

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
Office of the Clerk

INFORMATION PACKAGE FOR PRO SE APPELLANTS

(MAY 2006)

This information packet has been prepared by the United States Court of Appeals for the Ninth Circuit to assist you in presenting your appeal to the Judges of this court. Please read **ALL** of the information carefully **before** you prepare your case.

You **must** keep a copy of **all** documents you send to this court for your personal records.

Your appeal has been assigned a Court of Appeals docket number. You **must** include this number on **all** of the correspondence you send to this court and to the other side.

If you move or your mailing address changes, you **must** notify this court **in writing** immediately. If you do not, you could miss important papers from this court notifying you of deadlines or decisions. If you do not notify us of your address changes and you miss a filing deadline as a result, your appeal could be dismissed without further notice.

When filing documents, you must use paper and ink that will be legible when they arrive here for filing. Therefore, do **not** use tissue paper. If we can't read the documents, they will not be processed.

Your Appeal – A Checklist

- _____ Court Clerk assigns you a docket number and sends you this package of information. **You must include this docket number on anything you send to the Court!!** In this package, you will find:
 - _____ **A Time Schedule Order** - This tells you when certain papers are due. It is **VERY important**.
 - _____ **A Sample Certificate of Service**. You **MUST** send a copy of ALL documents that you file with this court to counsel for the opponent, if any, and you must include a statement to this court telling us that you did so. You may duplicate this form and fill it out and send it with EACH document you file with this court.
 - _____ **An Informal Brief Form**. **Please note that there is a separate version of this brief form for immigration cases!**
- _____ You must notify the Court in writing of any change of address.
9th Cir. R. 46-3.
- _____ You must pay your filing fee of \$455 (for appeals from district courts). If you cannot pay your fee and want to ask that it be waived, you must file a motion to proceed in forma pauperis. If your motion is denied and you do not pay the fees, your appeal will be dismissed.
- _____ You must file your opening brief by the date stated on the time schedule order.
- _____ If you want to file a reply to your opponent's brief, you must do that within 14 days of the date they served you with the brief.
- _____ If you are an appellant in an appeal from an action filed pursuant to 28 U.S.C. § 2254 or § 2255, you **MUST** first obtain a certificate of appealability regarding any issues you want to raise in your brief. If the district court has denied a certificate of appealability, you must seek a certificate from this court. *See 9th Cir. R. 22-1. See page 5 of this handout for more details.*
- _____ Once all the briefs are filed, the case will be considered by a panel of

three Judges. Unless one or more of the Judges requests that oral argument be heard, your case will be submitted on the briefs. *See* Fed. R. App. P. 34(a).

_____ In some cases, the Judges may decide a case **before** the completion of briefing, but you will be given an opportunity to tell the court why the case should not be summarily decided before the filing of your opening brief. *See* 9th Cir. R. 3-6.

_____ If they decide that argument would be beneficial to the Court, you will receive notice that your case has been calendared for argument.

_____ When the Judges decide your case, you will receive a memorandum disposition or order.

I. THE COURT OF APPEALS

The Court of Appeals reviews final decisions of the U.S. District Court, U.S. Tax Court, Bankruptcy Appellate Panel (BAP) and certain federal agencies. The court looks at the district court or administrative record in the case and the briefs of the parties to see if there are any constitutional, legal, or factual mistakes. NO new evidence or testimony can be presented in this court.

II. THE FEDERAL RULES

You must follow the Federal Rules of Appellate Procedure (Fed. R. App. P.) and the Ninth Circuit Rules. Make sure you follow the actual language of the rules. The Federal Rules are available in most law libraries. If you would like a copy of the Ninth Circuit Rules, free of charge, please send a written request to the Clerk's office and one will be sent to you. Please include a return mailing label with your address on it with your request. They are also available on the court's website, <http://www.ca9.uscourts.gov/>.

III. PAYMENT OF FEES

The docketing and filing fees for an appeal are paid in the BAP, district court or tax court when the notice of appeal is filed.

