

RUTTER GROUP PRACTICE GUIDE

FEDERAL *NINTH CIRCUIT*

CIVIL APPELLATE PRACTICE

2026 UPDATE

This 2026 softbound Update completely replaces the 2025 Update.

These Highlights summarize the most significant developments over the past year. The paragraph numbers are keyed to the 2026 edition of the Practice Guide where the topics are discussed in greater detail.

With this Update, Chapter 8 has been divided into two subchapters, elevating the topics of “Preparing Appellate Briefs” and “Using Legal Authority” into their own standalone chapters. These reorganized concepts appear in the order in which practitioners approach appellate briefs, making it easier to locate and apply this important guidance.

Check for Case/Statutory/Rules Developments: This Update went to press in April 2026. Some new cases may not have been final at that time and may be affected by later developments. In addition, unless specifically noted, this Update does not include case, legislative or rules changes taking effect after our press date. Counsel should check subsequent case histories and independently verify the current state of the law, including any developments that may affect the analysis in this Practice Guide.

Thank You! We are indebted to our customers for their comments and suggestions. *Please keep them coming!*

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2026 UPDATE HIGHLIGHTS

CHAPTER 1

PRELIMINARY CONSIDERATIONS

Filing Documents

[1:56.8] **Appellate Electronic Filing System requirements—signatures:** Amended Ninth Circuit Rule 32-1, Adv. Comm. Note clarifies that an electronic signature by counsel or an unrepresented party attests that the signer has reviewed the filing and is responsible for the accuracy of its contents, regardless of manner in which the document was generated (*see also* ¶8:385 of these *Highlights Summaries*).

[1:64] **No additional paper copies:** For all paper filings (i.e., by pro se and exempt filers), parties should submit only the original; no additional copies should be submitted unless requested by the court. [Amended Ninth Circuit Rule 31-1]

[1:67a] **Caption—identifying immigration petitioners by “A” number sufficient:** In a petition for review of a Board of Immigration Appeals order, the identification of the petitioner only by their agency “A” number in the caption satisfies FRAP 15(a)(2)(A)’s requirement that the petition “name each party seeking review either in the caption or the body of the petition.” [*Perez-Perez v. Bondi*, 127 F4th 1180, 1181-1182 (9th Cir. 2025) (internal quotes omitted); *also discussed at* ¶14:454]

CHAPTER 2

APPEALABILITY & JUSTICIABILITY

Final Judgments

[2:67] **Implicit intent:** Where the district court granted plaintiff’s summary judgment motion on one claim and denied it on two other claims, then entered judgment for defendant, the appellate court construed the judgment as implicitly intending to sua sponte grant summary judgment to defendant on the two remaining claims, creating an appealable final decision. [*Natural Grocers v. Rollins*, 157 F4th 1143, 1155-1156 (9th Cir. 2025)]

Interlocutory Appeals by Permission (28 USC §1292(b))

[2:180a] **Other party’s conditional petition:** A party aligned with the petitioning party can file a conditional petition to preserve its right to participate in the appeal should the petitioning party’s petition be granted. [See *Shoshone-Bannock Tribes of Fort Hall Reservation v. United States Dept. of Interior*, 153 F4th 748, 755 (9th Cir. 2025)]

Injunctive Orders

[2:220.4-220.5] **Orders having practical effect of granting or denying injunction:** An order requiring intervenor newspaper to return documents and not disseminate their contents would be injunctive and denial of such an order is appealable. [*Cahill v. Insider Inc.*, 131 F4th 933, 936-937 (9th Cir. 2025)]

And a district court order staying a Department of Homeland Security order terminating Temporary Protected Status for immigrants from certain countries under section 705 of the Administrative Procedure Act has the practical effect of an injunction. This order is appealable because the limited timeframe for such DHS orders means the lawfulness of the stay could be effectively unreviewable if left until final judgment. [*National TPS Alliance v. Noem*, 150 F4th 1000, 1014-1015 (9th Cir. 2025)]

[2:239] **Summary judgment order with injunctive effect:** Where a district court's order on a summary judgment motion does not dispose of the entire case but has the practical effect of an injunction, the order is appealable under 28 USC §1292(a)(1). [*Montana Wildlife Federation v. Haaland*, 127 F4th 1, 27-31 (9th Cir. 2025)]

