

TO: Susan Gelmis, Chief Deputy Clerk, Operations
Ninth Circuit Court of Appeals

FROM: Committee on Appellate Courts, Litigation Section

DATE: October 15, 2018

RE: Request for Review and Feedback for New and Revised Ninth
Circuit Forms and Videos

In response to the Court’s request for review and feedback, the Committee on Appellate Courts offers the following comments on the new and revised forms and videos.

PDF Forms:

Overall, the instruction pages and forms are clear and helpful, particularly for pro se litigants. To the extent that we see room for improvement, we have noted so below.

Application for Attorney’s Fees:

On the instruction page, it might make sense to move the bullet point saying “Do not include a cost bill or request for costs on appeal in your application. Use Form 10 to file a cost bill separately” before the bullet point explaining that requests for attorneys’ fees pursuant to the Equal Access to Justice Act may be requested using a different form. Because it explains what does not need to be included with this form, it would seem to fit better directly after the point explaining what does need to be included with it, and before the point explaining when an alternate form may be used.

Also, the instruction page says, “If you are filing electronically, use the electronic document filing type ‘Motion for Any Type of Relief’ and select ‘motion for attorney fees’ as the relief.” For this form and all others, it may be worth clarifying

when a party is exempt from e-filing, at least by reference to Circuit Rule 25-5, lest the reader think the choice is up to the filer.

Bill of Costs:

We suggest reordering the initial bullet points on the instruction page as follows:

You must use this form to request costs, even if the court has awarded costs.

- Refer to Fed. R. App. P. 39, 28 U.S.C. § 1920, and Circuit Rule 39-1 when preparing a bill of costs.
- Attorneys' fees cannot be requested on this form.
- The filing fee for an appeal in the district court also cannot be requested on this form. You must request the filing fee in the district court.
- File this form within 14 days from the opinion or memorandum's file-stamped date.
- File any late bill of costs with a motion to file late, showing good cause for its late filing.
- Costs per page may not exceed \$.10 or the actual cost, whichever is less.
- Costs will be allowed only for the number of copies you were ordered to file with the court, plus one additional copy and any copies that were required to be served in paper on another party.

Certificate of Compliance:

No suggestions for improvement.

Certificate of Service for Electronic Filing:

For the first bullet point on the instruction page, it might be helpful to make clear that the three scenarios listed as sub-points are alternative reasons for using the form. We suggest replacing "because:" with "because one or more of the following applies:".

CR 27-3 Certificate:

No suggestions for improvement.

Motion for Extension of Time:

In the Declaration form (page 3), we recommend revising the wording for question 6. The underlying rule that corresponds to question 6 is Circuit Rule 31-2.2(b)(6), which states that the motion for extension must declare "whether any

other party separately represented objects to the request, or why the moving party has been unable to determine any such party's position." Currently, the form asks for "[t]he position of any other party regarding this request" and has the following response options: "Unopposed"; "Opposed"; "Unknown. I am unable to determine the position of any other party because ____." This wording could be confusing if there are more than two parties in the case and those parties have taken different positions on the extension.

To better address a more-than-two-party situation, we suggest a few modifications. First, the form could ask for "[t]he position of the other party/parties regarding this request." Second, the form could include the following response options:

- Unopposed.
- Opposed by (*name party or parties opposing motion*) _____.
- Unknown. I am unable to determine the position of the other party/parties because: _____.

Notice of Delay:

No suggestions for improvement.

Response to Calendar Notice:

We recommend one clarification to the first bullet point on the instruction page. Currently, the bullet point instructs as follows: "Review the sitting dates listed at www.ca9.uscourts.gov/court_sessions before completing this form. Note that some months may have multiple court weeks. Indicate the dates when you are unavailable during the entire time period for which your case is being considered."

To make clear that the attorney only needs to review the court weeks for the particular hearing location that has been noticed, the bullet point could be revised to state: "Review the sitting dates for the hearing location stated in the court's notice, listed at www.ca9.uscourts.gov/court_sessions, before completing this form. Note that some months may have multiple court weeks for the same hearing location."

Response to Motion or Order:

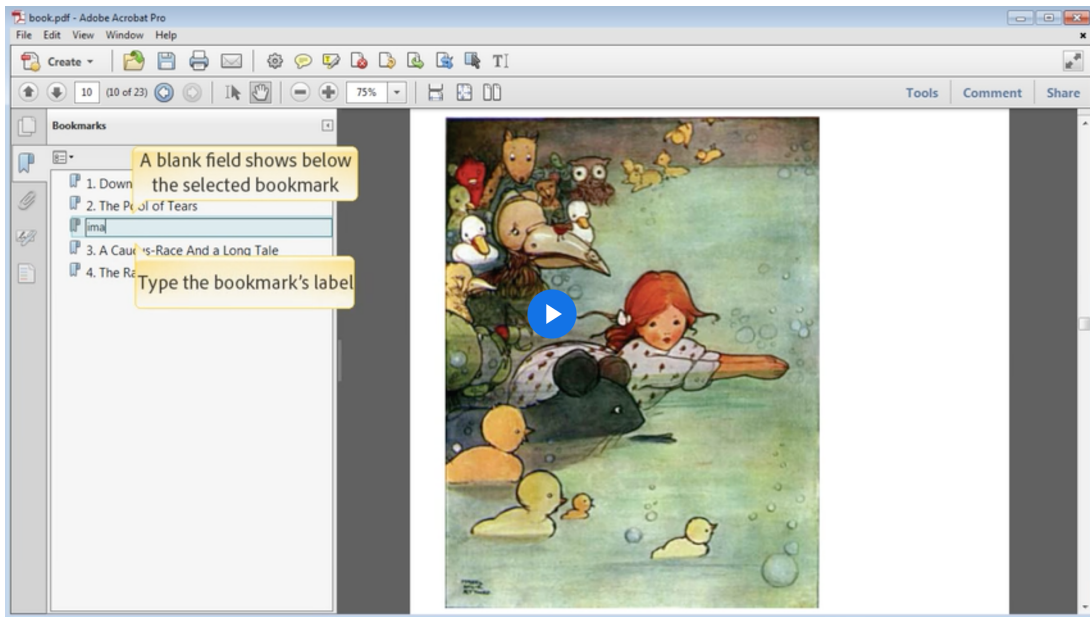
No suggestions for improvement.

Statement of Related Cases:

We recommend including an instruction page at the front, consistent with the other forms. The instruction page could include the list of factors that determine whether a case is deemed related under Circuit Rule 28-2.6, the standard instructions for converting the form to PDF, and an instruction to attach the form to the back of the opening brief.

Video Demonstrations:

The videos could all benefit from the addition of either an oral voiceover or text-box prompts for each step. Without these, it is hard to follow what is happening in the silent video, especially if the viewer does not have extensive experience with the Court's efilings system (which is the target audience presumably). Below is an example of the type of text-box prompts that would be helpful. This example comes from a video that the California Courts of Appeal recommend for litigants who need assistance bookmarking their PDF brief for efilings: <https://acrobatusers.com/tutorials/how-do-i-add-bookmarks-to-a-pdf-document>. See <http://www.courts.ca.gov/1dca-efile.htm> (How to Prepare Electronic Filings > Electronic Bookmarking Tips > How to Bookmark).



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