FEDERAL RULES OF APPELLATE PROCEDURE

Effective December 1, 2018

And

TENTH CIRCUIT RULES

Effective January 1, 2019

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FEDERAL RULES OF APPELLATE PROCEDURE

TITLE I. APPLICABILITY OF RULES

Fed. R. App. P. Rule 1. Scope of Rules; Title

(a) Scope of Rules.

(1) These rules govern procedure in the United States courts of appeals.

(2) When these rules provide for filing a motion or other document in the district court, the procedure must comply with the practice of the district court.

(b) Definition. In these rules, "state" includes the District of Columbia and any United States commonwealth or territory.

(c) Title. These rules are to be known as the Federal Rules of Appellate Procedure.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 28, 2010, eff. Dec. 1, 2010.)

10th Cir. R. 1

1.1 Scope of rules.

These rules supplement the Federal Rules of Appellate Procedure for cases in this court. Parties must comply both with the Federal Rules of Appellate Procedure and with these rules.

1.2 Organization.

These rules have been organized and numbered to correspond to the Federal Rules of Appellate Procedure. Provisions having no direct relationship to a Federal Rule of Appellate Procedure are in Rule 47.

1.3 Citation.

These rules are known as the Tenth Circuit Rules. A particular rule should be cited as "10th Cir. R. ___."

1.4 Internal references.

In these rules, the circuit clerk is referred to as "circuit clerk" or "the Clerk." A Tenth Circuit Rule is referred to as "Rule ___." A Federal Rule of Appellate Procedure is referred to as "Fed. R. App. P. ___" or

"Federal Rule of Appellate Procedure ___." A Federal Rule of Civil Procedure is referred to as "Fed. R. Civ. P. ___."

1.5 Effective date.

These local rules are effective January 1, 2019, and apply to all proceedings that have not been completed before that date.

Fed. R. App. P. Rule 2. Suspension of Rules

On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 2

2.1 Suspension of local rules.

The court may suspend any part of these rules in a particular case on its own or on a party's motion.

TITLE II. APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

Fed. R. App. P. Rule 3. Appeal as of Right—How Taken

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of the filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X;"

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record—excluding the appellant's—or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries—and any later docket entries—to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.

(3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

(e) Payment of Fees.

Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 3

3.1 Signing notice of appeal.

Every notice of appeal must be signed by the appellant's counsel or, if the appellant is proceeding pro se, by the appellant. Counsel's digital signature is sufficient under this Rule.

3.2 Preliminary record.

(A) Contents. When an appeal is filed, the district clerk must promptly send the Clerk, electronically, copies of:

(1) the district court's docket entries;

(2) pertinent written reports and recommendations, findings and conclusions, opinions, or orders of a district judge, bankruptcy judge, or magistrate judge;

(3) the district court's final judgment or order from which the appeal is taken;

(4) all postjudgment motions to reconsider or motions questioning the judgment (*see* Fed. R. App. P. 4(a)(4) and Fed. R. Civ. P. 60(b)), and any order disposing of them;

(5) the notice of appeal; and

(6) any motion for extension of time to file the notice of appeal or to reopen the time to file an appeal and any dispositive order.

(B) Later filed motions and later entered orders. The district court clerk must supplement the preliminary record with: any motion for extension of time to file the notice of appeal or to reopen the time to file an appeal and any dispositive order; any later filed postjudgment motions to reconsider or motions questioning the judgment and any order disposing of them; any amended judgment; and copies of the related docket entries. Sending the

Clerk the preliminary record and any supplement satisfies the requirements of Federal Rule of Appellate Procedure 11(e). *See* Rule 11.2(B) for procedures in pro se appeals.

3.3 Fees.

(A) Notification. The district court clerk must notify the Clerk when the fees are paid or when leave to proceed without prepayment of fees is granted or denied.

(B) Dismissal for failure to comply. An appeal may be dismissed immediately if, within 14 days after filing the notice of appeal, a party fails to:

(1) pay a required fee;

(2) file a timely motion for extension of time to pay the required fee; or

(3) file a timely motion for leave to proceed without prepayment of fees.

(C) Revocation of release. Release pending appeal may be revoked if the docket fee is not paid or if the appeal is not timely pursued. The district court must so advise the defendant and the defendant's attorney when release pending appeal is ordered.

3.4 Docketing statement.

(A) Filing. Within 14 days after filing the notice of appeal, the appellant must file with the circuit clerk a docketing statement on a court-approved form (*see* 10th Cir. Form 1). This requirement does not apply to appellants proceeding pro se and does not apply in bail appeals filed under Federal Rule of Appellate Procedure 9.

(B) Omitted issue. An issue not raised in the docketing statement may be raised in the appellant's opening brief.

Fed. R. App. P. Rule 3.1. Appeal from a Judgment of a Magistrate Judge in a Civil Case

[Abrogated]

No local rule.

Fed. R. App. P. Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;

(ii) a United States agency;

(iii) a United States officer or employee sued in an official capacity; or

(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf— including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)

(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A) —the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from that judgment or order.

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision, sentence, or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order—but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)—becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective—without amendment—to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) Motion for Extension of Time. Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) Entry Defined. A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; May 7, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 28, 2016, eff. Dec. 1, 2016.)

No local rule.

Fed. R. App. P. Rule 5. Appeal by Permission

(a) Petition for Permission to Appeal.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the circuit clerk with proof of service on all other parties to the district-court action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.

(b) Contents of the Petition; Answer or Cross-Petition; Oral Argument.

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and

(E) an attached copy of:

(i) the order, decree, or judgment complained of and any related opinion or memorandum, and

(ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

(2) A party may file an answer in opposition or a cross-petition within 10 days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) Form of Papers; Number of Copies; Length Limits. All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case. Except by the court's permission, and excluding the accompanying documents required by Rule 5(b)(1)(E):

(1) a paper produced using a computer must not exceed 5,200 words; and

(2) a handwritten or typewritten paper must not exceed 20 pages.

(d) Grant of Permission; Fees; Cost Bond; Filing the Record.

(1) Within 14 days after the entry of the order granting permission to appeal, the appellant must:

(A) pay the district clerk all required fees; and

(B) file a cost bond if required under Rule 7.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c).

(As amended Apr. 29, 2002, eff. Dec. 1, 2002; May 7, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016.)

10th Cir. R. 5

5.1 Reply briefs.

A party seeking to file a reply in support of a petition may file a motion to that effect within 5 business days of service of the response. The motion must include the proposed reply. Replies may be no longer than 2600 words in length in a 13 point font, or 10 pages if typed or handwritten. If using a word count, the proposed reply must include a certification per Federal Rule of Appellate Procedure 32(g).

Fed. R. App. P. Rule 5.1. Appeal by Leave under 28 U.S.C. § 636(c)(5)

[Abrogated]

No local rule.

Fed. R. App. P. Rule 6. Appeal in a Bankruptcy Case

(a) Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case. An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules.

(b) Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case.

(1) Applicability of Other Rules. These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d)(1) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction under 28 U.S.C. § 158(a) or (b), but with these qualifications:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(c), 13-20, 22-23, and 24(b) do not apply;

(B) the reference in Rule 3(c) to "Form 1 in the Appendix of Forms" must be read as a reference to Form 5; and

(C) when the appeal is from a bankruptcy appellate panel, "district court," as used in any applicable rule, means "appellate panel"; and

(D) in Rule 12.1, "district court" includes a bankruptcy court or bankruptcy appellate panel.

(2) Additional Rules. In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) Motion for Rehearing.

(i) If a timely motion for rehearing under Bankruptcy Rule 8022 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree—but before disposition of the motion for rehearing—becomes effective when the order disposing of the motion for rehearing is entered.

(ii) If a party intends to challenge the order disposing of the motion—or the alteration or amendment of a judgment, order, or decree upon the motion—then the party, in compliance with Rules 3(c) and 6(b)(1)(B), must file a notice of appeal or amended notice of appeal. The notice or amended notice must be filed within the time prescribed by Rule 4—excluding Rules 4(a)(4) and 4(b)—measured from the entry of the order disposing of the motion.

(iii) No additional fee is required to file an amended notice.

(B) The Record on Appeal.

(i) Within 14 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8009—and serve on the appellee—a statement of the issues to be presented on appeal and a designation of the record to be certified and made available to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 14 days after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

- the redesignated record as provided above;
- the proceedings in the district court or bankruptcy appellate panel; and
- a certified copy of the docket entries prepared by the clerk under Rule 3(d).

(C) Making the Record Available.

(i) When the record is complete, the district clerk or bankruptcy-appellate- panel clerk must number the documents constituting the record and promptly make it available to the circuit clerk. If the clerk makes the record available in paper form, the clerk will not send documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals, unless directed to do so by a party or the

circuit clerk. If unusually bulky or heavy exhibits are to be made available in paper form, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble the record and make it available. When the record is made available in paper form, the court of appeals may provide by rule or order that a certified copy of the docket entries be made available in place of the designated record. But any party may request at any time during the pendency of the appeal that the redesignated record be made available.

(D) Filing the Record. When the district clerk or bankruptcy-appellate-panel clerk has made the record available, the circuit clerk must note that fact on the docket. The date noted on the docket serves as the filing date of the record. The circuit clerk must immediately notify all parties of the filing date.

(c) Direct Review by Permission Under 28 U.S.C. § 158(d)(2).