[2:249] **Exceptions to nonappealability:** The Supreme Court applies a similar test to the Ninth Circuit's narrow exceptions to the general rule re nonappealability. [See *Department of Ed. v. California*, 604 US 650, 651, 145 S.Ct. 966, 968 (2025) (per curiam) (construing TRO as appealable preliminary injunction where order "carries many of the hallmarks of a preliminary injunction" and "basis for issuing the order [is] strongly challenged" because appellant is likely to succeed on merits (internal quotes omitted; brackets in original)]

Appealability in Particular Cases

[2:319.7] **Government employees' qualified immunity—good faith defense:** In most circumstances, a private party sued under 42 USC §1983 cannot assert qualified immunity as a defense but can assert a good faith defense to liability. But a district court order denying such a good faith defense is not immediately appealable as a collateral order. [*Estate of Esche v. Bunuel-Jordana*, 152 F4th 1185, 1197 (9th Cir. 2025)]

[2:320a] **State law immunity—orders denying anti-SLAPP motions:** An order denying a special motion to strike brought under California's anti-SLAPP statute is *not* an immediately appealable collateral order because it is not completely separate from the merits and is effectively reviewable on appeal from a final judgment. [*Gopher Media LLC v. Melone*, 154 F4th 696, 699 (9th Cir. 2025) (en banc)]

[2:344] **Orders denying transfer:** An order denying a motion to transfer is interlocutory and not immediately appealable. [*Montana Wildlife Federation v. Haaland*, *supra*, 127 F4th at 32]

[2:346.51] **Remand of pendent state claims:** After accepting removal of one of several state law claims as completely preempted under federal labor law and dismissing that claim for failure to exhaust contractual grievance procedures, the district court remanded the remaining state law claims under 28 USC §1367(c). Because the dismissal of the federal labor law claim was based on a nonjurisdictional claim-processing rule, the district court had jurisdiction to remand the remaining state law claims under §1367(c), and its remand order was therefore reviewable in its entirety. [*Renteria-Hinojosa v. Sunsweet Growers, Inc.*, 150 F4th 1076, 1085-1088 (9th Cir. 2025)]

[2:426.5] **Discovery orders under 28 USC §1782:** An order granting or denying a petition for production of documents for use in a foreign proceeding under 28 USC §1782 is generally immediately appealable as a collateral order. [*Novalpina Capital Partners I GP S.A.R.L. v. Read*, 149 F4th 1092, 1101 (9th Cir. 2025); also discussed at ¶2:426.2, 2:555]

Justiciability

[2:572] **District court jurisdiction versus appellate jurisdiction:** In some cases, a lack of justiciability will result in dismissal of the appeal. But where the district court reaches a final decision yet has acted in the absence of federal subject matter jurisdiction, the Ninth Circuit has appellate jurisdiction to review that decision. [*Walker v. State of Arizona*, 158 F4th 971, 979 (9th Cir. 2025)]

[2:618.1] **Standing—nonparty attorneys:** Nonparty attorneys who have been aggrieved by an order of the district court have standing to appeal on their own behalf. “To have standing, attorneys must show injury to themselves rather than to their clients.” [*Fierro Cordero v. Stemilt AG Services, LLC*, 142 F4th 1201, 1205 (9th Cir. 2025) (order limiting lawyer’s use of discovered materials)]

[2:619] **Appeal by intervenor:** When only an intervenor appeals a judgment, the issue whether intervention was proper becomes jurisdictional. [*Novalpina Capital Partners I GP S.A.R.L. v. Read*, supra, 149 F4th at 1100, fn. 3]

Mootness

[2:653] **Partial mootness:** See *United States v. Brumbaugh*, 139 F4th 1077, 1081 (9th Cir. 2025)—case not moot where appellant can recover portion of money paid (also discussed at ¶2:718).

