must serve any unregistered party or exempt counsel with 1 paper copy of the brief on the day that the brief is submitted electronically. Any unregistered party or exempt counsel shall file an original paper copy and 6 copies of each brief. No additional copies should be submitted unless requested by the Court. If a petition for hearing or rehearing en banc is granted, each party shall file 18 additional copies of its briefs and 10 additional copies of its excerpts of record. *(Rev. 12/1/09; 12/1/19)*

Circuit Rule 36-2. Criteria for Publication

A written, reasoned disposition shall be designated as an OPINION if it:

- a) Establishes, alters, modifies or clarifies a rule of federal law, or
- b) Calls attention to a rule of law that appears to have been generally overlooked, or
- c) Criticizes existing law, or
- d) Involves a legal or factual issue of unique interest or substantial public importance, or
- e) Is a disposition of a case in which there is a published opinion by a lower court or administrative agency, unless the panel determines that publication is unnecessary for clarifying the panel's disposition of the case, or

~~Is a disposition of a case following a reversal or remand by the United States Supreme Court, or~~

- f) Is accompanied by a separate concurring or dissenting expression, and the author of such separate expression requests publication of the disposition of the Court and the separate expression.