(1) Applicability of Other Rules. These rules apply to a direct appeal by permission under 28 U.S.C. § 158(d)(2), but with these qualifications:

(A) Rules 3-4, 5(a)(3), 6(a), 6(b), 8(a), 8(c), 9-12, 13-20, 22-23, and 24(b) do not apply;

(B) as used in any applicable rule, "district court" or "district clerk" includes—to the extent appropriate—a bankruptcy court or bankruptcy appellate panel or its clerk; and

(C) the reference to "Rules 11 and 12(c)" in Rule 5(d)(3) must be read as a reference to Rules 6(c)(2)(B) and (C).

(2) Additional Rules. In addition, the following rules apply:

(A) The Record on Appeal. Bankruptcy Rule 8009 governs the record on appeal.

(B) Making the Record Available. Bankruptcy Rule 8010 governs completing the record and making it available.

(C) Stays Pending Appeal. Bankruptcy Rule 8007 applies to stays pending appeal.

(D) Duties of the Circuit Clerk. When the bankruptcy clerk has made the record available, the circuit clerk must note that fact on the docket. The date noted on the docket serves as the filing date of the record. The circuit clerk must immediately notify all parties of the filing date.

(E) Filing a Representation Statement. Unless the court of appeals designates another time, within 14 days after entry of the order granting permission to appeal, the attorney who sought permission must file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009; Apr. 25, 2014, eff. Dec. 1, 2014.)

10th Cir. R. 6

6.1 Appendices in bankruptcy appeals.

Rules 30.1, 30.2, and 30.3 apply to all bankruptcy appeals.

Fed. R. App. P. Rule 7. Bond for Costs on Appeal in a Civil Case

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 8. Stay or Injunction Pending Appeal

(a) Motion for Stay.

(1) Initial Motion in the District Court. A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of a district court pending appeal;

(B) approval of a bond or other security provided to obtain a stay of judgment; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) Motion in the Court of Appeals; Conditions on Relief. A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(A) The motion must:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure

impracticable, the motion may be made to and considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other security in the district court.

(b) Proceeding Against a Security Provider. If a party gives security with one or more security providers, each provider submits to the jurisdiction of the district court and irrevocably appoints the district clerk as its agent on whom any papers affecting its liability on the security may be served. On motion, a security provider's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district clerk, who must promptly send a copy to each security provider whose address is known.

(c) Stay in a Criminal Case. Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 2018, eff. Dec. 1, 2018.)

10th Cir. R. 8

8.1 Required showing.

No application for a stay or an injunction pending appeal will be considered unless the applicant addresses all of the following:

(A) the basis for the district court's or agency's subject matter jurisdiction and the basis for the court of appeals' jurisdiction, including citation to statutes and a statement of facts establishing jurisdiction;

(B) the likelihood of success on appeal;

(C) the threat of irreparable harm if the stay or injunction is not granted;

(D) the absence of harm to opposing parties if the stay or injunction is granted; and

(E) any risk of harm to the public interest.

8.2 Emergency or ex parte motions.

(A) Emergency relief. Any motion that requests a ruling within 48 hours after filing must be plainly marked "EMERGENCY" and accompanied by a certificate stating:

(1) the reason the motion was not filed earlier;

(2) the date the underlying order was entered;

(3) the time and date the order becomes effective;

(4) the telephone numbers and email addresses for all counsel of record and, where available, unrepresented parties; and

(5) in immigration cases seeking a stay of removal or other emergency relief, the petitioner must attach to the motion a copy of the transcript from the Immigration Judge's ruling, if relevant, plus copies of the written rulings of the Immigration Judge and Board of Immigration Appeals.

(B) Ex parte relief. Any motion that requests the court to act ex parte must include a certificate stating the reason it was not possible to provide notice to the other parties.

(C) Notice to clerk. If a motion for emergency relief is contemplated, the movant must notify the Clerk in advance at the earliest practical time so that arrangements can be made for timely submission to the court.

8.3 Applications made to a single judge.

(A) Emergency. Application to a single judge for a stay of a judgment or order pending appeal is disfavored.

(B) Contents. An application made to a single judge must demonstrate:

(1) that notice of the application—including when, where, and to which judge the application was made and the reason for submission to a single judge—was furnished to other parties; or

(2) what efforts were made to furnish notice to other parties and to contact the office of the clerk, or else the reasons why notice to the parties and/or to the Clerk was not required and/or possible.

Fed. R. App. P. Rule 9. Release in a Criminal Case

(a) Release Before Judgment of Conviction.

(1) The district court must state in writing, or orally on the record, the reasons for an order regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with the court of appeals a copy of the district court's order and the court's statement of reasons as soon as practicable after filing the notice of appeal. An appellant who questions the factual basis for the district court's order must file a transcript of the release proceedings or an explanation of why a transcript was not obtained.

(2) After reasonable notice to the appellee, the court of appeals must promptly determine the appeal on the basis of the papers, affidavits, and parts of the record that the parties present or the court requires. Unless the court so orders, briefs need not be filed.

(3) The court of appeals or one of its judges may order the defendant's release pending the disposition of the appeal.

(b) Release After Judgment of Conviction. A party entitled to do so may obtain review of a district-court order regarding release after a judgment of conviction by filing a notice of appeal from that order in the district court, or by filing a motion in the court of appeals if the party has already filed a notice of appeal from the judgment of conviction. Both the order and the review are subject to Rule 9(a). The papers filed by the party seeking review must include a copy of the judgment of conviction.

(c) Criteria for Release. The court must make its decision regarding release in accordance with the applicable provisions of 18 U.S.C. §§ 3142, 3143, and 3145(c).

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 9

9.1 Expedited proceedings.

(A) Release order. Review of a district court's release order is generally expedited.

(B) Application of 10th Cir. R. 46.3(B). In light of the expedited nature of the proceeding, the motion requirement outlined in Rule 46.3(B) does not apply to bail appeals.

(C) Docketing Statement. Appellants are not required to file docketing statements in bail appeals.

(D) Deferred ruling. After reasonable notice, the court may defer ruling on a motion for release after a judgment of conviction until it disposes of the underlying direct appeal.

9.2 Procedures.

Within 14 days after filing the notice of appeal or motion for release, the party seeking relief must file:

(A) a memorandum containing:

(1) a statement of facts necessary for an understanding of the issues presented;

(2) the grounds for relief, including citation to relevant authorities; and

(3) a statement of the defendant's custodial status and reporting date as relevant—the court must be notified of any change in custody status pending the review process; and

(B) an electronic appendix containing the items noted below. (Please see the court's CM/ECF User Manual at Sections II(S) and III(G) for information regarding filing requirements and procedures for filing electronic appendices. It may be found on the court's website, www.ca10.uscourts.gov.) The appendix must include:

(1) all release orders or rulings, together with the reasons (findings and conclusions) given by the magistrate judge or the district judge for the action taken;

(2) any motion filed in the district court on the issue of release and relevant memoranda in support or opposition;

(3) transcripts of any relevant proceeding if the factual basis for the action taken is questioned;

(4) the judgment of conviction, if review is sought under Federal Rule of Appellate Procedure 9(b); and

(5) other relevant papers, affidavits, or portions of the district court record.

9.3 Response and date at issue.

Within 14 days after the Rule 9.2 memorandum is filed, the opposing party should file a response or notify the court that a response will not be filed. The matter will be considered at issue after the opposing party has been given reasonable notice and an opportunity to respond.

9.4 Ruling not law of the case.

Neither of the following constitutes law of the case:

(A) a decision on a motion for release; or

(B) a decision of an appeal from a district court's order on release made before final disposition of the direct criminal appeal.

Fed. R. App. P. Rule 10. The Record on Appeal

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

(1) Appellant's Duty to Order. Within 14 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

(2) Unsupported Finding or Conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) Partial Transcript. Unless the entire transcript is ordered:

(A) the appellant must—within the 14 days provided in Rule 10(b)(1)—file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 14 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

(C) unless within 14 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 14 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) Payment. At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it—together with any additions that the district court may consider necessary to a full presentation of the issues on appeal—must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

10th Cir. R. 10

10.1 Tenth Circuit Record on Appeal.

In this circuit, the record on appeal is presented in one of three forms:

- When the appellant is represented by retained counsel, the record on appeal is presented in an electronic appendix prepared by counsel in accordance with 10th Cir. R. 30.1 and filed concurrently with the opening brief.
- When the appellant is represented by counsel appointed pursuant to 18 U.S.C. § 3006A, the district court prepares and forwards a record on appeal comprised of district-court filings designated by counsel in accordance with 10th Cir. R. 10.3(A) and 11.2(A).
- When the appellant is pro se, the court prepares and dockets a record on appeal compiled in accordance with 10th Cir. R. 10.4.

10.2 Transcripts.

(A) Appropriate transcripts.

(1) Appellant's duty. The appellant must provide all portions of the transcript necessary to give the court a complete and accurate record of the proceedings related to the issues on appeal.

(a) When sufficiency of the evidence is raised, the entire relevant trial transcript must be provided.

(b) When sufficiency of the evidence is not raised, the appellant should order only the relevant portions of the transcript and enter into stipulations that will avoid or reduce the need for transcripts.

(c) The appellant must omit the examination of jurors unless specifically at issue on appeal.

(**2**) **No transcript ordered.** An appellant who does not intend to order a transcript must so state on a transcript order form filed in the district court, with a copy filed in the circuit court, within 14 days after filing the notice of appeal.

(B) Ordering transcripts.

(1) Order form. The transcript order must be made on a form provided by the district court and must comply with Federal Rule of Appellate Procedure 10(b). If counsel is appointed under the Criminal Justice Act, appropriate payment arrangements must be made in the eVoucher system at the time the transcript is ordered.