[2:688.4] **Mootness found—change in governing law:** Where the Hawaii legislature amended a statute prohibiting possession of butterfly knives in response to a Second Amendment challenge, and the amended statute was not “substantially similar” to the challenged statute nor did it “burden [the challengers] in the same fundamental way as the prior statute”, the case was moot. [*Teter v. Lopez*, 125 F4th 1301, 1307 (9th Cir. 2025) (en banc) (internal quotes omitted); also discussed at ¶2:687, 2:735.1]

[2:704] **Mootness not found—discovery orders:** An appeal was not moot where the county produced privileged documents in discovery pursuant to a district court order because the parties in possession of the documents could be ordered to return and/or destroy them. [*Greer v. County of San Diego*, 127 F4th 1216, 1222-1224 (9th Cir. 2025)]

CHAPTER 3

NOTICE OF APPEAL & CROSS-APPEAL

Appeal Time Period Triggered by “Entry” of Judgment

[3:63.1] **Separate document requirement—minute order text in electronic document entry:** A minute order whose text appears

within an electronic docket entry, but not in any document served separately on the parties, counts as an FRCP 58 separate document if the order is “unadorned” (contains no reasoning) and “fully close[s]” litigation of the issues subject to appeal. [*Rajabian v. Mercedes-Benz USA, LLC*, 154 F4th 1145, 1152 (9th Cir. 2025) (rejecting argument that minute order’s text had to appear in separate PDF to count as separate document)]

FRAP 4(a)(3) Extension

[3:174.1] **No new notice of appeal necessary:** An appellant who files a late notice of appeal before reopening need not file a new notice of appeal after reopening. The original notice relates forward to the date reopening is granted. [*Parrish v. United States*, 605 US 376, 379, 145 S.Ct. 1664, 1668 (2025)]

CHAPTER 4

THE RECORD AND JUDICIAL NOTICE

Excerpts of Record

[4:251.1] **Exemption from electronic filing—paper copy filing and service requirements:** Filers who are exempt from the electronic filing requirement must file one original paper copy of the excerpts at the time the brief is filed, bound separately from the brief, and serve one paper copy on each of the other parties. No additional paper copies should be submitted unless requested by the court. [Amended Ninth Circuit Rule 30-1.2(g)]

CHAPTER 6

MOTION PRACTICE

Motions to Seal

[6:200] **No public access to sealed documents:** Once the court seals a document, access is restricted to the court. There is no public access through PACER, even for parties and counsel of record. [Amended Ninth Circuit Rule 27-13(b)(1)]

[6:210] **Access to sealed case:** Parties may move to have an entire case sealed. In a sealed case, access to the docket and all documents is restricted to the court and case participants. [Amended Ninth Circuit Rule 27-13(b)(3)]

[6:214.1] **Access to ex parte materials:** The motion for permission to file documents ex parte must be served on other parties, but the ex parte material should *not* be served. There is no public access to ex parte filings through PACER, even for parties and counsel of record. [New Ninth Circuit Rule 27-13(b)(2)]

Stays or Injunctions Pending Appeal

[6:262.2] **Jurisdiction to enter stay pending appeal:** The Ninth Circuit need not consider if there is appellate jurisdiction over the appeal in order to grant a stay when the court has jurisdiction under the All Writs Act (28 USC §1651; ¶13:2) to enter a stay. [*American Federation of Government Employees, AFL-CIO v. Trump*, 148 F4th 648, 656, fn. 2 (9th Cir. 2025)]

[6:270a] **Stays in arbitration appeals compared:** An interlocutory appeal of the denial of a motion to compel arbitration results in an automatic stay of district court litigation. A motion for stay pending appeal is unnecessary. [*California ex rel. Harrison v. Express Scripts, Inc.*, 139 F4th 763, 773 (9th Cir. 2025) (*Coinbase, Inc. v. Bielski*, 599 US 736, 738, 143 S.Ct. 1915, 1918 (2023) limited to arbitration context)]

Motion for Full Remand

[6:371] **Full remand ordered:** See *American Federation of Government Employees, AFL-CIO v. Trump*, 155 F4th 1082, 1093-1094 (9th Cir. 2025)—full remand for reconsideration of preliminary injunction of agency reduction-in-force orders in light of new Supreme Court decision on scope of injunctions, Supreme Court stay order in this case, and case-specific factual developments.

