



**Office of the Clerk**  
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**Amendments to Ninth Circuit Rules  
and Advisory Committee Notes**

*effective, [July 1, 2007](#)*

**New or revised language is highlighted in yellow.**

<b>RULE</b>	<b>TITLE</b>	<b>New or Revised</b>	<b>PURPOSE OF AMENDMENT</b>
<b>Circuit Rules 17-1.6 &amp; 30-1.6 ACN to Rule 30-1.6</b>	Format of the Excerpts of Record	New & Revised	To require the mandatory contents of the excerpts of record to be contained in the first volume for ease of use by judicial officers
<b>Circuit Rule 28-2.7</b>	Addendum to Briefs	New 2 <sup>nd</sup> paragraph	To provide the bench with a ready access to documents that are central to review of an immigration case.
<b>New Advisory Committee Note to CR 28-6</b>	Citation of Supplemental Authorities	Revised	To provide guidance to the bar about when to file FRAP 28(j) letters.
<b>Circuit Rule 29-2 &amp; ACN to CR 29-2</b>	Brief of Amicus Curiae (during en banc considerations)	New	To provide guidance to the bar concerning the filing of amicus curiae briefs with respect to petitions for rehearing or rehearing en banc.
<b>Circuit Rule 35-3</b>	Limited En Banc Court	Revised	To return to 11-member en banc court.
<b>Circuit Rule 39-1 &amp; ACN to CR 39-1.6</b>	Request for Attorneys' Fees	Revised	To reflect the filing deadline set forth in EAJA, and to improve the clarity of the rule.
<b>Circuit Rule 39-2</b>	Attorneys' Fees and Expenses under the Equal Access to Justice Act	Abrogated	

## CIRCUIT RULE 17-1

### EXCERPTS OF RECORD ON REVIEW OR ENFORCEMENT OF AGENCY ORDERS

#### **17-1.6 Form of the Excerpts of Record**

If the excerpts exceed 75 pages, the first volume of the excerpts of record shall be limited to specific portions of the transcript containing any oral statements of decisions, the orders to be reviewed, and any reports, opinions, memoranda or findings of fact or conclusions of law prepared by the agency, board, commissioner or officer that relate to the orders to be reviewed. All additional documents shall be included in subsequent volumes of the excerpts. (New 7-1-07.)

The form of the excerpts shall otherwise be governed by Ninth Circuit Rule 30-1.6, with references in Rule 30-1.6 to appellant and the district court to be read as references to petitioner and agency, respectively. (Rev. 7-1-07)

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## CIRCUIT RULE 30-1

### THE EXCERPTS OF RECORD

#### **30-1.1 Purpose**

(a) In the Ninth Circuit the appendix prescribed by FRAP 30 is not required. Instead, Circuit Rule 30-1 requires the parties to prepare excerpts of record. All members of the panel assigned to hear the appeal ordinarily will not have the entire record. The purpose of the excerpts of record is to provide each member of the panel with those portions of the record necessary to reach a decision. The parties should ensure that in accordance with the limitations of Rule 30-1, those parts of the record necessary to permit an informed analysis of their positions are included in the excerpts.

(b) Excerpts of record must be filed in all cases. The requirements for petitions for review and applications for enforcement of agency decisions are set forth at Rule 17-1. In appeals from district court decisions reviewing agency actions, the excerpts of record shall comply with Rule 30-1 and shall include as well the materials required by Rule 17-1.