(2) Reporter's duty. Upon receipt of a properly completed transcript order, the reporter must:

(a) acknowledge receipt of the order;

(b) state on the form an anticipated date of completion within the time set by the Appellate Transcript Management Plan for the Tenth Circuit (*see* Local Appendix A); and

(c) promptly send a copy of the order form to the circuit clerk.

(3) Completion. A transcript order is not complete until satisfactory financial arrangements have been made with the reporter.

(C) Preparing, filing, and delivering transcripts.

(1) Preparation and filing. The Appellate Transcript Management Plan for the Tenth Circuit governs the preparation and filing of transcripts for cases on appeal. *See* Local Appendix A.

(2) Delivery. When the transcript is complete, the court reporter must:

(a) deliver the original to the requesting party or to counsel later appointed;

(b) file a certified copy with the district court clerk; and

(c) notify the circuit clerk.

10.3 Designation of record (when filed).

(A) Appointed counsel. In appeals in which any appellant is represented by appointed counsel—including companion and consolidated appeals—a designation of record must be filed in district court, with a copy filed with the circuit court. No Rule 30.1 appendix is required.

(1) Filing. The appellant's designation of record must be filed within 14 days after filing the notice of appeal.

(2) Appellee's designation. The appellee may file an additional designation within 14 days after service of the appellant's designation.

(B) Retained counsel. In appeals in which all appellants are represented by retained counsel—including companion and consolidated appeals—no designation is required and the record will be presented in an appendix prepared by the appellant. For requirements regarding the appendix, *see* 10th Cir. R. 30.1 (Appellant's appendix), 30.2 (Supplemental appendix), and 30.3 (Appendix exemptions). Retained counsel includes counsel for national, state, or local government entities. If the appellee's counsel is appointed, Rule 30.2(A) also applies.

(C) Pro se cases. In pro se cases, no designation is required. The court will prepare a pro se record. See 10th Cir. Rule 11.2(B); 30.1.

10.4 Content of record.

(A) Essential items. Counsel must designate a record on appeal or prepare an appendix that is sufficient for considering and deciding the appellate issues. Only essential parts of the district court record should be designated for the record on appeal.

(B) Inadequate record. The court need not remedy any failure by counsel to designate an adequate record or to prepare an adequate appendix. When the party asserting an issue fails to provide a record or appendix sufficient for considering that issue, the court may decline to consider it.

(C) Required contents. Every record on appeal or appendix filed must include:

(1) the district court's docket entries;

(2) the last amended complaint and answer, or the indictment or information and any superseding indictment or information;

(3) the final pretrial order;

(4) pertinent written reports and recommendations, findings and conclusions, opinions, or orders of a district judge, bankruptcy judge, or magistrate judge, or, if the findings and conclusions were made orally, a copy of the transcript pages reproducing those findings and conclusions;

(5) all jury instructions when an instruction is at issue on appeal, as well as proposed instructions that were refused; when a finding or conclusion is an issue on appeal, proposed findings and conclusions that were refused;

(6) the decision or order from which the appeal is taken;

(7) the notice of appeal; and

(8) in a social security appeal, the entire administrative record.

(D) Additional items.

(1) Evidence; instructions. If an appeal is based on a challenge to the admission or exclusion of evidence, the giving or failure to give a jury instruction, or any other ruling or order, a copy of the pages of the reporter's transcript must be included in the record or appendix to show where the evidence, offer of proof, instruction, ruling or order, and any necessary objection are recorded.

(2) Documents. When the appeal is from an order disposing of a motion or other pleading, the motion, relevant portions of affidavits, depositions and other supporting documents (including any supporting briefs, memoranda, and points of authority), filed in connection with that motion or pleading, and any responses and replies filed in connection with that motion or pleading must be included in the record or appendix.

(3) **Presentence report.** The presentence investigation report must be included if the appeal is from a sentence imposed under 18 U.S.C. § 3742. *See* Rule 11.3(C).

(4) **Other.** Other items, such as trial exhibits and transcript excerpts, must be included when they are relevant to an issue raised on appeal and are referred to in the brief.

(5) **Trial exhibits.** Copies of relevant trial exhibits released by the district court before appeal but referred to in a party's brief may be presented in an appendix where one is filed, or may be submitted via motion as a supplement to the record on appeal in cases where the record is created via designation.

(E) **Exclusions.** The following items may not be included in the record on appeal or appendix unless they are relevant to the issues on appeal:

- appearances;
- bills of costs;
- briefs, memoranda, and points of authority, except as specified in Rule 10.3(D)(2);
- certificates of service;
- depositions, interrogatories, and other discovery matters, unless used as evidence;
- lists of witnesses or exhibits;
- notices and calendars;
- procedural motions or orders;
- returns and acceptances of service;
- subpoenas;
- summonses;
- setting orders;
- unopposed motions granted by the trial court;
- non final pretrial reports or orders; and

- suggestions for voir dire.

Fed. R. App. P. Rule 11. Forwarding the Record

(a) Appellant's Duty.

An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

(b) Duties of Reporter and District Clerk.

(1) Reporter's Duty to Prepare and File a Transcript. The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) District Clerk's Duty to Forward. When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(c) Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal.

The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

(d) [Abrogated.]

(e) Retaining the Record by Court Order.

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.

(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.

(f) Retaining Parts of the Record in the District Court by Stipulation of the Parties.

The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or request by a party. The parts of the record so designated remain a part of the record on appeal.

(g) Record for a Preliminary Motion in the Court of Appeals. If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- for dismissal;

- for release;
- for a stay pending appeal;
- for additional security on the bond on appeal or on a bond or other security provided to obtain a stay of judgment; or
- for any other intermediate order—

the district clerk must send the court of appeals any parts of the record designated by any party.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 2018, eff. Dec. 1, 2018.)

10th Cir. R. 11

11.1 Record retained in district court (appendix filed).

(A) Notice from district court. In appeals in which an appendix is required by 10th Cir. R. 30.1, *see also* 10th Cir. R. 10.3(B), the district court clerk will notify the parties and the circuit clerk when the record is complete (i.e., when the appellant certifies that no transcript will be ordered or the transcript is filed).

(B) Appendix. Appellant electronically files the appendix concurrently with the opening brief. The appendix must comply with all provisions of 10th Cir. R. 30.1. The appellee may file a supplemental appendix in accordance with 10th Cir. R. 30.2.

11.2 Record transmitted to court of appeals (when required).

(A) Designated record. In an appeal in which an appellant is represented by appointed counsel, the district court clerk must forward the record to the circuit clerk as required by Federal Rule of Appellate Procedure 11(b). *See also* 10th Cir. R. 10.3(A). The record must include any transcript that has been filed for the appeal.

(B) Pro se record. In pro se appeals, a record on appeal will be prepared and docketed. *See* 10th Cir. R. 10.3(C).

(C) Original file. In a pro se appeal in which the district court denies the appellant permission to proceed without prepayment of fees or denies a certificate of appealability, the district court clerk may transmit the district court's "original file" to the circuit clerk.

(D) Electronic submission. When the district court clerk transmits a record electronically, the various volumes shall be forwarded as separate *.pdf* files. Pleadings must be bookmarked, and sealed volumes shall be identified as such.

11.3 Sealed materials.

(A) In the appendix. Rule 25.6 applies to sealed materials in the appendix.

(B) In the record on appeal. When materials sealed by district court order are forwarded as part of the record, the district court clerk must:

(1) separate the sealed materials from other portions of the record;

(2) enclose them in an envelope clearly marked "Sealed" if forwarded in hard copy or identify them as sealed in a separate electronic volume when transmitted; and

(3) affix a copy of the sealing order to the outside of the envelope if the sealed material is not available electronically.

(C) Presentence investigation reports. Presentence reports are confidential. If a presentence report needs to be forwarded as part of the record on appeal, the district court clerk must treat it like sealed material under this rule.

Fed. R. App. P. Rule 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record

(a) Docketing the Appeal.

Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

(b) Filing a Representation Statement.

Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 14 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(c) Filing the Record, Partial Record, or Certificate.

Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

No local rule.

Fed. R. App. P. Rule 12.1. Remand After an Indicative Ruling by the District Court on a Motion for Relief That Is Barred by a Pending Appeal

(a) Notice to the Court of Appeals.

If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the circuit clerk if the district court states either that it would grant the motion or that the motion raises a substantial issue.

(b) Remand After an Indicative Ruling.

If the district court states that it would grant the motion or that the motion raises a substantial issue, the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal. If the court of appeals remands but retains jurisdiction, the parties must promptly notify the circuit clerk when the district court has decided the motion on remand.

(Eff. Dec. 1, 2009.)

No local rule.

TITLE III. APPEALS FROM THE UNITED STATES TAX COURT

Fed. R. App. P. Rule 13. Appeals from the Tax Court

An Appeal as of Right.

(1) How Obtained; Time for Filing a Notice of Appeal.

(A) An appeal as of right from the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

(B) If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

(2) Notice of Appeal; How Filed.

The notice of appeal may be filed either at the Tax Court clerk's office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

(3) Contents of the Notice of Appeal; Service; Effect of Filing and Service.

Rule 3 prescribes the contents of a notice of appeal, the manner of service, and the effect of its filing and service. Form 2 in the Appendix of Forms is a suggested form of a notice of appeal.

(4) The Record on Appeal; Forwarding; Filing.

