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FEDERAL RULES OF APPELLATE PROCEDURE
NINTH CIRCUIT RULES
CIRCUIT ADVISORY COMMITTEE NOTES

1 December 2021

- (f) **Appeal on the Original Record Without an Appendix.** The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

(As amended Mar. 30, 1970, eff. July 1, 1970; Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

CIRCUIT RULE 30-1. THE EXCERPTS OF RECORD

(New 12/1/2020)

30-1.1. Purpose

The Ninth Circuit requires the parties to file Excerpts of Record instead of the Appendix prescribed by FRAP 30. The primary purpose of the excerpts is to compile for the Court all parts of the record, but only those parts of the record, that are relevant and useful to the Court in deciding the appeal.

For purposes of these rules, the terms “Excerpts” and “Excerpts of Record” refer to any type of excerpts submitted by any party, including Supplemental Excerpts and Further Excerpts.

Advisory Committee Note to Rule 30-1.1

The Excerpts of Record should be a well-organized and accessible compendium of all the documents in the record that are necessary to understand and decide the issues on appeal. Although the Court has access to most of the district court record via PACER, that access is time consuming, and citations to the record serve as a distraction when reading the briefs. The parties should not expect the Court to search through the district court record for the documents that support their arguments on appeal. Therefore, unless a party is exempt from the excerpts-of-record requirement, citations directly to the record are not permitted except for purely background information, such as factual or procedural history, that is undisputed and provided only for general context.

30-1.2. Requirements

- (a) The appellant or petitioner shall submit Excerpts of Record when submitting the opening brief unless the filer is exempt pursuant to Circuit Rule 30-1.3.
- (b) The appellee or respondent shall submit Supplemental Excerpts of Record when submitting the answering brief only if the brief refers to documents or portions of documents not included in the initial Excerpts, or if no Excerpts of Record were filed because the appellant or petitioner is exempt pursuant to Circuit Rule 30-1.3.

Plaintiff's APPENDIX-A

- (c) A non-exempt appellant or petitioner shall submit Further Excerpts of Record when submitting the reply brief only if the brief refers to documents or portions of documents not included in the Excerpts or Supplemental Excerpts.
- (d) Any non-exempt party shall submit Supplemental Excerpts of Record when submitting a supplemental brief only if the brief refers to documents or portions of documents not included in any previously filed Excerpts.
- (e) All excerpts shall be separate from the brief and submitted electronically at the same time as the brief unless the filing party is exempt from the electronic-filing requirement.
- (f) On the same day the excerpts are submitted electronically, the filing party shall serve 1 paper copy of the excerpts on any other party that is not registered for electronic filing, but shall defer submission of paper copies of the excerpts to the Court until directed by the Clerk to do so.
- (g) If the filing party is exempt from the electronic-filing requirement, the filing party shall file 3 paper copies of the excerpts at the time the brief is submitted, bound separately from the brief, and serve 1 paper copy on each of the other parties.
- (h) Should the Court consider a case en banc, the Clerk will require counsel to submit additional paper copies of the excerpts.
- (i) In any petition for review challenging an order of removal in an immigration case, neither party need file Excerpts of Record.

30-1.3. No Excerpts Required for Pro Se Party

A party proceeding without counsel need not file excerpts. If such a party does not file excerpts, counsel for appellee or respondent must file Supplemental Excerpts of Record that contain all of the documents that are cited in the pro se opening brief or otherwise required by Rule 30-1.4, as well as the documents that are cited in the answering brief.

30-1.4. Contents of the Excerpts of Record

- (a) Volume 1 of the Excerpts of Record shall include all decisions being appealed, reviewed, or collaterally challenged, whether oral or written, final or interim. Unless the entire set of excerpts will be submitted in a single volume of no more than 300 pages, Volume 1 of the Excerpts of Record shall not include any other material. This requirement applies to Volume 1 of any Supplemental or Further Excerpts of Record that contain such decisions not included in the initial Excerpts. The documents in the first volume of excerpts ordinarily shall be arranged by file date in reverse chronological order.
- (b) Except as provided in subsection (d), additional volumes of any excerpts shall not include any decisions referred to in subsection (a), but shall include all other parts, but only those parts, of the record that are relevant to deciding the appeal. The documents contained in these volumes of excerpts ordinarily shall be arranged in reverse chronological order.
- (c) If the excerpts contain the complete trial transcript, the filer may elect to submit the original reporter's transcript as a separate volume(s) of excerpts of no more than 300

pages each, but such volume(s) must be paginated consecutively in accordance with subsection 1.5(c). If documentary trial exhibits, such as written materials and photographs capable of production in PDF format, are relevant to deciding the appeal, they shall be included in the excerpts of record and placed together, either with any separate volume(s) of trial transcripts or at the end of the final volume of unsealed Excerpts of Record (just before the notice of appeal and docket sheet) or, if appropriate, in the final volume of sealed Excerpts. Submission of physical exhibits that are not capable of transmission in PDF format is governed by Circuit Rule 27-14.