CHAPTER 7

SCOPE, WAIVER & STANDARDS OF REVIEW

Waiver in District Court

[7:125.7d; 7:125.7e] **Waiver of summary judgment issues—procedural issues:** The party opposing summary judgment may not request entry of summary judgment in their favor for the first time on appeal. Failure to move for summary judgment in the district court forfeits the right to request entry of summary judgment on appeal. [*Damiano v. Grants Pass School Dist. No. 7*, 140 F4th 1117, 1138, fn. 5 (9th Cir. 2025)]

And where the court of appeals cannot tell from the district court's order whether the district court reached and decided an issue that the appellant did not sufficiently raise below (such that the appellant may have forfeited it), the appellate court can remand with instructions that the district court clarify its ruling. [*Damiano v. Grants Pass School Dist. No. 7*, 140 F4th 1117, 1152 (9th Cir. 2025)]

[7:126] **Forfeit of instructional error argument:** See *Lister v. City of Las Vegas*, 148 F4th 690, 695 & fn. 2 (9th Cir. 2025)—objection to verdict form but not to related jury instructions forfeits instructional error argument on appeal (review is for plain error).

[7:136.2] **Waiver of FRCP 50 challenges to legal sufficiency of evidence; qualified immunity:** If the party raises only the purely legal issue of whether the constitutional violation was clearly established for the first time in a FRCP 50(b) motion and the argument's factual underpinnings were presented in a preverdict FRCP 50(a) motion, that issue is not forfeited. [*Estate of Aguirre v. County of Riverside*, 132 F4th 702, 706 (9th Cir. 2025); also discussed at ¶7:136.2]

Waiver at Appellate Level

[7:177.1a] **Appeal from denial of tribal sovereign immunity:** Tribal sovereign immunity is waived only through an unequivocal expression of the tribe's intent to waive its immunity.

Thus, a tribe's failure to raise the issue in an earlier appeal does *not* prevent it from raising it in a subsequent appeal. [*California ex rel. Bonta v. Del Rosa*, 158 F4th 1066, 1075 (9th Cir. 2025)]

[7:177.9] **Social Security appeals:** A party may appeal from a remand order in a Social Security case. Failure to appeal at that stage does not waive issues in a subsequent appeal after remand. However, if the party files an appeal from the remand order, any issue it could have raised but did not will be waived. [*Fallon v. Dudek*, 135 F4th 831, 836 (9th Cir. 2025)]

[7:182.7] **Waiver by defective brief:** Appellant put forward an argument in the reply brief that “represent[ed] a substantial shift in position and fundamentally alter[ed] the contours of [the court’s] analysis,” and was “not simply a response to an argument made by” appellee. In these circumstances, the court refused to consider the argument. [*Cascadia Wildlands v. United States Bureau of Land Mgmt.*, 153 F4th 869, 893, fn. 10 (9th Cir. 2025)]

Waiver of Jurisdictional Issues—District Court Jurisdiction

[7:195.1a] **Rooker-Feldman doctrine:** The *Rooker-Feldman* doctrine is jurisdictional, and the court must consider it even if it is not raised by the parties. [*In re Wike*, 145 F4th 1221, 1226 (9th Cir. 2025)]

Standards Applied to Particular Decisions

[7:293.2] **Decision to consider documents incorporated by reference:** A district court’s decision to consider documents incorporated by reference in a complaint is reviewed for abuse of discretion. [*Trader Joe’s Co. v. Trader Joe’s United*, 150 F4th 1040, 1048 (9th Cir. 2025)]

[7:326.5] **Denial of motion to lift stay:** A district court’s denial of a motion to lift a stay is reviewed under the abuse of discretion standard. [*Rajabian v. Mercedes-Benz USA, LLC*, 154 F4th 1145, 1150 (9th Cir. 2025)]

[7:433.3] **Equitable tolling:** Generally, a decision regarding the application of equitable tolling is reviewed for abuse of discretion. But if the facts are undisputed, the question of whether the statute of limitations should be equitably tolled is reviewed de novo. Findings of fact underlying the district court’s equitable tolling decision are reviewed for clear error. [See *Perez v. Reubart*, 150 F4th 1164, 1170 (9th Cir. 2025)]

[7:450.3] **Renewed motion for judgment as matter of law:** Where appellant argues that a jury’s verdict is inconsistent, the test is not whether there was substantial evidence to support the jury’s conclusions, but whether it is possible to reconcile the verdicts. If it is possible to reconcile the verdicts on any reasonable theory consistent with the evidence, then the court must uphold the judgment. [*Alves v. County of Riverside*, 135 F4th 1161, 1168-1169 (9th Cir. 2025)]