If you cannot afford to pay the fees, you may:

1. File a motion to proceed without payment of fees. This motion is called a Motion to Proceed *in forma pauperis*. You must file this motion in this court together with a financial affidavit, including a statement by you swearing under penalty of perjury that you do not have enough money or other assets to pay the fees. You may use the Form affidavit provided as Form 4 of the Federal Rules of Appellate Procedure.
2. If this court determines that your appeal is without legal or factual merit, it may deny your motion whether or not you can afford to pay the fees. If the motion is denied, you **MUST** pay the fees. *See* Fed. R. App. P. 24.
3. **If you do not pay your filing fees or file a motion to proceed *in forma pauperis*, your case will be dismissed. *See* 9th Cir. R. 42-1.**
4. If your motion to proceed *in forma pauperis* is GRANTED, you do not need

to pay the filing fees, unless you are a prisoner in a civil (non-habeas corpus) appeal, in which case you will be required to pay the entire \$455 docketing and filing fees when funds exist in your prison account. *See* 28 U.S.C. § 1915(b). If you are incarcerated, the court will notify you of your obligations under this statute and will require you to complete and return an authorization form to allow prison officials to deduct the funds from your account on a monthly basis. In addition, all litigants proceeding in forma pauperis still have to pay for other expenses of their appeal. These include copying, mailing, or costs you may have to pay the other party if you lose the appeal. *See* Fed. R. App. P. 39.

NOTE: If you were permitted to proceed *in forma pauperis* in the district court and that status has not been revoked, you need not seek such status in this court, whether or not you are incarcerated. *See* Fed. R. App. P. 24(a). You will still be obliged to pay the fees under 28 U.S.C. § 1915(b) in civil appeals if you are incarcerated.

IV. CERTIFICATE OF APPEALABILITY

In all appeals from proceedings filed pursuant to 28 U.S.C. § 2254 or § 2255, the petitioner must obtain a certificate of appealability (COA) in order to seek review in the Circuit Court. *See* Fed. R. App. P. 22(b). If the district court denies a COA as to all issues, you must request a COA from the court of appeals. *See* 9th Cir. R. 22-1. A timely notice of appeal will be considered as a request for a certificate of appealability in this Court.

V. TRANSCRIPT DESIGNATION AND ORDERING FORM

Whether or not you are incarcerated, if you want to quote matters that were discussed during district court hearings to support what you tell this court in your brief, you must order a transcript of the hearing and pay the court reporter to prepare the transcript (or file a motion for transcripts at government expense). You must fill out the transcript designation form and include the date of the hearing and the name of the reporter that reported the hearing. A copy of the designation **MUST** be sent to the reporter and to the district court, **AND** must be served on opposing counsel. The **TIME SCHEDULE ORDER** gives you the date by which you must designate the transcript. Forms are available from the district court clerk.

You are not required to designate written pleadings or orders that were filed in the lower court unless you are appealing an order issued by the Bankruptcy Appellate Panel or a district court reviewing a bankruptcy court order.

VI. TRANSCRIPTS AT GOVERNMENT EXPENSE

In forma pauperis status in civil appeals does NOT automatically entitle you to transcripts at government expense, unless you are appealing from the denial of a petition filed pursuant to 28 U.S.C. § 2254 or § 2241. You must file a separate motion for transcripts in the district court. If the motion is denied, you can file the same motion in the Ninth Circuit. *See* 28 U.S.C. § 753(f).

You may request transcripts at government expense only for hearings conducted in the district court in the proceeding that generated your appeal; the court will not authorize payment for production of transcripts of hearings that were held in other courts or other proceedings.

VII. APPOINTMENT OF COUNSEL

The situations in which the court may appoint counsel or request the services of volunteer counsel in civil appeals are VERY LIMITED. To request the court to appoint counsel, you should file a motion for the appointment of counsel stating reasons why counsel is necessary and why you cannot afford an attorney. Remember to serve counsel for the opposing party with a copy of the motion.

In direct criminal appeals, if you have in forma pauperis status or can show that you are indigent, you are entitled to appointed counsel. However, you **MUST ASK** that counsel be appointed by filing a "Motion for Appointment of Counsel."

VIII. BRIEF

Your appeal was assigned a court of appeals docket number. **You must include this number on all motions, briefs or other correspondence in order to avoid delay or lost documents.**

The TIME SCHEDULE ORDER tells you when you must file particular papers. Your brief is the written argument of your appeal. You will file the first brief, called the Opening Brief. The other side is given a chance to file a brief answering your arguments. You will have an opportunity to reply to their brief. The TIME SCHEDULE ORDER will tell you when your Opening and Reply Briefs are due.

Briefing in certain appeals may be expedited, giving shorter deadlines to both parties. *See* 9th Cir. R. 3-3 (appeals from the denial of preliminary injunctive relief).

