



**Office of the Clerk**  
**UNITED STATES COURT of APPEALS for the NINTH CIRCUIT**  
**95 Seventh Street, Post Office Box 193939**  
**San Francisco, California 94119-3939**



Cathy A. Catterson, Clerk of Court

(415) 556-9800

**AMENDMENTS TO THE RULES**  
**Effective July 1, 2001**

<b>RULE</b>	<b>TITLE</b>	<i>New or Revised</i>	<b>PURPOSE OF AMENDMENT</b>
4-1 (d)	Counsel in Criminal Appeals (d) Motions for Leave to Proceed Pro Se in Direct Criminal Appeals	Revised	To clarify the court's procedures governing defendants who wish to represent themselves in light of the Supreme Court's decision in <u>Martinez v. Court of Appeal</u> , 120 S.Ct. 684 (2000).
6-1	Appeals From Final Decisions of the Supreme Court of the Commonwealth of the Northern Mariana Islands	Revised	Citation to 48 U.S.C. §1694c(a) was replaced with §1824(a).  TEXT NOT INCLUDED.
33-1	Settlement Program - Appeal Conferences	Revised	SEE BELOW.
33-1 (c)	Circuit Advisory Committee Note to Rule 33-1	New	(1) To advise the bar of the availability of the arbitration process; and (2) To set forth the procedures governing such matters.
39-1.6	Costs and Attorneys Fees on Appeal < Request for Attorneys Fees	New	To ensure that practitioners provide all information necessary to assess attorneys' fee requests.
39-1.6	Circuit Advisory Committee Note to Rule 39-1.6	Revised	SEE ABOVE.
39-1.7	Opposition to Request for Attorneys Fees	Revised	SEE ABOVE.

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**CIRCUIT RULE 4-1**  
**COUNSEL IN CRIMINAL APPEALS**

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This rule applies to appeals in categories of cases listed in 18 U.S.C. § 3006A.

- (a) Continuity of Representation on Appeal  
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- (b) Application for Indigent Status on Appeal  
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- (c) Withdrawal of Counsel After Filing the Notice of Appeal  
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(1) through (6)
- (d) **Motions for Leave to Proceed Pro Se in Direct Criminal Appeals**  
**The court will permit defendants in direct criminal appeals to represent themselves if: (1) the defendant's request to proceed pro se and the waiver of the right to counsel are knowing, intelligent and unequivocal; (2) the defendant is apprised of the dangers and disadvantages of self-representation on appeal; and (3) self-representation would not undermine a just and orderly resolution of the appeal. If, after granting leave to proceed pro se the court finds that appointment of counsel is essential to a just and orderly resolution of the appeal, leave to proceed pro se may be modified or withdrawn. (New 7/1/2001)**
- (e) Post Appeal Proceedings  
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- (f) Counsel's Claim for Fees and Expenses  
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**CIRCUIT RULE 33-1**  
**SETTLEMENT PROGRAM -- APPEAL CONFERENCES**

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The primary purpose of a prehearing conference shall be to explore settlement of the dispute that gave rise to the appeal. The judge or court mediator may require the attendance of parties and counsel. Information disclosed to the judge or court mediator in settlement discussions shall be kept confidential and shall not be disclosed to the judges deciding the appeal or to any other person outside the settlement program participants. (rev. 7/94) **In the context of a settlement or mediation in a civil appeal, the parties who have otherwise settled the case may stipulate to have one or more issues in the appeal submitted to an appellate commissioner for a binding determination.** (New 7/2001)

<p><b><i>CIRCUIT ADVISORY COMMITTEE</i></b> <b><i>NOTE TO RULE 33-1</i></b></p>
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(a) *Appeal Settlement Conferences.*

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(b) *Appeal Case Management Conference.*

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(c) ***Binding Determinations by Appellate Commissioner. In the context of a settlement or mediation in a civil appeal, the parties may stipulate to having one or more issues in their appeal referred for a binding determination by an Appellate Commissioner. Where the parties enter into such a stipulation, the matter may be handled with abbreviated and accelerated briefing and a guaranteed opportunity for in-person or telephonic oral argument before the Appellate Commissioner. The Appellate Commissioner will issue a determination and, if requested, a written statement of reasons. The determination will have no precedential effect and will be final and nonreviewable. Cases will ordinarily be referred to the Appellate Commissioner through the court's mediation program. In some instances, the court's pro se unit may also alert parties to the availability of this program. For further information, please contact the Circuit Mediation Office at (415) 556-9900.*** (New 7/2001)

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**CIRCUIT RULE 39-1**  
**COSTS AND ATTORNEYS FEES ON APPEAL**

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39-1.1 Support for Bill of Costs

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39-1.2 Number of Briefs and Excerpts

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39-1.3 Cost of Reproduction

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39-1.4 Untimely Filing

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39-1.5 Objection to Bill of Costs

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39-1.6 Request for Attorneys Fees

Absent a statutory provision to the contrary, a request for attorneys fees, including a request for attorneys fees and expenses in administrative agency adjudications under 28 U.S.C. § 2412(d)(3), shall be filed with the Clerk, with proof of service, within 14 days from the expiration of the period within which a petition for rehearing or suggestion for rehearing en banc may be filed, unless a timely petition for rehearing or suggestion for rehearing en banc is filed. If a timely petition for rehearing or a suggestion for rehearing en banc is filed, a request for attorneys fees shall be filed within 14 days after the court's disposition of such petition or suggestion. The request must be filed separately from any cost bill.

**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: (a) a detailed itemization of the tasks performed each date and the amount of time spent by each lawyer and paralegal on each task; (b) a showing that the hourly rates claimed are the prevailing rates in the relevant market; and (c) an affidavit attesting to the accuracy of the information submitted. (New 7/2001)**

**39-1.7 Opposition to Request for Attorneys Fees**

Any party from whom attorneys fees are requested may file an objection to the request. The objection shall be filed with the Clerk, with proof of service, within 14 days after service of the request. **The party seeking fees may file a reply to the objection within 7 days after service of the objection.** (Last sentence new 7/2001)

39-1.8 Request for Transfer

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39-1.9 Referral to Appellate Commissioner

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<p><b><i>CIRCUIT ADVISORY COMMITTEE</i></b> <b><i>NOTE TO RULE 39-1.6</i></b></p>
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*Forms for cost bills and attorneys fees 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)).*

**Form 9. Application for Attorneys Fees** (Rev. 7/2001)

<i>DESCRIPTION OF SERVICES</i>	<i>HOURS</i>
Interviews & Conferences	
Obtaining & Reviewing Records	
Legal Research	
Preparing Briefs	
Preparing for & Attending Oral Argument	
Other: (specify on additional sheet(s))	
TOTAL Hours Claimed	

*TOTAL COMPENSATION REQUESTED:* \_\_\_\_\_

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

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 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 summary for each lawyer and paralegal of the total hours spent in the categories set forth above;
- (3) a showing that the hourly rates claimed are the prevailing rates in the relevant market; and
- (4) an affidavit attesting to the accuracy of the information submitted.