(A) Except as otherwise provided under Tax Court rules for the transcript of proceedings, the appeal is governed by the parts of Rules 10, 11 and 12 regarding the record on appeal from a district court, the time and manner of forwarding and filing, and the docketing in the court of appeals.

(B) If an appeal is taken to more than one court of appeals, the original record must be sent to the court named in the first notice of appeal filed. In an appeal to any other court of appeals, the appellant must apply to that other court to make provision for the record.

(b) Appeal by Permission. An appeal by permission is governed by Rule 5.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 16, 2013, eff. Dec. 1, 2013)

No local rule.

Fed. R. App. P. Rule 14. Applicability of Other Rules to Appeals from the Tax Court

All provisions of these rules, except Rules 4, 6-9, 15-20, and 22-23, apply to appeals from the Tax Court. References in any applicable rule (other than Rule 24(a)) to the district court and district clerk are to be read as referring to the Tax Court and its clerk.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 16, 2013, eff. Dec. 1, 2013.)

10th Cir. R. 14

14.1 Tenth Circuit rules apply.

These rules—except Rules 8, 9, 15, 17, 20, and 22—apply to review of a decision of the Tax Court. As used in any applicable Tenth Circuit rule, the term “district court” includes the Tax Court, the term “district judge” includes a judge of the Tax Court, and the term “district court clerk” includes the Tax Court clerk.

TITLE IV. REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

Fed. R. App. P. Rule 15. Review or Enforcement of an Agency Order—How Obtained; Intervention

(a) Petition for Review; Joint Petition.

(1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in a petition to the same court to review the same order.

(2) The petition must:

(A) name each party seeking review either in the caption or the body of the petition—using such terms as "et al.," "petitioners," or "respondents" does not effectively name the parties;

(B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and

(C) specify the order or part thereof to be reviewed.

(3) Form 3 in the Appendix of Forms is a suggested form of a petition for review.

(4) In this rule "agency" includes an agency, board, commission, or officer; "petition for review" includes a petition to enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.

(b) Application or Cross-Application to Enforce an Order; Answer; Default.

(1) An application to enforce an agency order must be filed with the clerk of a court of appeals authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may file a cross-application for enforcement.

(2) Within 21 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.

(3) The application must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief requested.

(c) Service of the Petition or Application.

The circuit clerk must serve a copy of the petition for review, or an application or cross-application to enforce an agency order, on each respondent as prescribed by Rule 3(d), unless a different manner of service is prescribed by statute. At the time of filing, the petitioner must:

(1) serve, or have served, a copy on each party admitted to participate in the agency proceedings, except for the respondents;

(2) file with the clerk a list of those so served; and

(3) give the clerk enough copies of the petition or application to serve each respondent.

(d) Intervention.

Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion—or other notice of intervention authorized by statute—must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

(e) Payment of Fees.

When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.

(As amended May 7, 2009, eff. Dec. 1, 2009.)

10th Cir. R. 15

15.1 Required attachments.

The order to be reviewed or enforced must be attached to the petition for review or the application to enforce. In immigration cases, a copy of the transcript from the Immigration Judge's oral ruling, plus copies of the written rulings of the Immigration Judge and the Board of Immigration Appeals must be attached.

15.2 Service on the Respondents.

At the time of making the filing required under Federal Rule of Appellate Procedure 15(c)(2), the petitioner shall also include a list of those respondents requiring service of the petition**.**

15.3 Docketing statement.

Within 14 days after filing a petition for review or an application for enforcement, the filing party must file a docketing statement on a form provided by the court. *See* 10th Cir. Form 1.

15.4 Intervention.

(A) Notice of Intervention by a party. A party to an agency proceeding may intervene in a review of that proceeding by filing a notice of intervention in the court. The notice must state whether the party wishes to intervene as a petitioner in opposition to the agency order or as a respondent in support of the order.

(B) Motion to intervene.

(1) Content. In addition to the requirements of Federal Rule of Appellate Procedure 15(d), a nonparty motion must state the reasons why the parties cannot adequately protect the interest asserted.

(2) Opposition. Opposition to a motion to intervene must be filed within 14 days after the motion is served.

Fed. R. App. P. Rule 15.1. Briefs and Oral Argument in a National Labor Relations Board Proceeding

In either an enforcement or a review proceeding, a party adverse to the National Labor Relations Board proceeds first on briefing and at oral argument, unless the court orders otherwise.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 16. The Record on Review or Enforcement

(a) Composition of the Record.

The record on review or enforcement of an agency order consists of:

(1) the order involved;

(2) any findings or report on which it is based; and

(3) the pleadings, evidence, and other parts of the proceedings before the agency.

(b) Omissions From or Misstatements in the Record.

The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 17. Filing the Record

(a) Agency to File; Time for Filing; Notice of Filing.

The agency must file the record with the circuit clerk within 40 days after being served with a petition for review, unless the statute authorizing review provides otherwise, or within 40 days after it files an application for enforcement unless the respondent fails to answer or the court orders otherwise. The court may shorten or extend the time to file the record. The clerk must notify all parties of the date when the record is filed.

(b) Filing—What Constitutes.

(1) The agency must file:

(A) the original or a certified copy of the entire record or parts designated by the parties; or

(B) a certified list adequately describing all documents, transcripts of testimony, exhibits, and other material constituting the record, or describing those parts designated by the parties.

(2) The parties may stipulate in writing that no record or certified list be filed. The date when the stipulation is filed with the circuit clerk is treated as the date when the record is filed.

(3) The agency must retain any portion of the record not filed with the clerk. All parts of the record retained by the agency are a part of the record on review for all purposes and, if the court or a party so requests, must be sent to the court regardless of any prior stipulation.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 17

17.1 Time for filing.

If a certified list is filed instead of the record, the entire record, or the parts designated by the parties, must be filed on or before the deadline set for filing the respondent's brief.

17.2 No separate appendix required.

Because the appendix requirement of Rule 30.1 applies only to appeals from district courts, it does not apply to cases under this Rule.

Fed. R. App. P. Rule 18. Stay Pending Review

(a) Motion for a Stay.

(1) Initial Motion Before the Agency. A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order.

(2) Motion in the Court of Appeals. A motion for a stay may be made to the court of appeals or one of its judges.

(A) The motion must:

(i) show that moving first before the agency would be impracticable; or

(ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) The motion must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(b) Bond.

The court may condition relief on the filing of a bond or other appropriate security.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 18

18.1 Applications for stay.

Applications for stay must comply with Rule 8.

Fed. R. App. P. Rule 19. Settlement of a Judgment Enforcing an Agency Order in Part

When the court files an opinion directing entry of judgment enforcing the agency's order in part, the agency must within 14 days file with the clerk and serve on each other party a proposed judgment conforming to the opinion. A party who disagrees with the agency's proposed judgment must within 10 days file with the clerk and serve the agency with a proposed judgment that the party believes conforms to the opinion. The court will settle the judgment and direct entry without further hearing or argument.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

No local rule.

Fed. R. App. P. Rule 20. Applicability of Rules to the Review or Enforcement of an Agency Order

All provisions of these rules, except Rules 3-14 and 22-23, apply to the review or enforcement of an agency order. In these rules, "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 20

20.1 Tenth Circuit rules apply.

These rules—except Rules 3, 9, 10, 11.1, 11.2, 14, and 22—apply to review or enforcement of agency orders. As used in any Tenth Circuit rule, the term "appellant" includes a petitioner and the term "appellee" includes a respondent in proceedings to review or enforce agency orders, and the term "district judge" includes an administrative law judge or hearing officer.

TITLE V. EXTRAORDINARY WRITS

Fed. R. App. P. Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs

(a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing.

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2) (A) The petition must be titled "In re [name of petitioner]."

(B) The petition must state:

(i) the relief sought;

(ii) the issues presented;

(iii) the facts necessary to understand the issue presented by the petition; and

(iv) the reasons why the writ should issue.

(C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The clerk must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, the trial-court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The circuit clerk must send a copy of the final disposition to the trial-court judge.

(c) Other Extraordinary Writs.

An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).

(d) Form of Papers; Number of Copies.

All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case. Except by the court's permission, and excluding the accompanying documents required by Rule 21(a)(2)(C):

(1) a paper produced using a computer must not exceed 7,800 words; and

(2) a handwritten or typewritten paper must not exceed 30 pages.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 28, 2016, eff. Dec. 1, 2016.)

10th Cir. R. 21

21.1 Fees.

The fee is due and payable to the Clerk when the petition is filed. *See* 28 U.S.C. § 1913 note (Judicial Conference Schedule of Fees).

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

Fed. R. App. P. Rule 22. Habeas Corpus and Section 2255 Proceedings

(a) Application for the Original Writ.

An application for a writ of habeas corpus must be made to the appropriate district court. If made to a circuit judge, the application must be transferred to the appropriate district court. If a district court denies an application made or transferred to it, renewal of the application before a circuit judge is not permitted. The applicant may, under 28 U.S.C. § 2253, appeal to the court of appeals from the district court's order denying the application.

(b) Certificate of Appealability.

(1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district clerk must send to the court of appeals the certificate (if any) and the statement described in Rule 11(a) of the Rules Governing Proceedings Under 28 U.S.C. § 2254 or § 2255 (if any), along with the notice of appeal and the file of the district court proceedings. If the district judge has denied the certificate, the applicant may request a circuit judge to issue it.

(2) A request addressed to the court of appeals may be considered by a circuit judge or judges, as the court prescribes. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.