#### **30-1.2 to 30-1.5 [NO CHANGE]**

#### **30-1.6 Format of Excerpts of Record**

##### **(a) Excerpts of record that exceed 75 pages**

The first volume of the excerpts of record shall be limited to specific portions of the transcript containing any oral statements of decisions, the orders to be reviewed, any reports, opinions, memoranda or findings of fact or conclusions of law prepared by the district, magistrate, bankruptcy judge, bankruptcy appellate panel, and, in proceedings governed by 28 U.S.C. § 2254, the state reviewing court disposition, that relate to the issues being appealed. All additional documents shall be included in subsequent volumes of the excerpts. The documents in the first volume of the excerpts normally shall be arranged by file date in chronological order beginning with the document with the most recent file date. The documents in

subsequent volumes also normally shall be arranged by file date in chronological order beginning with the document with the most recent file date. Reporter's transcripts or portions thereof shall be placed according to the date of the hearing. The trial court docket shall always be the last document in the excerpts. The five (5) copies of the excerpts are to be reproduced on letter size light paper by any duplicating or copying process capable of producing a clear black image. Each copy must be securely bound on the left side and must have a white cover styled as described in FRAP 32(a), except that the wording "Excerpts of Record" shall be substituted for "Brief of Appellant." The cover shall include the volume number. The excerpts must be either consecutively paginated beginning with page 1, or the documents marked with tabs corresponding to the tab number, if any, of the documents in the clerk's record. If tabs are used, the pages within the tabs must be consecutively paginated. The excerpts must begin with an index organized in the order the documents are presented describing the documents, exhibits and portions of the reporter's transcript contained therein, the location where the documents and exhibits may be found in the district court record, and the page where the documents, exhibits or transcript portions may be found in the excerpts. The excerpts shall be filed in multiple volumes, with each volume containing three hundred (300) pages or fewer. (Rev. 7/1/98, 12/02, 7-1-07)

(b) Excerpts of Record that do not exceed 75 pages

The documents in the excerpts normally shall be arranged by file date in chronological order beginning with the document with the most recent file date. Reporter's transcripts or portions thereof shall be placed according to the date of the hearing. The document with the earliest file date should appear under the first tab or should be paginated beginning with page 1. The trial court docket shall always be the last document in the excerpts. The five (5) copies of the excerpts are to be reproduced on letter size light paper by any duplicating or copying process capable of producing a clear black image. Each copy must be securely bound on the left side and must have a white cover styled as described in FRAP 32(a), except that the wording "Excerpts of Record" shall be substituted for "Brief of Appellant." The excerpts must be either consecutively paginated beginning with page 1, or the documents marked with tabs corresponding to the tab number, if any, of the documents in the clerk's record. If tabs are used, the pages within the tabs must be consecutively paginated. The excerpts must begin with an index organized in the order the documents are presented describing the documents, exhibits and portions of the reporter's transcript contained therein, the location where the documents and exhibits may be found in the district court record, and the page where the documents, exhibits or transcript portions may be found in the excerpts. (Rev. 7/1/98, 12/02, 7-1-07)

~~Appellants proceeding without the assistance of counsel who file the form brief provided by the Clerk pursuant to Circuit Rule 28-1 and who are required to file an excerpt of record need not comply with the technical requirements of this rule if they attach to their form briefs the documents comprising the excerpts of record. (Rev. 1/96)~~

*CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 30-1.6*

*Although presentation of the excerpts' contents in chronological order is the customary method to proffer the documents, the parties may employ an alternative method of organization if that method seems better suited to the arguments offered in the brief. (New, 7-1-07)*

## CIRCUIT RULE 28-2

### CONTENTS OF BRIEFS

#### **28-2.7 Addendum to Briefs**

If determination of the issues presented requires the study of statutes, regulations or rules, relevant parts thereof shall be reproduced in an addendum at the end of a party's brief. The addendum shall be separated from the brief by a distinctively colored page.