In general, briefs should include:

- (a) A statement of the facts of your case.
- (b) What the district court or agency decided.
- (c) The issues you present on appeal.
- (d) The LEGAL arguments you wish to present.
- (e) A statement telling this court what you want us to do on appeal - reverse the district court, remand the case back to the district court, or modify the district court opinion and WHY.
- (f) Your signature - all briefs must be signed by each pro se appellant.

Please read Fed. R. App. P. 28 and 32 and 9th Cir. R. 28-1, 28-2, 28-4, 32-1, 32-3 and 32-5 for the exact requirements of the brief.

You must file the **original and 7 copies** of your briefs with the court. *See* 9th Cir. R. 31-1. You must also send 2 copies of your brief to counsel for EACH opposing party and you must file a certificate of service with each copy as well.

NOTE: Because you are appearing without the help of an attorney, you may file the informal brief included in this package. If you choose instead to file your own brief, it must meet **all** of the requirements of the federal rules, and must include the certificate of compliance required by 9th Cir. R. 32-1. If it does not, we will ask you to correct it, which will delay the decision in your case. If you use the attached informal brief form, however, your opening and reply briefs need not comply with the technical requirements of the Rules. *See* 9th Cir. R. 28-1(b), 32-5. You may add additional pages to the form, up to a total of 40 double-spaced pages.

NOTE: The court will DISMISS your appeal if you do not file your brief when it is due!

NOTE: Your briefs are considered filed as of the date you mail them to the court if you use first class mail. *See* Fed. R. App. P. 25(a). This is NOT true for any other filings in this court unless you are incarcerated. *See* Fed. R. App. P. 25(c).

X. EXTENSIONS OF TIME

If you need an extension of time in which to file your brief, you may request one extension of no more than 14 days by telephone. The telephone numbers for requesting telephonic extensions are:

Appeals originating from the Central and
Southern Districts of California (626) 229-7261

Appeals originating from Alaska, Idaho,
Montana, Oregon and the Eastern and
Western Districts of Washington (206) 553-0191

All other districts and agency cases (415) 556-9768

Once you receive a telephonic extension of time, no further extension of time is available absent extraordinary circumstances. You must give the other party notice by telephone that you are requesting an extension BEFORE you call the court. *See* 9th Cir. R. 31-2.2(a). **If you need more than a 14-day extension, or have already been granted one or more extensions to file the brief,** you must file a written motion for extension of time in which to file your brief. This motion must be filed at least SEVEN calendar days before the due date for your brief. Your motion must meet the requirements of 9th Cir. R. 31-2.2(b).

XI. MOTIONS

Any motions filed while your appeal/petition is pending must clearly identify the relief sought and the legal grounds for such relief. You must file an original and 4 copies of any motion and you must serve a copy of the motion on all counsel for opposing parties and file a certificate of service saying you have done so. 9th Cir. R. 27-1. If you are requesting emergency relief you must FIRST call the Motions Unit of the Court at (415) 556-9890. The attorney on duty will help you figure out the best way to get your motion to the Court.

Any motion for reconsideration or clarification of an order disposing of a motion or otherwise entered by a court staff, the Appellate Commissioner or Judges prior to the completion of briefing must be filed within 14 days (or 28 days if you are incarcerated and proceeding pro se). *See* 9th Cir. R. 27-7, 27-10.

XII. PETITION FOR REHEARING

If you think this court's final disposition on the merits of your case was wrong you may file a petition for rehearing in this court **within 14 days of Entry of Judgment (or 45 days when it is a civil case and there is a Federal participant)**. *See* Fed. R. App. P. 35 and 40; 9th Cir. R. 35 and 40. Unless you filed an informal opening brief on one of the forms provided with this packet, your petition for rehearing must comply with the technical form requirements of Fed. R. App. P. 32. *See* 9th Cir. R. 32-5, 40-1.

You must present new facts or legal bases not already presented in your brief. After this court either denies your timely petition for rehearing or issues a new judgment upon rehearing in your case, you may file a petition for writ of certiorari in the United States Supreme Court.

If you do not file a petition for rehearing in this Court, you may instead file a petition for a writ of certiorari in the United States Supreme Court. (See the Supreme Court Rules for details on how to proceed in the Supreme Court.)

Remember that you must have a LEGAL basis to support your belief that this court's final decision was incorrect; it is not enough to simply disagree with the outcome.