(3) A certificate of appealability is not required when a state or its representative or the United States or its representative appeals.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

10th Cir. R. 22

22.1 Certificate of appealability.

(A) Required form. Although a notice of appeal constitutes a request for a certificate of appealability, the appellant must also file a brief. The Clerk will provide pro se appellants a form for this purpose which serves as both a brief and a request for a certificate.

(B) Briefing. Respondents-appellees shall not file a brief until requested to do so by this court.

22.2 Procedures in death penalty cases.

(A) General Procedures.

(1) Upon receipt of the docketing statement in capital cases arising under 28 U.S.C. § 2254 or any federal criminal statute, the Clerk shall enter a case management order directing the parties to schedule a video or phone conference with the chief deputy clerk or other designated court representative. Lead counsel for both parties must be available for the conference.

(2) At the designated time, counsel and the court shall address matters related to issues to be appealed, page limitations, record issues, and any other procedural matters which the parties believe are significant in the appeal. At the time of the conference, counsel shall be prepared to discuss and adopt a briefing schedule. In addition, where appropriate, the court may address issues regarding issuance of a certificate of appealability.

(3) The court will issue a scheduling order following the conference. In that order, the court will set all appropriate deadlines. Motions to amend those deadlines are strongly discouraged, and the court will deviate from the scheduling order only under extreme circumstances.

(B) Cases with a scheduled execution date.

(1) Notice of execution date. When a petitioner has a scheduled execution date at the time the notice of appeal is filed, a separate notice regarding the date must be filed with the Clerk. The notice must be filed immediately upon case opening. The notice must:

(a) certify the existence of a death sentence and state the execution date; and

(b) list any previous related cases in federal court and any related cases pending in any other court, including state courts.

(2) Immediate communication upon filing in district court. The district clerk must notify the circuit clerk immediately upon the filing of any new habeas petition, or any other new proceeding, which includes a scheduled execution date for the petitioner. Counsel for the petitioner must also notify this court immediately if any new proceeding is filed in the district court involving a case with a scheduled execution date.

(C) Motion for stay.

(1) Initial motion in district court. A motion for a stay of execution must ordinarily be made in the district court first. *See* Fed. R. App. P. 8(a)(2)(A)(i).

(2) Lodged with court of appeals. In anticipation of jurisdiction, a motion for stay and supporting documents may be forwarded to Clerk before a notice of appeal is filed. Counsel should also contact the circuit clerk via phone as soon as is feasible regarding anticipated motions for stay. Written materials may be forwarded electronically to clerk@ca10.uscourts.gov.

22.3 Other rules applicable.

All other Tenth Circuit rules apply in death penalty cases unless they are inconsistent with this rule.

Fed. R. App. P. Rule 23. Custody or Release of a Prisoner in a Habeas Corpus Proceeding

(a) Transfer of Custody Pending Review.

Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

(b) Detention or Release Pending Review of Decision Not to Release.

While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:

(1) detained in the custody from which release is sought;

(2) detained in other appropriate custody; or

(3) released on personal recognizance, with or without surety.

(c) Release Pending Review of Decision Ordering Release.

While a decision ordering the release of a prisoner is under review, the prisoner must—unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise—be released on personal recognizance, with or without surety.

(d) Modification of the Initial Order on Custody.

An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to the court of appeals or the Supreme Court, or to a judge or justice of either court, the order is modified or an independent order regarding custody, release, or surety is issued.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 24. Proceeding in Forma Pauperis

(a) Leave to Proceed in Forma Pauperis.

(1) Motion in the District Court. Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) Action on the Motion. If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

(4) Notice of District Court's Denial. The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) Motion in the Court of Appeals. A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) Leave to Proceed in Forma Pauperis on Appeal from the United States Tax Court or on Appeal or Review of an Administrative-Agency Proceeding.

A party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1):

(1) in an appeal from the United States Tax Court; and

(2) when an appeal or review of a proceeding before an administrative agency, board, commission, or officer proceeds directly in the court of appeals.

(c) Leave to Use Original Record.

A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 16, 2013, eff. Dec. 1, 2013.)

10th Cir. R. 24

24.1 Prison Litigation Reform Act.

All prisoners bringing civil actions or appeals must pay the full amount of filing and docketing fees. 28 U.S.C. § 1915(b)(1). Consequently, if a prisoner tenders less than full fees when a notice of appeal is filed, the district court shall obtain sufficient information to determine the prisoner's eligibility to make partial payments of the full fee, and, if the prisoner is eligible, assess a partial filing fee under the Act. If the prisoner has sufficient funds, the district court shall assess the entire fee immediately. A prisoner who was permitted to proceed in forma pauperis in the district court is not automatically entitled to proceed on appeal without prepayment of full fees, but must file a motion specifically seeking such permission. The partial payment determination must take place regardless of whether the prisoner's status was examined at the time the complaint or other pleading was submitted to the district court. If the district court denies in forma

pauperis status, the prisoner must file a renewed motion in the court of appeals. The appeal should be processed and submitted to this court in the normal course, as required by Federal Rule of Appellate Procedure 3(d), without waiting for the determination of the prisoner's eligibility for making partial payments. When the district court makes its determination, it shall enter an order and forward a copy to this court. If the in forma pauperis application reveals the eligible prisoner has no assets and no means to make an initial partial payment, 28 U.S.C. § 1915(b)(4), the district court's order must reflect that finding.

24.2 Duty of Prisoner Appellant.

The appellant must authorize the custodian to deduct payments from the institutional account, and the custodian shall pay the assessment. Any failure to file the proper trust account statement and authorization shall be grounds for dismissal under 10th Cir. R. 3.3(B) and 42.1. Filing fee payments shall be made to the clerk of the district court pursuant to Federal Rule of Appellate Procedure 3(e).

TITLE VII. GENERAL PROVISIONS

Fed. R. App. P. Rule 25. Filing and Service

(a) Filing.

(1) Filing with the Clerk. A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

(2) Filing: Method and Timeliness.

(A) Nonelectronic filing.

(i) In General. For a paper not filed electronically, filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

(ii) A Brief or Appendix. A brief or appendix not filed electronically is timely filed, however, if on or before the last day for filing, it is:

- mailed to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage prepaid; or
- dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(iii) Inmate Filing. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(A)(iii). A paper not filed electronically by an inmate is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

- it is accompanied by: a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid; or
- the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(A)(iii).

(B) Electronic Filing and Signing.

(i) By a Represented Person—Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(ii) By an Unrepresented Person—When Allowed or Required. A person not represented by an attorney:

- may file electronically only if allowed by court order or by local rule; and
- may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.

(iii) Signing. A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(iv) Same as a Written Paper. A paper filed electronically is a written paper for purposes of these rules.

(3) Filing a Motion with a Judge. If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.

(4) Clerk's Refusal of Documents. The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(5) Privacy Protection. An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.

(b) Service of All Papers Required. Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties

to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Nonelectronic service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail; or

(C) by third-party commercial carrier for delivery within 3 days.

(2) Electronic service of a paper may be made (A) by sending it to a registered user by filing it with the court's electronic-filing system or (B) by sending it by other electronic means that the person to be served consented to in writing.

(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on filing or sending, unless the party making service is notified that the paper was not received by the party served.

(d) Proof of Service.

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(A)(ii), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies. When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007; May 7, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018.)

10th Cir. R. 25

25.1 File stamped copies of papers.

For pro se parties submitting hard copies, file stamped copies of papers filed with the court will be sent to the filer only if that party provides necessary copies and a self-addressed envelope bearing sufficient postage.

25.2 Papers subject to being stricken.

If papers submitted to the Clerk do not comply with the Federal Rules of Appellate Procedure and these rules, they may be stricken.

25.3 Electronic filing.

As authorized by Federal Rule of Appellate Procedure 25(a)(2)(B), the court has converted to *mandatory* electronic case filing (ECF) for all counsel of record. All pleadings filed electronically shall be submitted in compliance with the procedures adopted by the court and set forth in the CM/ECF User Manual at Sections II and III. In addition, all pleadings filed electronically must contain a certificate of compliance with the court's ECF requirements. Please see the CM/ECF User Manual at Section II(J) for information regarding the required certification. Consistent with Rule 25(a)(2)(B)(i), any party may move to be exempt from electronic filing requirements, including the filing of an electronic appendix. *See* 10th Cir. R. 30.3(A). Copies of, and information regarding, the court's User Manual and training materials may be obtained by contacting the office of the clerk or by visiting the court's website at www.ca10.uscourts.gov.

25.4 Electronic service.

In accordance with Federal Rule of Appellate Procedure 25(c)(2), electronic filers may use the court's ECF system to serve pleadings, including an appendix. Please see the court's CM/ECF User Manual at Section II(E) for information regarding service requirements. Filers must, however, continue to include a certificate of service with all papers and materials submitted, and shall identify in the certificate the method of service used. The filer is responsible for making service in another manner on persons entitled to notice who are not electronic filers in the case.

25.5 Privacy redaction requirements.

All filers are required to follow the privacy and redaction requirements of Federal Rule of Appellate Procedure 25(a)(5), as well as the

applicable federal rules of civil procedure, criminal procedure, and the relevant bankruptcy rule. *See* Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1; Fed. R. Bankr. P. 9037. Required redactions include social security numbers and tax identification numbers (filers may disclose the last four digits of a social security or tax identification number), birth dates (use year of birth only), minors' names (initials may be used), and financial account numbers (except those identifying property allegedly subject to forfeiture in a forfeiture proceeding). It is the sole responsibility of the filer to redact pleadings appropriately.