All opening briefs filed in counseled petitions for review of immigration cases must include an addendum comprised of the orders being challenged, including any orders of the immigration court and Board of Immigration Appeals. The addendum shall be separated from the brief by a distinctively colored page. (*New 7-1-07*)

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## CIRCUIT RULE 28-6

### CITATION OF SUPPLEMENTAL AUTHORITIES

The body of letters filed pursuant to Federal Rule of Appellate Procedure 28(j) shall not exceed two (2) pages, unless it complies with the alternative length limitations of 350 words or 39 lines of text. Litigants shall submit an original and four (4) copies of a Fed. R. App. P. 28(j) letter. (*New, 12-1-02*)

#### *CIRCUIT ADVISORY COMMITTEE NOTE TO CIRCUIT RULE 28-6*

*In the interests of promoting full consideration by the court and fairness to all sides, the parties should file all Fed. R. App. P. 28(j) letters as soon as possible. When practical, the parties are particularly urged to file Rule 28(j) letters at least seven (7) calendar days in advance of any scheduled oral argument or within seven (7) calendar days after notification that the appeal will be submitted on the briefs. (*New 7-1-07*)*

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## CIRCUIT RULE 29-2

### BRIEF OF AMICUS CURIAE SUBMITTED TO SUPPORT OR OPPOSE A PETITION FOR PANEL OR EN BANC REHEARING OR DURING THE PENDENCY OF REHEARING

- (a) When Permitted. An amicus curiae may be permitted to file when the court is considering a petition for panel or en banc rehearing or when the court has granted rehearing. The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus curiae brief without the consent of the parties or leave of court. Subject to the provisions of subsection (f) of this rule, any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.

- (b) Motion for Leave to File: The motion must be accompanied by the proposed brief and include the recitals set forth at Fed. R. App. P. 29(b).
- (c) Format/Length:
- (1) A brief submitted while a petition for rehearing is pending shall be styled as an amicus curiae brief in support of or in opposition to the petition for rehearing or as not supporting either party. A brief submitted during the pendency of panel or en banc rehearing shall be styled as an amicus curiae brief in support of appellant or appellee or as not supporting either party.
  - (2) A brief submitted while a petition for rehearing is pending brief shall 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.
  - (3) Unless otherwise ordered by the court, a brief submitted after the court has voted to rehear a case en banc shall 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.
- (d) Number of Copies:  
If the brief pertains to a petition for panel rehearing, an original and four (4) copies shall be submitted. If the brief pertains to a pending petition for rehearing en banc, an original and fifty (50) copies shall be submitted. If a petition for rehearing en banc has been granted, an original and thirty (30) copies of the brief shall be submitted.
- (e) Time for Filing:
- (1) Brief Submitted to Support or Oppose a Petition for Rehearing  
An amicus curiae must serve its brief along with any necessary motion no later than ten (10) calendar days after the petition or response of the party the amicus wishes to support is filed or is due. An amicus brief that does not support either party must be served along with any necessary motion no later than ten (10) calendar days after the petition is filed. Motions for extensions of time to file an amicus curiae brief submitted under this rule are disfavored.
  - (2) Briefs Submitted During the Pendency of Rehearing  
Unless the court orders otherwise, an amicus curiae supporting the position of the petitioning party or not supporting either party must serve its brief, along with any necessary motion, no later than twenty-one (21) days after the petition for rehearing is granted. Unless the court orders otherwise, an amicus curiae supporting the position of the responding party must serve its brief, along with any necessary motion, no later than thirty-five (35) days after the petition for panel or en banc rehearing is granted. Motions for extensions of time to file an amicus curiae brief submitted under this rule are disfavored.

- (f) Circulation: Motions for leave to file an amicus curiae brief to support or oppose a petition for panel rehearing are circulated to the panel. Motions for leave to file an amicus curiae brief to support or oppose a petition for en banc rehearing are circulated to all members of the court. Motions for leave to file an amicus curiae brief during the pendency of en banc rehearing are circulated to the en banc court.

