



## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

### NOTICE AND OPPORTUNITY FOR COMMENT ON PROPOSED AMENDMENTS TO THE CIRCUIT RULES

Pursuant to 28 U.S.C. § 2071(b), comments are invited on the proposed changes to Circuit Rule 27-10, Motions for Reconsideration; Circuit Rule 28-4, Extensions of Time and Enlargements of Size for Consolidated and Joint Briefing and Companion Form 7; Circuit Rule 32-1, Form of Briefs; Circuit Rule 32-2, Requests to Exceed Type-Volume Limitations and Companion Form 8; and Circuit Rule 39-1.9, Referral to the Appellate Commissioner.

Please direct comments to Molly C. Dwyer, Clerk of Court at [Molly\\_Dwyer@ca9.uscourts.gov](mailto:Molly_Dwyer@ca9.uscourts.gov) and Cole Benson, Supervising Deputy Clerk at [Cole\\_Benson@ca9.uscourts.gov](mailto:Cole_Benson@ca9.uscourts.gov). Comments must be submitted no later than September 17, 2015.

#### *Summary of Proposed Revisions*

- *Rule 27-10*: Clarifies when opposition to motion for reconsideration is permitted; corrects existing internal inconsistency regarding deadline to move for reconsideration of dispositive order.
- *Rule 28-4*: Abrogated. Opportunity to obtain 30-day extension of time under Circuit Rule 31-2.2(a) obviates need for 21-day extensions of time; provisions pertaining to routine brief size enlargements for (1) separately represented parties filing joint brief or (2) parties responding to multiple or joint briefs shifted to Circuit Rule 32-2, the Court's principal authority governing requests for leave to file oversize briefs. Companion Form 7 abrogated.
- *Rule 32-2*: Incorporates size enlargement provisions of Circuit Rule 28-4 pertaining to (1) joint briefs filed by separately represented parties and (2) briefs responding to joint briefs or separate briefs filed by aligned parties. Companion Form 8 revised consistent with changes to rule.
- *Rule 39-1.9*: Carves out exception to Circuit Rule 27-10. Prohibits filing of opposition to motion for reconsideration of Appellate Commissioner attorney fee order given low probability that reconsideration will be granted and potential increase in award created by preparation of response.

## CIRCUIT RULES 27-10, MOTIONS FOR RECONSIDERATION

### (a) Filing for Reconsideration

#### (1) Time limit for orders that terminate the case

A party seeking further consideration of an order that disposes of the entire case on the merits, terminates a case, or otherwise concludes the proceedings in this Court must comply with the time limits and other requirements of FRAP 40(a)(1) and Circuit Rule 40-1.

#### (2) Time limit for all other orders

Unless the time is shortened or enlarged by order of this Court, a motion for clarification, modification or reconsideration of a court order that does not dispose of the entire case on the merits, terminate a case, or otherwise conclude proceedings in this Court must be filed within 14 days after entry ~~the date of~~ the order. (Rev. 12/1/09)

#### (3) Required showing

A party seeking relief under this rule shall state with particularity the points of law or fact which, in the opinion of the movant, the Court has overlooked or misunderstood. Changes in legal or factual circumstances which may entitle the movant to relief also shall be stated with particularity.

### (b) Court Processing

**Motions Panel Orders:** A timely motion for clarification, modification or reconsideration of an order issued by a motions panel shall be decided by that panel. If the case subsequently has been assigned to a merits panel, the motions panel shall contact the merits panel before disposing of the motion. A party may file only one motion for clarification, modification or reconsideration of a panel order. No answer to ~~such~~ a motion for reconsideration, modification or clarification of a panel's order is permitted unless requested by the Court, but ordinarily the Court will not grant such a motion without requesting an answer. ~~The rule applies to any motion seeking review of a motions panel order, either by the panel or en banc, and~~

~~supersedes the time limits set forth in FRAP 40(a)(1) with respect to such motions.~~

**Orders Issued under Circuit Rule 27-7:** A motion to reconsider, clarify or modify an order issued pursuant to Circuit Rule 27-7 by a deputy clerk, staff attorney, circuit mediator or the appellate commissioner is initially directed to the individual who issued the order or, if appropriate, to his/her successor. The time to respond to such a motion is governed by FRAP 27(a)(3)(A). If that individual or his/her successor is disinclined to grant the requested relief, the motion for reconsideration, modification or clarification shall be processed as follows:

.....