25.6 Filing under seal.

Any party who seeks to file any document under seal in this court must overcome a presumption in favor of access to judicial records. *See Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey*, 663 F.3d 1124, 1135 (10th Cir. 2011).

(A) Motions to seal. Except as provided in Rule 11.3(C) any document—motion, response, attachment, brief, appendix, or other paper—submitted under seal must be accompanied by a motion for leave to file the document under seal. The motion must

(1) identify with particularity the specific document containing the sensitive information;

(2) explain why the sensitive information cannot reasonably be redacted in lieu of filing the entire document under seal;

(3) articulate a substantial interest that justifies depriving the public of access to the document;

(4) cite any applicable rule, statute, case law, and/or prior court order having a bearing on why the document should be sealed, keeping in mind that this court is not bound by a district court's decision to seal a document below, *see Williams v. FedEx Corporate Services*, 849 F.3d 889, 905 (10th Cir. 2017); and

(5) comply with Tenth Circuit Rule 27.1.

(6) In addition, the motion to seal need not be filed under seal unless required by the nature of the request or the need to protect sealed information.

(B) Redaction in lieu of sealing. Redaction is preferable to filing an entire document under seal. Thus, unless redaction is impracticable, the party seeking to protect sensitive information

shall publicly file a redacted version of the document concurrently with the motion to seal.

25.7 Technical failure.

The Clerk may deem the ECF system to be subject to a technical failure on any given day if the system is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon MT on that day. Filings due on the day of a declared technical failure that were not filed solely due to that failure shall be due the next business day. All delayed filings shall be accompanied by a declaration or affidavit attesting to and describing the filer's failed attempts to file electronically.

Fed. R. App. P. Rule 26. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) Period Stated in Hours. When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) Inaccessibility of the Clerk's Office. Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 26(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 26(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) "Last Day" Defined. Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing in the district court, at midnight in the court's time zone;

(B) for electronic filing in the court of appeals, at midnight in the time zone of the circuit clerk's principal office;

(C) for filings under Rules 4(c)(1), 25(a)(2)(A)(ii), and 25(a)(2)(A)(iii)—and filing by mail under Rule 13(a)(2)—at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system; and

(D) for filing by other means, when the clerk's office is scheduled to close.

(5) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) "Legal Holiday" Defined. "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where either of the following is located: the district court that rendered the challenged judgment or order, or the circuit clerk's principal office.

(b) Extending Time. For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

(1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or

(2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

(c) Additional Time after Certain Kinds of Service. When a party may or must act within a specified time after being served, 3 days are added after the period would otherwise expire under Rule 26(a), unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule 26(c), a paper that is served electronically is treated as delivered on the date of service stated in the proof of service.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; May 7, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018.)

No Local Rule.

Fed. R. App. P. Rule 26.1. Corporate Disclosure Statement

(a) Who Must File. Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) Time for Filing; Supplemental Filing. A party must file the Rule 26.1(a) statement with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 26.1(a) changes.

(c) Number of Copies. If the Rule 26.1(a) statement is filed before the principal brief, or if a supplemental statement is filed, the party must file an original and 3 copies unless the court requires a different number by local rule or by order in a particular case.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

10th Cir. R. 26.1

(A) Disclosure Statement in Appeals Based on Diversity Jurisdiction—Identifying Members and Partners.

Where the asserted basis for federal jurisdiction is 28 U.S.C. § 1332 and a party or parties to the appeal are formed as a limited liability company (LLC), partnership, or any other unincorporated entity, each party so defined must:

(1) Include in that party's brief a statement identifying each of its members and their states of citizenship.

(2) Submit a supplemental statement if any of the required information changes.

See Americold Realty Trust v. Conagra Foods, Inc., 136 S. Ct. 1012, 1015 (2016) (for diversity jurisdiction, the citizenship of an unincorporated entity depends on the citizenship of all of its members).

Fed. R. App. P. Rule 27. Motions

(a) In General.

(1) Application for Relief. An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

(2) Contents of a Motion.

(A) Grounds and Relief Sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) Accompanying Documents.

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief must include a copy of the trial court's opinion or agency's decision as a separate exhibit.

(C) Documents Barred or not Required.

(i) A separate brief supporting or responding to a motion must not be filed.

(ii) A notice of motion is not required.

(iii) A proposed order is not required.

(3) Response.

(A) Time to File. Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 10 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

(B) Request for Affirmative Relief. A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

(4) Reply to Response. Any reply to a response must be filed within 7 days after service of the response. A reply must not present matters that do not relate to the response.

(b) Disposition of a Motion for a Procedural Order. The court may act on a motion for a procedural order—including a motion under Rule 26(b)—at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) Power of a Single Judge to Entertain a Motion. A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge.

(d) Form of Papers; Page Limits; and Number of Copies.

(1) Format.

(A) Reproduction. A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Cover. A cover is not required but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

(C) Binding. The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) Paper Size, Line Spacing, and Margins. The document must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) Typeface and type styles. The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

(2) Length Limits. Except by the court's permission, and excluding the accompanying documents authorized by Rule 27(a)(2)(B):

(A) a motion or response to a motion produced using a computer must not exceed 5,200 words;

(B) a handwritten or typewritten motion or response to a motion must not exceed 20 pages;

(C) a reply produced using a computer must not exceed 2,600 words; and

(D) a handwritten or typewritten reply to a response must not exceed 10 pages.

(3) Number of Copies. An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(e) Oral Argument. A motion will be decided without oral argument unless the court orders otherwise.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; May 7, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016.)

10th Cir. R. 27

27.1 Disclosure of opponent's position.

Every motion filed under Federal Rule of Appellate Procedure 27 and this rule must contain a statement of the opposing party's position on the relief requested or why the moving party was unable to learn the opposing party's position. Parties should make reasonable efforts to

contact opposing parties well in advance of filing a motion. Motions filed in direct criminal appeals or postconviction proceedings to withdraw, continue appointment, or substitute counsel need not state opposing counsel's position.

27.2 Paper copies not required.

Attorneys and pro se parties filing electronically need not provide the court with paper copies of motions, responses, or replies filed electronically.

27.3 Summary disposition on motion by a party or the court.

(A) Motions to dismiss or affirm.

(1) Types. A party may file only the following dispositive motions:

(a) a motion to dismiss the entire case for lack of appellate jurisdiction or for any other reason a dismissal is permitted by statute, the Federal Rules of Appellate Procedure, or these rules;

(b) a motion for summary disposition because of a supervening change of law or mootness;

(c) a motion to remand for additional trial court or administrative proceedings; or

(d) a motion by the government to enforce an appeal waiver.

(2) Contents.

(a) The motion must discuss the grounds for the motion.

(b) A motion under (A)(1)(d) must include copies of the plea agreement and copies of transcripts for both the plea hearing and the sentencing hearing.

(3) Time to file.

(a) A motion under (A)(1)(a) through (c) should be filed within 14 days after the notice of appeal is filed, unless good cause is shown.

(b) A motion under (A)(1)(d) must be filed within 20 days after:

(i) the district court's notice, pursuant to 10th Cir. R. 11.1, that the record is complete, or;

(ii) the district court's notice that it is transmitting the record pursuant to 10th Cir. R. 11.2.

(c) Failure to file a timely motion to enforce an appeal waiver does not preclude a party from raising the issue in a merits brief.

(4) Time to respond. If a party chooses to respond to a motion, the response must be filed within 14 days after the motion is served.

(B) Action by the court. After giving notice to the parties, the court may summarily dispose of an appeal or a petition for review or enforcement.

(1) Memorandum briefs. The court may require parties to file memorandum briefs addressing specific dispositive issues.

(2) Contents. A memorandum brief need not contain an index or a table of cases, but it must include a list of prior and related appeals.

(3) Length. Memorandum briefs filed under this rule shall be no longer than 5200 words in length or 20 pages if typed or handwritten. All briefs filed using the word limit must contain a certification in accord with Federal Rule of Appellate Procedure 32(g).

(4) Submission. A case with memorandum briefs will be considered without oral argument, unless a panel member decides that oral argument is needed. *See* 10th Cir. R. 34.1(G).

(C) Briefing stopped. The filing of a motion under (A) or notice of action by the court under (B) suspends the briefing schedule unless the court orders otherwise.

27.4 Certification of questions of state law.

(A) Certification; abatement. When state law permits, this court may:

(1) certify a question arising under state law to that state's highest court according to that court's rules; and

(2) abate the case in this court to await the state court's decision of the certified question.

(B) Motion. The court may certify on its own or on a party's motion.

(C) Time to file. A motion to certify should be filed at the same time as, but separately from, the moving party's brief on the merits.

(D) Response; time to file. A response may be filed at the same time as the answer or reply brief or within 14 days after the motion is served.

(E) When considered. A motion to certify is ordinarily referred to the panel of judges assigned to decide the appeal on the merits and is considered at the same time as the arguments on the merits.

