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**Amendments to the
 LOCAL RULES & GENERAL ORDERS
 for the Ninth Circuit Court of Appeals
 Effective, July 1, 2005**

RULE	TITLE	New or Revised	PURPOSE OF AMENDMENT
Circuit Rule 27-1(c)	Filing of Motions	New	To eliminate a redundancy between federal rules and circuit rule concerning number of copies required. <i>See</i> , (FRAP 27(d)(1).
Circuit Rule 36-3 Advisory Committee Note	Citation of Unpublished Dispositions or Orders	Revised	To extend date of this Advisory Committee Note due to the U.S. Judicial Conference's consideration of proposed FRAP 32.1.

CIRCUIT RULE 27-1

FILING OF MOTIONS

All motions must be filed with the Clerk in San Francisco. Except for same-day emergencies as described in Circuit Rule 27-3(2), counsel should not contact a circuit judge regarding any motion.

(1) Form of Motions

- (a) The typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) apply to motions, responses and replies. (*New, 7/1/2002*)
- (b) The court requires an original and four (4) copies of motions, responses to motions, replies, and any supporting papers and appendices. (*Rev., 7/1/2002*)
- (c) **The provisions of Fed. R. App. P. 27(d)(1) otherwise govern the format of motions. (*New 7-1-05*)**

The provisions of Fed. R. App. P. 27(d) apply except that the court requires an original and 4 copies of motions, responses to motions, and any supporting papers and appendices.

(2) Position of Opposing Counsel

If counsel for the moving party learns that a motion is unopposed, counsel shall so advise the court. [eff. 1/1/99]

Cross Reference: Circuit Rule 25-2, Communications to the Court.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 27-1

(1) ***Motions Acted on by the Appellate Commissioner.*** *The Appellate Commissioner is an officer appointed by the court. The court has delegated broad authority under FRAP 27(b) to the Appellate Commissioner to review a wide variety of motions formerly ruled on by judges. For example, the Appellate Commissioner rules on most motions concerning the appointment, substitution and withdrawal of counsel, motions for reinstatement, motions for leave to intervene and motions to seal or unseal documents. The Appellate Commissioner may deny a motion for dispositive relief, but may not grant such a request other than those filed under FRAP 42(b).*

(2) ***Motions Acted on by a Single Judge.*** *Under FRAP 27(c), a single judge may grant or deny any motion which by order or rule the court has not specifically excluded, but a single judge may not dismiss or otherwise effectively determine an appeal or other proceeding. Thus, a single judge may not grant motions for summary disposition, dismissal, or remand. A single judge is not authorized to grant or deny in its entirety a motion for stay or injunction pending appeal, but may grant or deny temporary relief in emergency situations pending full consideration of the motion by a motions panel. (See infra) In addition, some types of motions may be ruled on by a single judge by virtue of a particular rule or statute. For example, a single judge is authorized to grant a certificate of appealability. (See 28 U.S.C. § 2253; FRAP 22.)*

(3) *Motions Acted on by Motions Panels*

(a) ***Motions Heard by the Motions Panels.*** *The motions panel rules on substantive motions, including motions to dismiss, for summary affirmance, for bail and similar motions.*

(b) ***Selection of Motions Panels.*** *Judges are assigned to the three-judge motions panel on a rotating basis by the clerk for a term of one month. The panels are normally composed of three circuit judges in active service, but any senior circuit judge who is willing to serve may be assigned to the panel. The three judges serving on the motions panel rotate as lead judge, second judge and third judge. A single motions panel is appointed for the entire circuit.*

(c) ***Procedures for Disposition of Motions by the Motions Panel.*** *All three judges of the motions panel participate in ruling on motions that dispose of the appeal. Other substantive motions are presented to two judges; if in agreement, they decide the motion. The third judge participates only if*

- (i) *one of the other members of the panel is disqualified or is otherwise unavailable;*
- (ii) *the other members of the panel disagree on the disposition of a motion; or*
- (iii) *he or she is requested to participate by the other members of the panel.*

The motions panel sits in San Francisco approximately every ten days. Motions are presented orally to the panel by the motions attorneys or court law clerks when the panel sits. For complex motions, the motions attorneys or court law clerks may prepare and transmit to the panel in

advance bench memoranda, the moving papers and relevant portions of the record.