CHAPTER 8A
PREPARING APPELLATE BRIEFS

General Rules on Briefing

[8:99] **Amicus curiae briefs must include disclosure statement:** The proposed amicus brief must be accompanied by a Form 34 Disclosure Statement. [New Ninth Circuit Rule 29-1]

Filing Briefs

[8:200; 8:202] **No copies required:** Parties should not submit paper copies unless requested by the clerk. And a party or amicus curiae permitted to file paper-format brief (i.e., a brief exempt from the electronic filing requirement) must file the original—no copies are required. [Amended Ninth Circuit Rule 31-1]

Briefing Format—Opening Brief

[8:290] **No disclosure statement:** Do not include in your brief a copy of the Form 34 Disclosure Statement. It is filed earlier in the life of the appeal as a separate document (*see* ¶1:189.9). [New Ninth Circuit Rule 28-1(c)]

[8:385] **Signature:** By signing the brief, attorneys are attesting they have reviewed the filing and are “responsible for the accuracy of its contents.” The rules do not specify *how* a filing may (or may not) be prepared; thus, “employing generative artificial intelligence” is not foreclosed, so long as parties and attorneys ultimately “ensure the reliability of any filing.” [Amended Ninth Circuit Rule 32-1, Adv. Comm. Note]

CHAPTER 8B
USING LEGAL AUTHORITY

Precedential Value of Ninth Circuit Decisions

[8:635] **Published dispositions as binding precedent—“clear irreconcilability” requirement:** The “clear irreconcilability” requirement begins with a presumption against overruling a prior decision: “It is not enough for there to be ‘some tension’ between the intervening higher authority and prior circuit precedent or for the intervening higher authority to ‘cast doubt’ on the prior circuit precedent.” A preference to decide a case differently than a prior panel is insufficient. “Nothing short of ‘clear irreconcilability’ will do.” [*Kivett v. Flagstar Bank, FSB*, 154 F4th 640, 645-649 (9th Cir. 2025) (internal quotes omitted) (finding no irreconcilability despite intervening Supreme Court case intended to resolve circuit split); *United States v. Alaska*, 151 F4th 1124, 1136 (9th Cir. 2025)]

CHAPTER 11
REHEARING

Filing Time Frame

[11:135.3] **45-day period inapplicable where nondispositive**

order or opinion at issue: A petition for rehearing or rehearing en banc of a court order or opinion that does not dispose of the entire case on the merits, terminate the case, or otherwise conclude proceedings in the Ninth Circuit must be filed within 14 days after entry of the order or opinion, even if one of the parties is the United States and the extended 45-day period would apply to a petition challenging a dispositive order or opinion. [Amended Ninth Circuit Rule 27-10(a)(2)]

Amicus Curiae Briefs in Support or Opposition

[11:178] **Briefs submitted after hearing is granted:** Amicus briefs filed to support or oppose a rehearing petition should not be refiled if rehearing is granted. [Amended Ninth Circuit Rule 29-2, Adv. Comm. Note]

[11:178.1] **Disclosure statement:** A proposed amicus brief must be accompanied by a completed Form 34 “Disclosure Statement.” [New Ninth Circuit Rule 29-2(c)(4)]

[11:178.2] **No reply:** No reply brief by an amicus is permitted under the rules. [Amended Ninth Circuit Rule 29-3]

CHAPTER 12

COSTS, FEES, AND POSTAPPEAL ISSUES

Allocation and Recovery of Appellate Costs

[12:2.2] **Generally allocated to prevailing party:** Unless otherwise provided by law, *agreed by the parties*, or ordered by the court, the party prevailing on appeal is entitled to appellate costs. [Amended FRAP 39(a)]

[12:2.7] **“Mixed” dispositions, modification or vacatur—no cost shifting:** Unless the court orders otherwise, if the judgment is affirmed in part, reversed in part, vacated or modified, “each party bears its own costs.” [Amended FRAP 39(a)(4)]

[12:2.12] **Challenging allocation of costs:** Once the allocation of appellate costs is established by entry of judgment in the court of appeals, a party may seek reconsideration of that allocation by filing a motion in the court of appeals within 14 days of entry of judgment. [New FRAP 39(b)]

[12:2.12a] **Mandate issuance not delayed:** Where a party moves for reconsideration of a costs allocation, issuance of the mandate is not delayed by the pendency of the motion, and the court of appeals retains jurisdiction to decide the motion after the mandate issues. [New FRAP 39(b)]