27.5 Clerk authorized to act on certain motions.

(A) Motions. Subject to review by the court, the Clerk is authorized to act for the court on any of the following motions:

(1) to extend time to file a pleading or perform an act required by Federal Rules of Appellate Procedure 10, 11, 12, 13(d), 17, 24, 27, 29, 30, 31, 39, or 40, or by 10th Cir. R. 3, 10, 11, 14, 15, 17, 20, 24, 27, 30, 31, 40, or 46;

(2) to correct a brief or pleading;

(3) to supplement or correct records or to incorporate records from previous appeals;

(4) to consolidate appeals;

(5) to substitute parties;

(6) to appear as amicus curiae;

(7) to expedite or continue cases;

(8) to withdraw or substitute counsel in a civil case or, after compliance with 10th Cir. R. 46.4, in a criminal case;

(9) by appellant to dismiss an appeal (in criminal and postconviction cases, *see* 10th Cir. R. 46.3(C)), or a stipulation for dismissal, with or without an agreement on

payment of costs (if an appeal is dismissed, the Clerk may issue a copy of the dismissal order as the mandate);

(10) for extension of time to file a petition for rehearing, limited to one extension of 15 days or less;

(11) a motion under 10th Cir. R. 30.2 or 30.3; or

(12) any other motion the court may authorize.

(B) Opposed motions. If any motion listed in (A) is opposed, the Clerk will submit the matter to the court.

27.6 Motions to extend time.

(A) Disfavored. Extensions of time to file briefs are disfavored.

(B) Time to file. A motion to extend time to file a brief must be filed at least 5 days before the brief's due date, unless the reasons for the request did not exist or were unknown earlier.

(C) Content. A motion to extend time must:

(1) state the brief's due date;

(2) contain a statement of the opposing party's position on the relief requested or why the moving party was unable to learn the opposing party's position. In this regard, parties should make reasonable efforts to contact opposing parties well in advance of filing a motion; and

(3) list any such prior motion filed and the court's action on it.

(D) Requirements. The motion must establish that it will not be possible to file the brief on time, even if the party exercises due diligence and gives priority to preparing the brief.

(1) All factual statements must be set forth with specificity.

(2) Generalities—such as assertions that the purpose of the motion is not for delay and that counsel is too busy—are not sufficient.

(3) If the reason for the extension is that the transcript is not available, the motion must show that the transcript was timely ordered and paid for, or must explain why not.

(E) Reasons. Reasons that may merit consideration are that:

(1) other litigation presents a scheduling conflict, in which case the motion must:

(a) identify the litigation by caption, number, and court;

(b) describe the action taken in the other litigation on a request for continuance or deferment;

(c) state reasons why the other litigation should receive priority over the case in which the motion is filed;

(d) state reasons why other associated counsel cannot prepare the brief for timely filing or relieve movant's counsel of the other litigation; and

(e) recite any other relevant circumstances;

(2) the case is so complex that an adequate brief cannot reasonably be prepared by the due date, in which case the motion must state facts demonstrating the complexity; and

(3) counsel will suffer extreme hardship, in which case the motion must state the nature of the hardship.

(F) Criminal cases. A motion to extend time to file a brief in a criminal case must also state the custody status of the defendant.

27.7 Orders.

(A) Panel Judge. When a case has been assigned, a designated panel judge may issue any interlocutory order and act on any motion filed under Federal Rules of Appellate Procedure 8, 9(b), 22(a), or 22(b).

(B) Procedural orders. Orders are entered when the Clerk dockets them. The docket entry will:

(1) describe briefly and succinctly the nature of the order; and

(2) either be entered by the Clerk or state the name of the judge or judges directing its entry.

Fed. R. App. P. Rule 28. Briefs

(a) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a corporate disclosure statement if required by Rule 26.1;

(2) a table of contents, with page references;

(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

(4) a jurisdictional statement, including:

(A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;

(5) a statement of the issues presented for review;

(6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (Rule 28(e));

(7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(8) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(9) a short conclusion stating the precise relief sought; and

(10) the certificate of compliance, if required by Rule 32(g)(1).

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 28(a)(1)-(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case; and

(4) the statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the reply brief where they are cited.

(d) References to Parties. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."

(e) References to the Record. References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- Answer p. 7;
- Motion for Judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) [Reserved]

(h) [Reserved]

(i) Briefs in a Case Involving Multiple Appellants or Appellees. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(j) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

(As amended Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 28, 2016, eff. Dec. 1, 2016.)

10th Cir. R. 28

28.1 References to appendix or record.

(A) Record references. For each issue raised on appeal, all briefs must cite the precise references in the record where the issue was raised and ruled on. Counsel are encouraged to include a footnote in the briefs at the point of the first record citation to confirm the citation convention.

(1) Appendix. References to the appendix should be by page number (e.g., Aplt. App. at 27, or Aplee. Supp. App. at 14).

(2) Record. In cases without an appendix, references to the record should be to the record volume and page number (e.g., ROA, Vol. II, at 6). References to the transcript should be by page number.

(B) Particular record references. Briefs must cite the precise references in the record where a required objection was made and ruled on, if the appeal is based on:

(1) a failure to admit or exclude evidence;

(2) the giving of or refusal to give a particular jury instruction; or

(3) any other act or ruling for which a party must record an objection to preserve the right to appeal.

28.2 Additional requirements.

(A) Appellant's brief. In addition to all other requirements of the Federal Rules of Appellate Procedure and these rules, the appellant's brief must include as an attachment the following (even though they are also included in the appendix or record):

(1) copies of all pertinent written findings, conclusions, opinions, or orders of a district judge, bankruptcy judge, or magistrate judge (if the district court adopts a magistrate's report and recommendation, that report must also be included);

(2) if any judicial pronouncement listed in (1) is oral, a copy of the transcript pages;

(3) in social security cases, copies of the decisions of the administrative law judge and the appeals council;

(4) in immigration cases, a copy of the transcript from the Immigration Judge's oral ruling, plus copies of the written rulings of the Immigration Judge and the Board of Immigration Appeals; and

(5) the judgment.

(B) Appellee's brief. If the appellant's brief fails to attach all the rulings required by (A), the appellee's brief must attach them.

(C) All principal briefs.

(1) Name of court, judge, and originating case number. The front cover of each brief must contain the name of the court, the judge whose judgment is being appealed, and the originating case number.

(2) Oral argument statement. The front cover of each party's first brief must state whether oral argument is requested. If argument is requested, a statement of the reasons why argument is necessary must follow the brief's conclusion.

(3) Statement of related cases. At the end of the Table of Authorities, the first brief filed by each party must list all prior or related appeals, with appropriate citations, or a statement that there are no prior or related appeals.

(4) Glossary. All briefs containing acronyms or abbreviations not in common use (other than names of parties) must include a Glossary on a page immediately following the Table of Authorities.

(5) Brief Attachments and the Table of Contents. All attachments to briefs, including those required by Rule 28.2(A), shall be identified and included in the Table of Contents.

28.3 Disfavored practices.

(**A) Motions to exceed word counts are disfavored**. Motions to exceed the word count will be denied unless extraordinary and compelling circumstances can be shown. A motion filed within 14 days of the brief's due date must show why earlier filing was not possible.

(B) Incorporating by reference disapproved. Incorporating by reference portions of lower court or agency briefs or pleadings is

disapproved and does not satisfy the requirements of Federal Rules of Appellate Procedure 28(a) and (b).

(C) Use of passim discouraged. Use of passim as a citation form is discouraged. Parties are encouraged to include page references for all authorities and sources.

Fed. R. App. P. Rule 28.1. Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed. Rules 28(a)-(c), 31(a)(1), 32(a)(2), and 32(a)(7)(A)-(B) do not apply to such a case, except as otherwise provided in this rule.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) Appellee's Principal and Response Brief. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement.

(3) Appellant's Response and Reply Brief. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)-(8) and (10), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

(A) the jurisdictional statement;

(B) the statement of the issues;

(C) the statement of the case; and

(D) the statement of the standard of review.

(4) Appellee's Reply Brief. The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)-(3) and (10) and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Cover. Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; an intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 32(a)(2).

(e) Length.

(1) Page Limitation. Unless it complies with Rule 28.1(e)(2), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(2) Type-Volume Limitation.

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if it:

(i) contains no more than 13,000 words; or

(ii) uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if it:

(i) contains no more than 15,300 words; or

(ii) uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

(f) Time to Serve and File a Brief. Briefs must be served and filed as follows:

(1) the appellant's principal brief, within 40 days after the record is filed;

(2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;

(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and

(4) the appellee's reply brief, within 21 days after the appellant's response and reply brief is served, but at least 7 days before argument unless the court, for good cause, allows a later filing.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; May 7, 2009, eff. Dec. 1, 2009; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018.)

No Local Rule.

Fed. R. App. P. Rule 29. Brief of an Amicus Curiae

(a) During Initial Consideration of a Case on the Merits.

(1) Applicability. This Rule 29(a) governs amicus filings during a court's initial consideration of a case on the merits.

(2) When Permitted. The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a court of appeals may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification.

(3) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:

(A) the movant's interest; and

(B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(4) Contents and Form. An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but must include the following:

(A) if the amicus is a corporation, a disclosure statement like that required of parties by Rule 26.1;

(B) a table of contents, with page references;

(C) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

(D) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(E) unless the amicus curiae is one listed in the first sentence of Rule 29(a)(2), a statement that indicates whether:

(i) a party's counsel authored the brief in whole or in part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;

(F) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

(G) a certificate of compliance under Rule 32(g)(1), if length is computed using a word or line limit.

(5) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(6) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.

(8) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission.

(b) During Consideration of Whether to Grant Rehearing.

(1) Applicability. This Rule 29(b) governs amicus filings during a court's consideration of whether to grant panel rehearing or rehearing en banc, unless a local rule or order in a case provides otherwise.

(2) When Permitted. The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.

(3) Motion for Leave to File. Rule 29(a)(3) applies to a motion for leave.

(4) Contents, Form, and Length. Rule 29(a)(4) applies to the amicus brief. The brief must not exceed 2,600 words.