Motions are referred by the clerk's office to the motions attorneys, who transmit them to the judges of the motions panel. If necessary, emergency motions are acted on by telephone. (See Cir. R. 27-3 through 27-4 and Advisory Committee Notes thereto.)

(d) **Motions for Bail.** Despite the provisions of FRAP 27(c), conferring broad powers upon single judges to dispose of motions and the power granted "any judge or justice" to grant bail or other relief, see 18 U.S.C. § 3041, the court has determined that in the interest of uniformity, motions for bail are neither granted nor denied by one judge. Therefore, it is required that motions for bail be routed through the clerk's office and considered by a motions panel. (See Cir. R. 9-1.1 and 9-1.2 as to the required form and content of motions for bail pending trial or appeal.)

(4) **Motions for Clarification, Reconsideration or Rehearing.** A motion for clarification, reconsideration, or rehearing of an order entered by a single judge or the appellate commissioner is referred to that judge or the commissioner. If that individual declines to grant reconsideration, rehearing, or clarification, the motion is referred to the current motions panel.

A motion for clarification, rehearing or reconsideration of an order issued by a motions panel is referred to the panel that entered the order, unless the case has been assigned to a panel on the merits. (In the latter case, the motion is referred to the merits panel.)

Motions for clarification, reconsideration or rehearing of a motion are disfavored by the Court and are rarely granted. The filing of such motions is discouraged. (See Circuit Rule 27-10 as to time limits on filing motions for reconsideration.) (rev. 7/95, 7/98)

(5) **Position of Opposing Counsel.** Counsel are encouraged to contact opposing counsel prior to the filing of any motion and to either inform the court of the position of opposing counsel or provide an explanation regarding the efforts made to obtain that position.

(6) **Request to Amend the Briefing Schedule:** A party may request modification of the briefing schedule in conjunction with any request for other relief. The request for modification of the briefing schedule should be included in the legend as well as the body of the motion for other relief. (New Note 7/1/2000)

Cross References: See Advisory Committee Note regarding Habeas Corpus procedures See Advisory Committee Note to Rule 27-3 regarding emergency motions. See Circuit Rule 25-2, Communications to the Court; Fed. R. App. P. 32 (c), Form of Other Papers; Fed. R. App. P. 40 (b) Petition for Panel Rehearing, Form of Petition; Length.

CIRCUIT RULE 36-3

CITATION OF UNPUBLISHED DISPOSITIONS OR ORDERS

- (a) **Not Precedent:** Unpublished dispositions and orders of this Court are not binding precedent, except when relevant under the doctrine of law of the case, res judicata, and collateral estoppel.
- (b) **Citation:** Unpublished dispositions and order of this Court may not be cited to or by the

courts of this circuit, except in the following circumstances.

- (i) They may be cited to this Court or to or by any other court in this circuit when relevant under the doctrine of law of the case, res judicata, or collateral estoppel.
 - (ii) They may be cited to this Court or by any other courts in this circuit for factual purposes, such as to show double jeopardy, sanctionable conduct, notice, entitlement to attorneys' fees, or the existence of a related case.
 - (iii) They may be cited to this Court in a request to publish a disposition or order made pursuant to Circuit Rule 36-4, or in a petition for panel rehearing or rehearing en banc, in order to demonstrate the existence of a conflict among opinions, dispositions, or orders.
- (c) **Attach Copy:** A copy of any cited unpublished disposition or order must be attached to the document in which it is cited, as an appendix. *(New Rule 7/1/2000)*

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 36-3

Please note that Circuit Rule 36-3 has been extended until further order of the Court.
(Rev. 01-01-2003, Rev. 07-01-05)