- (d) When any Excerpts of Record include documents: (1) that are required to be sealed pursuant to statute or rule and submitted under Circuit Rule 27-13(d); or (2) that are being submitted provisionally under seal pursuant to Circuit Rule 27-13(e) or (f); those documents shall be submitted in a separate, final volume(s) of the excerpts. The documents contained in sealed or provisionally sealed volumes ordinarily shall be arranged in reverse chronological order. Pre-sentence reports and related sealed sentencing documents shall not be included in the excerpts, but shall instead be filed using the pre-sentence report filing event. See Circuit Rule 27-13(d).
- (e) In social security appeals, the certified administrative record (CAR) shall not be included in the excerpts of record, but shall be submitted by the appellant in its entirety in a separate CAR filing event at the time the opening brief and initial excerpts are filed, unless appellant is exempt from the excerpts requirement, in which case it will be submitted by the appellee at the time the answering brief is filed.
- (f) On appeal from a District Court, Bankruptcy Appellate Panel, Bankruptcy Court, or Tax Court case, the notice of appeal and lower court docket sheet shall be included at the end of the last volume in the non-sealed initial Excerpts of Record.

Advisory Committee Note to Rule 30-1.4

Volume 1 of the Excerpts of Record ordinarily should include:

- (a) *the judgment or interlocutory order appealed from;*
- (b) *any other orders or rulings, including the text of minute orders (copied into a separate sheet of paper or contained in a separate page from the district court docket sheet), sought to be reviewed;*
- (c) *where an appeal challenges any ruling, order, finding of fact, or conclusion of law, and that ruling, order, finding, or conclusion was delivered orally, that specific portion of the reporter's transcript recording any discussion by court or counsel on which the assignment of error is alleged to rest;*
- (d) *the entire sentencing transcript in any criminal appeal challenging the sentence;*
- (e) *any jury instruction given or refused that presents an issue on appeal; and*
- (f) *any relevant state court decisions in a habeas corpus proceeding.*

Circuit Rule 28-2.8 requires every assertion in briefs regarding matters in the record to be supported by a citation to the Excerpts of Record. Excerpts therefore must include, at a

minimum, all documents cited by the briefs except for undisputed facts or procedural history offered only for general background.

Legal memoranda and briefs ordinarily are not relevant to the issues on appeal and, therefore, should be excluded from the excerpts. They may be relevant if a party asserts that an issue was waived, forfeited, or not exhausted, to support disputed assertions of procedural history, or in other similar circumstances.

If the briefs cite only certain pages of a long transcript or other document, parties may elect to include only portions of the transcript or document. But the parties should provide enough surrounding pages to provide relevant context and, where a brief raises a sufficiency of the evidence or harmless error argument, the filer ordinarily should include the entire trial transcript.

*If the brief is accompanied by a motion to withdraw pursuant to *Anders v. California*, the initial Excerpts of Record shall include the complete transcripts for the plea hearing or trial and the sentencing hearing. See Circuit Rule 4-1(c)(6).*

In criminal cases, the excerpts shall include the final indictment or other charging document.

If the brief raises issues requiring consideration of trial exhibits, whether admitted or excluded, it is counsel's responsibility to provide those exhibits to the Court as part of the excerpts (if they are capable of submission in PDF format) or via separate transmission to the Court pursuant to Circuit Rule 27-14.

The Court prefers excerpts that are organized in reverse chronological order (subject to the provisions relating to the contents of first and sealed volumes), beginning with the most recently filed document or set of documents. For this purpose, transcripts, including trial transcripts, should be placed by hearing date, except that hearings or trials that span multiple dates or sessions should appear in chronological order for that hearing or trial, using the first day of the hearing or trial as the relevant date. Alternative organization of the excerpts is acceptable if better suited to a particular case.

30-1.5. Index and Format

- (a) Except as noted in section (b) below, each set of Excerpts of Record shall be accompanied by a separately bound Table of Contents ("Index Volume") of all documents contained in all numbered volumes of the set, including any separate volumes of trial transcript pursuant to Circuit Rule 30-1.4(c). The Index Volume shall list each document in order, including a citation to where the document may be found in the lower court record, and its location in the volume and page number in the excerpts. When listing the documents in the Index, parties should provide descriptive labels. For example, "Exhibit 12 - 2018 Deposition of Jeanne Smith" is more helpful than "Exhibit 12 to motion for summary judgment." The individual numbered volumes of excerpts shall no longer include tables of contents.
- (b) No volume may exceed 300 pages, including the caption (cover) page. If an entire set of excerpts, including Index and caption page, totals 300 pages or less, they may be submitted together in one single volume.

1 **WO**

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3
4 **IN THE UNITED STATES DISTRICT COURT**
5 **FOR THE DISTRICT OF ARIZONA**
6

7 Paul E Jozwiak,

8 Plaintiff,

9 v.