(New, 7-1-07)

*Cross-reference*: Fed. R. App. P. 29; Circuit Rule 25-4

#### **CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 29-2**

*Circuit Rule 29-2 only concerns amicus curiae briefs submitted to support or oppose a petition for panel or en banc rehearing and amicus curiae brief submitted during the pendency or rehearing. The court considers the filing of amicus curiae briefs related to petitions for rehearing or en banc review to appropriate only when the post-disposition deliberations involve novel or particularly complex issues.*

*The court will ordinarily deny motions and disallow stipulations for leave to file an amicus curiae brief where the filing of the brief would result in the recusal of a member of the en banc court. Any member of the court who would be subject to disqualification in light of the amicus curiae brief may, of course, voluntarily recuse, thereby allowing the filing of the amicus curiae brief.*

(New, 7-1-07)

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### **CIRCUIT RULE 35-3**

#### **LIMITED EN BANC COURT**

The en banc court, for each case or group of related cases taken en banc, shall consist of the Chief Judge of this circuit and 10 additional judges to be drawn by lot from the active judges of the Court. In the absence of the Chief Judge, a 11th active judge shall be drawn by lot, and the most senior active judge on the panel shall preside. [rev. 1-1-06, 7-1-07]

The drawing of the en banc court will be performed by the Clerk or a deputy clerk of the Court in the presence of at least one judge and shall take place on the first working day following the date of the order taking the case or group of related cases en banc.

If a judge whose name is drawn for a particular en banc court is disqualified, recused, or knows that he or she will be unable to sit at the time and place designated for the en banc case or cases, the judge will immediately notify the Chief Judge who will direct the Clerk to draw a replacement judge by lot. [rev. 1-1-06]

In appropriate cases, the Court may order a rehearing by the full court following a hearing or rehearing en banc.

# CIRCUIT RULE 39-1

## COSTS AND ATTORNEYS FEES ON APPEAL

### **39-1.6 Request for Attorneys Fees**

#### (a) Time Limits:

Absent a statutory provision to the contrary, a request for attorneys' fees shall be filed no later than fourteen (14) days after the expiration of the period within which a petition for rehearing may be filed, unless a timely petition for rehearing is filed. If a timely petition for rehearing is filed, the request for attorneys fees shall be filed no later than fourteen (14) days after the court's disposition of the petition.

#### (b) Contents:

A request for an award of attorneys' fees must be supported by a memorandum showing that the party seeking fees is legally entitled to them and must be accompanied by Form 9 (appended to these rules) or a document that contains substantially the same information, along with:

- (1) a detailed itemization of the tasks performed each date and the amount of time spent by each lawyer and paralegal on each task;
- (2) a showing that the hourly rates claimed are legally justified; and
- (3) an affidavit or declaration attesting to the accuracy of the information. All applications must include a statement that sets forth the application's timeliness. The request must be filed separately from any cost bill. (7/2001, Rev. 7-1-07)

#### *CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 39-1.6*

*Forms for attorneys' fees and cost bills are found as Appendices 9 and 10 to these Rules. The forms are also available from the Clerk's Office or may be accessed via the Court's Website ([www.ca9.uscourts.gov](http://www.ca9.uscourts.gov)). (Rev. 7-1-07)*

*Calculation of Cost Bill Filing Deadline: Litigants are reminded that a cost bill must be received by the Clerk in San Francisco by the due date. See Federal Rule of Appellate Procedure 25(a)(1) and (2)(A) and Circuit Rule 25-2; but see Federal Rule of Appellate Procedure 25(a)(2)(C) (document filed by inmate timely if deposited in institution's internal mailing system on or before due date). The deadline is strictly enforced. See *Mollura v. Miller*, 621 F.2d 334 (9th Cir. 1980). (New, 1-1-05, rev. 7-1-07)*

*Equal Access to Justice Act Applications: Counsel filing applications under 28 U.S.C. § 2412 should carefully review the statutory requirements concerning the timeliness and the contents of the application. In computing the applicable hourly rate under the Equal Access to Justice Act, adjusted for cost-of-living increases, counsel should be aware of the formula set forth in *Thangaraja v. Gonzales*, 428 F.2d 870, 876-77 (9<sup>th</sup> Cir. 2005). (New 7-1-07)*