[12:3] **Costs governed by allocation determination:** The allocation of costs specified in FRAP 39(a) governs both costs taxable in the court of appeals under FRAP 39(e) and costs taxable in the district court under FRAP 39(f). [New FRAP 39(c)]

[12:3a] **Costs taxable in court of appeals:** The items of costs that may be recovered in the court of appeals are: (1) the production of necessary copies of a brief or appendix; (2) the docketing

fee (the \$5 portion of the fee paid to the originating court for the appeal); and (3) a filing fee paid in the court of appeals (which is different from the filing fee paid to the district court for filing the notice of appeal). [New FRAP 39(e)(1)]

Recovery of Appellate Attorney Fees

Prevailing party requirement

- [12:40] **Prevailing plaintiff:** See *Lackey v. Stinnie*, 604 US 192, 203-204, 145 S.Ct. 659, 669 (2025)—plaintiff prevails where “court conclusively resolves a claim by granting enduring judicial relief on the merits that materially alters the legal relationship between the parties.”
- [12:41.1] **Interim attorney fee-shifting:** The Supreme Court has continued to narrow the situations in which interim attorney fee-shifting is permitted. [*Lackey v. Stinnie*, *supra*, 604 US at 206, 145 S.Ct. at 670—“Our decisions simply indicate that attorney’s fees may be awarded when conclusive, enduring judicial relief is meted out on an incremental basis” (*also discussed at* ¶12:104)]

Civil rights cases

- [12:106] **No award unless success is conclusive and enduring:** Under 42 USC §1988(b), a plaintiff prevails where “a court conclusively resolves a claim by granting enduring judicial relief on the merits that materially alters the legal relationship between the parties.” [*Lackey v. Stinnie*, *supra*, 604 US at 203-204, 145 S.Ct. at 669]

Supreme Court Review and Subsequent Ninth Circuit Activity

[12:290] **Interlocutory review (before court of appeals decision):** See *Trump v. Slaughter*, — US —, —, 146 S.Ct. 18, 18 (2025) (construing stay application as, and granting, petition for writ of certiorari before judgment to decide whether statutory restrictions on President’s power to remove at will members of Federal Trade Commission violate separation of powers and whether Supreme Court precedent upholding those restrictions should be overruled).

[12:298] **Court of appeals may consider issue left open by Supreme Court mandate:** See *Pirani v. Slack Technologies, Inc.*, 127 F4th 1183, 1189 (9th Cir. 2025).

Rule of Mandate

[12:318] **Jurisdictional requirement:** See *Alaska Dept. of Fish & Game v. Federal Subsistence Bd.*, 139 F4th 773, 788 (9th Cir. 2025)—district court is without jurisdiction to hear claim that falls outside scope of remand (*also discussed at* ¶12:320).

[12:320.4b] **Exceptions to rule of mandate?** The Ninth Circuit has not yet decided whether the exceptions to the law of the case doctrine also apply to the rule of mandate. [*Alaska Dept. of Fish & Game v. Federal Subsistence Bd.*, *supra*, 139 F4th at 789, fn. 18 (discussing but not deciding this question)]

CHAPTER 13

EXTRAORDINARY WRITS

“*Bauman* Factors”

[13:86.1] **Absence of precedent:** See *American Federation of Government Employees, AFL-CIO v. Trump*, 155 F4th 1082, 1090 (9th Cir. 2025)—“Where there is no prior Ninth Circuit authority that prohibited the course taken by the District Court, its ruling is not clearly erroneous” (internal quotes, brackets and citation omitted).

Jury Trial Issues

[13:151] **Mandamus relief granted:** Mandamus relief was granted where the district court mischaracterized a legal claim as equitable and so converted a jury trial to a bench trial. [*In re Tsay JBR LLC*, 136 F4th 1176, 1181 (9th Cir. 2025)]

Denial of Relief Under Crime Victims’ Rights Act (CVRA)

[13:243] **Limitation on mandamus challenge:** The CVRA’s mandamus procedure does not permit victims to challenge matters other than a district court’s denial of the rights enumerated in that statute. [*In re J.H.*, 138 F4th 1347, 1349 (9th Cir. 2025)]