10 Raytheon Missile Systems, et al.,

11 Defendants.
12

No. CV-20-00039-TUC-DCB

ORDER

13 The Plaintiff files a Request for the Clerk of the Court to Provide the Record to the
14 Court of Appeals. This case was closed on November 6, 2020, for failure to serve it on
15 Defendants. The Plaintiff appealed. The record was sent by the Clerk of the Court to the
16 Ninth Circuit Court of Appeals, and the appellate court affirmed this Court's dismissal of
17 the case on August 26, 2021. The Court does not see entry of a Mandate by the Ninth
18 Circuit Court of Appeals but that is not a matter this Court has jurisdiction to address. This
19 case is closed.

20 **Accordingly,**

21 **IT IS ORDERED** that the Motion to Provide the Record (Doc 62) is **DENIED**.

22 Dated this 20th day of April, 2022.
23

24
25 

26 Honorable David C. Bury
27 United States District Judge
28

Plaintiff's APPENDIX-B

MIME-Version: 1.0 From: azddb_responses@azd.uscourts.gov To: azddb_nefs@localhost.localdomain
Message-Id: Subject: Activity in Case 4:20-cv-00039-DCB Jozwiak v. Raytheon Missile Systems et al
Order on Motion to Produce Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** *There is no charge for viewing opinions.*

U.S. District Court

DISTRICT OF ARIZONA

Notice of Electronic Filing

The following transaction was entered on 4/20/2022 at 2:14 PM MST and filed on 4/20/2022

Case Name: Jozwiak v. Raytheon Missile Systems et al

Case Number: 4:20-cv-00039-DCB

Filer:

WARNING: CASE CLOSED on 11/06/2020

Document Number: 63

Docket Text:

ORDER denying [62] Motion to Provide the Record. (See attached Order for complete details) Signed by Senior Judge David C Bury on 4/20/2022. (MCO)

4:20-cv-00039-DCB Notice has been electronically mailed to:

4:20-cv-00039-DCB Notice will be sent by other means to those listed below if they are affected by this filing:

Paul E Jozwiak
404 S Cedar Ave.
Marshfield, WI 54449

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1096393563 [Date=4/20/2022] [FileNumber=23168522-0] [605e07d72cf6c92a04f0760c0f16d4d7b9afd87d97a68d71af784f2f309e94a173e691cac00aa0024aa987a1bf7c8c216c5a28b103f79efb6f9b93058fab8b44]]

RE: Official Court Document and/or Information Request!

From: Prose-Pleadings CA09Operation (prose-pleadings@ca9.uscourts.gov)

To: orion5x5x9@yahoo.com

Date: Wednesday, April 13, 2022, 11:04 AM CDT

The court of appeals has access to the entire district court record. PACER does not need to send a copy to the court of appeals.

In addition, pro se litigants are exempt from having to send excerpts of record to the court of appeals. See Ninth Cir. R. 30-1.3

From: Paul Jozwiak <orion5x5x9@yahoo.com>

Sent: Wednesday, April 13, 2022 8:55 AM

To: PACERMAIL/SAT/AO/USCOURTS <pacer@psc.uscourts.gov>

Cc: Prose-Pleadings CA09Operation <prose-pleadings@ca9.uscourts.gov>

Subject: Re: Official Court Document and/or Information Request!

CAUTION - EXTERNAL:

Good morning there.

What is happening with this E-Mail Legal-Request and the Previous USPS Mailed-Letter Request sent to you on Thursday, March 24, 2022??

On Wednesday, April 6, 2022, 10:23:51 AM CDT, Paul Jozwiak <orion5x5x9@yahoo.com> wrote:

Good Morning.

Plaintiff's APPENDIX-C

Under the Rules-Of-Procedure for the AZ District and CA Appeals Courts, it is Written-Law that the

California 9th Circuit Court Of Appeals Judges were Required to ORDER their Clerk Of The Courts

to Transmit a Request (By E-Mail Or Regular Mail) to the District Court holding the Court Record for

the Case Under Appeal, where the Clerk Of The Court having Possession of this Court Record was

Required to Number The Documents to be Certified, and then Immediately Transmit Them with the

Numbered List that Specifically Identified Each Document They Had Transmitted.

This is a Legal-Request for a Copy of the 9th Circuit Court's Order (For Appeals Case No. 20-17361)

for this AZ District Court Record (Case No.4:20-cv-00039-DCB) with the Names and Dates Of Those

Involved with this Request which SHALL include a Copy of this Numbered-List, Its-Certification and

the Transmission-Report showing the Dates and Times when this was Completed!!

CAUTION - EXTERNAL EMAIL: This email originated outside the Judiciary. Exercise caution when opening attachments or clicking on links.

**Additional material
from this filing is
available in the
Clerk's Office.**