## **~~CIRCUIT RULE 28-4. EXTENSIONS OF TIME AND ENLARGEMENTS OF SIZE FOR CONSOLIDATED AND JOINT BRIEFING~~**

~~In a case or consolidated cases involving multiple separately represented appellants or appellees, all parties on a side are encouraged to join in a single brief to the greatest extent practicable. As set forth below, the Court will grant a reasonable extension of time and enlargement of size for filing such a joint brief or for filing a brief responding to a joint brief or to multiple briefs.~~

~~**Notice Procedure.** If no previous extension of the filing deadline or enlargement of brief size has been obtained and the case has not been expedited, the Court will grant a 21-day extension of time and an enlargement of five (5) pages, 1,400 words or 130 lines of monospaced text for a joint brief upon the filing of the notice at Appendix of Forms, No. 7 to these rules. (Rev. 7/1/00)~~

~~If no previous extension of the filing deadline or enlargement of brief size has been obtained and the case has not been expedited, the Court will grant a 21-day extension of time and an enlargement of five (5) pages, 1,400 words or 130 lines of monospaced text to a party filing a single response to a joint brief or multiple briefs upon the filing of the notice at Appendix of Forms, No. 7.~~

~~Upon receipt of such a notice, a corresponding adjustment to the responsive brief's due date will be recorded on the docket. (Rev. 7/1/00)~~

~~All notices described in this rule must be filed at least 7 days prior to the brief's due date and signed by counsel for all parties on that side. If the parties on a side have different due dates for their briefs, the notice must be filed at least 7 days before the earliest due date and the extended due date shall be calculated from the latest due date. (Rev. 12/1/09)~~

~~**Motion Procedure.** If parties filing a joint brief or responding to multiple briefs or joint briefs wish to obtain a lengthier extension of time or greater enlargement of brief size than described above, or if the case has been previously expedited, the extension or enlargement request must be made by written motion. Motions for extensions of time must be filed at least 7 days prior to the brief's due date; joint motions for extensions of time and/or to enlarge brief size must be signed by all counsel filing the motion. If the parties on a side have different due dates for their briefs, the motion must be filed at least 7 days prior to the earliest due date. (Rev. 12/1/02; 12/1/09)~~

~~The previous grant of an extension of time under Circuit Rule 31-2.2(a) precludes a request for relief under this rule absent a showing of extraordinary and compelling circumstances. (Rev. 7/97)~~

**Cross Reference:**

- ~~Circuit Rule 31-2. Time for Service and Filing, specifically, 31-2.2.~~
- ~~• Extensions of Time for Filing Briefs~~
- ~~• Circuit Rule 32-1. Form of Briefs: Certificate of Compliance~~
- ~~• Circuit Advisory Committee Note to Rule 33-1~~

~~CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 28-4~~

~~Rule 28-4 encourages separately represented parties to file a joint brief to avoid burdening the Court with repetitive presentations of common facts and issues. Such joint briefing may require additional time and size. Accordingly, upon written notice, the Court will grant a 21-day extension of time for filing a joint brief or a brief responding to multiple briefs. Similarly, upon written notice, the Court will grant five (5) additional, double-spaced pages, 1,400 additional words, or 130 lines of monospaced text for filing a joint brief or a brief responding to a joint brief or to multiple briefs. A further enlargement of time or size may be granted upon written motion supported by a showing of good cause. (Rev. 7/1/00)~~

~~In exceptionally complex, multi-party criminal cases, the parties may request a case conference before the appellate commissioner. See Circuit Advisory Committee Note to Rule 33-1, Section B. (Eff. 7/1/97)~~

-Office of the Clerk  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
P.O. Box 193939, San Francisco, California 94119-3939  
www.ca9.uscourts.gov

**Form 7: NOTICE OF JOINT BRIEF  
Under Ninth Circuit Rule 28-4**

9th Cir. No.  Case Name:  v.