Writ Review Procedures

[13:257.1] **Disclosure statement:** As with an appeal, petitioners for writs of mandamus must file a disclosure statement. Disclosure statements should not be included in the petition itself, but should instead follow the form, timing, and content requirements set forth in Ninth Circuit Rule 26.1-1(a) and (b). [Amended Ninth Circuit Rule 21-3]

CHAPTER 14

REVIEW IN BANKRUPTCY, AGENCY & TAX COURT PROCEEDINGS

Appeals in Bankruptcy Cases

[14:13] **Appeals in cases of original district court jurisdiction:** The FRAP apply fully to appeals in bankruptcy cases and proceedings in which the district court exercised original jurisdiction under 28 USC §1334. One caveat: the time periods for tolling motions in FRAP 4(a)(4)(A) “must be read as” referring to the time periods for equivalent FRBP motions, which are often shorter than for comparable FRCP motions. [Amended FRAP 6(a)] The Advisory Committee Notes to the 2025 Amendments to FRAP 6 include a helpful chart comparing the FRCP and FRBP motions and deadlines.

[14:97.6-97.7] **Appeals from bankruptcy court to Ninth Circuit:** See amended FRAP 6(c)(2) (re perfecting the appeal if the Ninth Circuit grants the application), 6(c)(1)(A) (re FRAP applying to direct appeals from bankruptcy court decisions with certain exceptions).

[14:181] **Standards of review—district court/BAP decisions:** In

bankruptcy cases, the Ninth Circuit independently reviews the bankruptcy court's decision without deference to the determinations of the district court or BAP. The bankruptcy court's conclusions of law are reviewed de novo, and its findings of fact are reviewed for clear error. [*In re Nance*, 156 F4th 961, 965 (9th Cir. 2025)]

Review in Agency Proceedings

Jurisdiction to review agency decisions

- [14:297] **Alternative circuit venues:** Some statutory schemes provide for judicial review of agency actions in multiple courts of appeals. For example, certain challenges to EPA actions taken under the Clean Air Act (42 USC §7607(b)(1)) that are nationally applicable are properly venued in the D.C. Circuit, while locally or regionally applicable determinations are properly venued in the corresponding regional circuit court of appeals. [See *Oklahoma v. EPA*, 605 US 609, 614, 618-620, 145 S.Ct. 1722, 1727-1728, 1730-1731 (2025); *EPA v. Calumet Shreveport Refining, LLC*, 605 US 627, —, 145 S.Ct. 1735, 1743 (2025)]
- [14:302] **Test for “finality”:** See *Waterkeeper Alliance v. United States EPA*, 140 F4th 1193, 1207-1208 (9th Cir. 2025)—first finality requirement satisfied by action taken at “culmination of [a] biennial cycle,” even though agency “will have to conduct similar periodic reviews” in future cycles; second requirement satisfied by leaving unchanged existing standards limiting discharge of pollutants with which industry must comply.

Scope of review

- [14:521.2] **Review limited to bases for agency decision; identifying “basis” in immigration cases:** Ninth Circuit review is limited to the BIA's decision except to the extent that it expressly adopts the Immigration Judge's opinion. [*De Souza Silva v. Bondi*, 139 F4th 1137, 1142 (9th Cir. 2025)]

Where “the BIA's phrasing seems in part to suggest that it did conduct an independent review of the record, but the BIA's analysis on the relevant issues is confined to a simple statement of a conclusion,” the court “also looks to the IJ's decision as a guide to what lay behind the BIA's conclusion.” [*De Souza Silva v. Bondi*, *supra*, 139 F4th at 1142 (internal quotes and brackets omitted)]

Standards of review

- [14:574] **Degree of deference owed agency that enjoys statutory discretion:** See *Seven County Infrastructure Coalition v. Eagle County*, 605 US 168, 180, 145 S.Ct. 1497, 1511 (2025)—“substantial” deference owed to agency that prepared EIS under NEPA because “NEPA is a purely procedural statute” that “imposes no substantive constraints on the agency's ultimate decision to build, fund, or approve a proposed project” (emphasis omitted)]

Disposition—petition granted

- [14:621.21] **Vacatur of agency action:** The vacatur remedy

is most common in petitions for review challenging agency actions, but the court may also consider vacatur of agency actions in appeals from district court decisions. [See *Center for Biological Diversity v. United States Bureau of Land Management*, 141 F4th 976, 1015-1016 (9th Cir. 2025)]