**We certify that the following**     Appellants                       Appellants/cross-appellees  
                                                  Appellees                       Appellees/cross-appellants

Party names

- 1. Are separately represented and will file a joint**
- Opening brief                       Opening brief on cross-appeal
  - Answering brief                       Answering/opening brief on cross-appeal
  - Reply brief                       Reply/answering brief on cross-appeal
  - Cross-appeal reply brief

**2. Are responding to a joint or multiple brief.**

**We certify that no previous extensions of time to file this brief have been requested, the case has not been expedited, and we are eligible for an extension of time under Circuit Rule 28-4.**

Pursuant to Circuit Rule 28-4, the brief's due date will be extended for 21 days and the size enlarged by 5 monotype pages or 1,400 words.

Subsequent briefing will proceed as follows:  
< The answering brief will be due 30 days from service of the joint opening brief.  
< The reply brief will be due 14 days from service of the joint answering brief.  
< The answering/opening brief will be due 40 days from service of the joint opening brief on cross-appeal.  
< The reply/answering brief will be due 30 days from service of the joint answering/opening brief on cross-appeal.  
< The cross-appeal reply brief will be due 14 days from service of the joint reply/answering brief.

Signature <input type="text"/>	Counsel for: <input type="text"/>
Signature <input type="text"/>	Counsel for: <input type="text"/>
Signature <input type="text"/>	Counsel for: <input type="text"/>
Signature <input type="text"/>	Counsel for: <input type="text"/>

Additional sheets may be attached for the signatures of additional counsel. "s/" plus the attorney name may be used in lieu of a manual signature on electronically-filed documents.  
~~THIS NOTICE MUST BE FILED WITH THE COURT AND SERVED ON OPPOSING COUNSEL AND ACCOMPANIED BY PROOF OF SUCH SERVICE.~~

**Circuit Rule 32-1.**  
**Form of Briefs; Certificate of Compliance**

All briefs submitted under Circuit Rules ~~28-4~~, 32-2 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~~ available on the Court's website attached to these rules.

**Circuit Rule 32-2.**  
**Motions Requests to Exceed the Page or Type-Volume Limitations**

**(a) Motions**

The Court looks with disfavor on motions to exceed the applicable page, line or type-volume limitations. Such motions will be granted only upon a showing of diligence and substantial need. A motion for permission to exceed the page, line or type-volume limitations set forth at FRAP 32(a)(7)(A) or (B) must be filed on or before the brief's due date and must be accompanied by a declaration stating in detail the reasons for the motion.

Any such motions shall be accompanied by a single copy of the brief the applicant proposed to file and a Form 8 certification as required by Circuit Rule 32-1 as to the line or word count. The cost of preparing and revising the brief will not be considered by the Court in ruling on the motion.

**(b) Notices of Automatic Size Enlargements**

If no prior enlargement of the brief's size has been obtained, the Court will provide an enlargement of 5 pages, 1,400 words or 130 lines of monospaced text to separately represented parties filing a joint brief. That same enlargement will also be routinely provided to a party or parties filing a single brief that answers or replies either to (1) multiple briefs or (2) an enlarged joint brief filed pursuant to this subsection. Briefs submitted under this subsection must be accompanied by Form 8.

### ***Circuit Advisory Committee Note to Rule 32-2***

*Motions: If the Court does not grant a motion for leave to file an oversize brief ~~the requested relief~~ or grants the motion ~~requested relief~~ only in part, the Court ordinarily will provide the party or parties a reasonable interval after the entry of the order to file a brief as directed by the Court. Any order that decides a motion will make adjustments to the due date(s) for any further briefing.*

*Notices: Rule 32-2 encourages separately represented parties to file a joint brief to avoid burdening the Court with repetitive presentations of common facts and issues. The routine enlargement of brief size provided by the rule is intended to accommodate the additional length that may be necessary to permit preparation of a joint brief.*

*If an overlength brief is submitted by a party or parties ineligible for relief under Rule 32-2(b), the Clerk will provide the parties with an interval within which to file a motion under Rule 32-2(a).*

Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules ~~28-4~~,  
29-2(c)(2) and (3), 32-2 or 32-4<sup>1</sup> for Case Number \_\_\_\_\_

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (check appropriate option):

- This brief complies with the enlargement of brief size permitted by Ninth Circuit Rule ~~28-4~~ 32-2(b). The brief is \_\_\_\_\_ words, \_\_\_\_\_ lines of text or \_\_\_\_\_ pages excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable, and is filed by (1) \_\_\_\_\_ separately represented parties; (2) \_\_\_\_\_ a party or parties filing a single brief in response to multiple briefs; or (3) \_\_\_\_\_ a party or parties filing a single brief in response to an enlarged joint brief filed under Rule 32-2(b). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). ~~This brief is \_\_\_\_\_ words, \_\_\_\_\_ lines of text or \_\_\_\_\_ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.~~
- This brief complies with the enlargement of brief size **established** ~~granted~~ by court order dated \_\_\_\_\_. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). This brief is \_\_\_\_\_ words, \_\_\_\_\_ lines of text or \_\_\_\_\_ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.
- This brief is accompanied by a motion for leave to file an oversize brief pursuant to Circuit Rule 32-2(a) and is \_\_\_\_\_ words, \_\_\_\_\_ lines of text or \_\_\_\_\_ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.
- This brief is accompanied by a motion for leave to file an oversize brief pursuant to Circuit Rule 29-2(c)(2) or (3) and is \_\_\_\_\_ words, \_\_\_\_\_ lines of text or \_\_\_\_\_ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.
- This brief complies with the length limits set forth at Ninth Circuit Rule 32-4. **The brief is \_\_\_\_\_ words, \_\_\_\_\_ lines of text or \_\_\_\_\_ pages, excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), if applicable.** The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Signature of Attorney or  
Unrepresented Litigant

("s/" plus typed name is acceptable for electronically-filed documents)

Date

<sup>1</sup> If filing a brief that falls within the length limitations set forth at Fed. R. App. P. 32(a)(7)(B), use Form 6, Federal Rules of Appellate Procedure.

## **Circuit Rule 39-1.9 Referral to Appellate Commissioner**

When the Court has awarded attorneys fees on appeal or on application for extraordinary writ, and a party opposes the amount of attorneys fees requested by the prevailing party, the Court may refer to the Appellate Commissioner the determination of an appropriate amount of attorneys fees. ~~The Court may direct the Appellate Commissioner to make a recommendation to the Court or to issue an order awarding attorneys fees.~~

Within 14 days after the date of an Appellate Commissioner's order awarding attorneys fees, a party may file a motion for reconsideration. The motion is directed initially to the Appellate Commissioner. If the Appellate Commissioner is disinclined to grant reconsideration, the Appellate Commissioner will refer the motion to the Court. If the Appellate Commissioner enters a revised order in response to the motion, that order is subject to reconsideration by the Court.

No response to a motion for reconsideration of a fee order is permitted unless requested by the Appellate Commissioner or the Court, but ordinarily neither the Appellate Commissioner nor the Court will grant reconsideration without requesting a response.

~~Any such order issued by the Appellate Commissioner is subject to reconsideration by the Court.~~