(5) Time for Filing. An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file the brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018.)

10th Cir. R. 29

29.1 Amicus briefs on rehearing.

The court will receive but not file proposed amicus briefs on rehearing. Filing will be considered shortly before the oral argument on rehearing en banc if granted, or before the grant or denial of panel rehearing.

Fed. R. App. P. Rule 30. Appendix to the Briefs

(a) Appellant's Responsibility.

(1) Contents of the Appendix. The appellant must prepare and file an appendix to the briefs containing:

(A) the relevant docket entries in the proceeding below;

(B) the relevant portions of the pleadings, charge, findings, or opinion;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the court's attention.

(2) Excluded Material. Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

(3) Time to File; Number of Copies. Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(b) All Parties' Responsibilities.

(1) Determining the Contents of the Appendix. The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 14 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 14 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.

(2) Costs of Appendix. Unless the parties agree otherwise, the appellant must pay the cost of the appendix. If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

(c) Deferred Appendix.

(1) Deferral Until After Briefs are Filed. The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.

(2) References to the Record.

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.

(d) Format of the Appendix. The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the

transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

(e) Reproduction of Exhibits. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district-court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

(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 Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

10th Cir. R. 30

30.1 Appellant's appendix.

Instead of a Federal Rule of Appellate Procedure 30 "appendix to the briefs," parties shall attach to their briefs the documents required by Tenth Circuit Rule 28.2(A) and (B).

The appendix required by the remainder of this Rule 30.1 is the form the record on appeal takes when the appellant is represented by retained counsel. *See* 10th Cir. R. 10.1. The remainder of this rule does not apply to appeals in which the appellant is pro se or represented by counsel appointed pursuant to 18 U.S.C. § 3006A. See 10th Cir. R. 10.1.

The appendix is prepared and electronically filed by the appellant, who must also forward a single hard copy of the electronic appendix to the office of the clerk. The hard copy must be an exact replica of the electronically filed appendix. This rule also applies to appeals from the Tax Court.

(A) Timing.

(1) Electronic filing. The appendix must be filed electronically at the same time the opening brief is filed. *See* 10th Cir. R.

31.1(A)(1) (noting the brief and appendix must be filed within 40 days after the district court clerk notifies the parties and the circuit clerk that the record is complete).

(2) Required hard copy filing. Within 2 business days of the electronic filing, a single hard copy of the appendix must be received in the office of the clerk, along with the required number of hard copies of the opening brief. *See* 10th Cir. R. 31.5.

(3) Deferred appendix. Parties seeking to submit a deferred appendix under Federal Rule of Appellate Procedure 30(c) may file a motion seeking an exception to these requirements.

(B) Content.

(1) Appellant's duty. An appellant represented by retained counsel must electronically file an appendix sufficient for considering and deciding the issues on appeal. The requirements of Rule 10.4 for the contents of a record on appeal apply to appellant's appendix. *See also* Rule 10.2(A) (addressing appellant's duty with regard to transcripts).

(2) Social security cases. In social security cases, the entire administrative record must be included in the appendix. In appropriate situations, the appellant may file a motion seeking an exemption from electronic filing of the administrative record, and a waiver of service requirements for the administrative record. If an exemption from electronic filing is granted, the appellant must submit a hard copy of the appendix. *See* 10th Cir. R. 30.1(A)(2).

(3) Inadequate Appendix. The court need not remedy any failure of counsel to provide an adequate appendix. *See* 10th Cir. R. 10.4(B).

(C) Multiple appellants. When multiple appellants are allowed to file separate briefs under 10th Cir. R. 31.3(B), separate appendices may be filed. But counsel must avoid duplication of items included in a previously filed appendix; duplicative items may be adopted by reference. A single agreed appendix is preferred.

(D) Form.

Important Note: Counsel should review the Court's CM/ECF User Manual at Sections II and III and in particular III(G) for

important technical information and instructions regarding the electronic appendix. These sections also include important information regarding submission of the required single hard copy of the appendix. *See* www.ca10.uscourts.gov

(1) **Pagination; index or table of contents.** With the exception of social security appeals, the appendix must be paginated consecutively. All appendices must include an index of documents with page numbers noting where the documents appear. If the appendix consists of multiple volumes, each volume must include an index.

(2) **File stamped.** Documents in the appendix should show the district court's electronic stamp, but they need not be certified.

(3) **District court docket entries.** A copy of the district court's docket entries should always be the first document in the appendix.

(4) **Order of documents.** Documents should be arranged in chronological order according to the filing date; other papers such as exhibits and transcript excerpts should be at the end.

(5) **Separate volumes.** Where the appendix is large, separate volumes should be created to allow for manageable review of the materials, and each volume should have its own cover page identifying that volume number. Individual volumes should not exceed 300 pages in length. The number of electronic volumes must match the number of hard copy volumes. For the single hard copy, the court strongly encourages the use of spiral binding. The use of three-ring binders is prohibited.

(6) **Sealed documents; form and motion requirement.** Copies of documents intended for filing under seal should be submitted in a separate volume, using the ECF option for filing under seal. If the appendix includes sealed materials it must be accompanied by a separate motion to seal in accordance with Tenth Circuit Rule 25.6. Presentence reports in criminal cases constitute an exception to this motion requirement. 10th Cir. R. 11.3(C).

(E) **Service of the Appendix.** The electronic appendix must be served on every other party to the appeal. Parties may use the court's CM/ECF system to accomplish that service. *See* 10th Cir.

R. 25.4. If served electronically, a hard copy need not be served on other parties. If an exemption is allowed under 10th Cir. R. 30.3(A) and only hard copies of the appendix are filed, a hard copy of the appendix must be served on every other party to the appeal. *See* 10th Cir. R. 25.3 (regarding seeking exemptions from electronic filing requirements); 10th Cir. R. 30.3(A).

(F) Order appealed must be submitted with brief. Filing an appendix does not relieve counsel of the requirements of Rule 28.2(A).

30.2 Supplemental appendix.

(A) Appellee's appendix.

(1) Filing. An appellee who believes that the appellant's appendix omits items that should be included may file a supplemental appendix with the answer brief. Supplemental appendices shall be filed electronically and served in the same manner as is described in 10th Cir. R. 30.1(E).

(2) Appointed counsel. If all appellants are represented by retained counsel, appointed counsel for an appellee may file a supplemental appendix and apply for reimbursement when the voucher or the statement of hours and expenses is filed.

(B) No other appendix. No other appendix may be filed except by order of the court.

30.3 Appendix exemptions.

(A) Waiver of electronic appendix requirement. Any appellant may move to be exempt from the electronic appendix requirement upon the filing of a motion at least 7 days prior to the due date for filing the opening brief and appendix. If an exemption is granted, hard copies of the required appendix must be filed. Two hard copies must be received in the office of the clerk within 2 business days of the electronic filing of the brief, and the appendix must be served via hard copy on all other parties to the appeal.

(B) Particular documents. A party may file a motion to exempt certain documents from the appendix:

(1) if the documents themselves cannot be readily copied or put in electronic form;

(2) if essential excerpts of the reporter's transcript are so voluminous that copying or creating electronic access is excessively burdensome or costly; or

(3) if an exemption to the electronic appendix requirement is sought and obtained under subsection (A) of this rule, those cases in which making 2 copies of the administrative record would be too costly.

(C) Waiver of appendix requirement in pro bono cases. In pro bono cases, if production or creation of an appendix is too costly for the appellant to bear, the appellant may file a motion to proceed on a record on appeal.

Fed. R. App. P. Rule 31. Serving and Filing Briefs

(a) Time to Serve and File a Brief.

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 21 days after service of the appellee's brief but a reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

(b) Number of Copies. Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; May 7, 2009, eff. Dec. 1, 2009; Apr. 26, 2018, eff. Dec. 1, 2018.)

10th Cir. R. 31

31.1 Opening brief for appellant/petitioner.

(A) Appeals from district court.

(1) Retained Counsel. When the appellant is required to file an appendix, the appellant's brief and appendix must be filed within 40 days after the date the district court clerk (as required by Rule 11.1) notifies the parties and the circuit clerk that the record is complete for purposes of appeal.`

(2) Appointed counsel; pro se. In all other cases, appellant's opening brief must be filed and served according to Federal Rule of Appellate Procedure 31(a).

(B) Review and enforcement proceedings. In cases seeking review or enforcement of agency orders, petitioner's opening brief must be filed within 40 days after the date when the certified list is filed or the date when the record is filed, whichever occurs first.

31.2 Joint briefing in criminal appeals.

Codefendants in criminal appeals may each file a brief or may join in a single brief. Joint briefs must bear all the appellate case numbers and captions of all appeals. The United States is encouraged to file a single brief.

31.3 Joint briefing in civil appeals.

(A) Multiple parties. In civil cases involving more than one appellant or appellee, including consolidated cases, all parties on a side (including intervenors) must—to the extent practicable—file a single brief. Where, however, multiple response briefs are filed pursuant to 10th Cir. R. 31.3(B), the appellant may file only one reply except upon motion to the court seeking an exemption.

(B) Certificate of counsel. Any brief filed separately by one of multiple parties on a side must contain a certificate plainly stating the reasons why the separate brief is necessary. The only exception to this requirement is if the only other party on a side filing separately is a government entity under 10th Cir. R. 31.3(D).

(C) Extension of time. On motion, the Clerk may extend the time for briefing to allow the parties time to coordinate a single brief.

(D) Government entities exempt. This rule does not apply to government entities.

31.4 Extensions.

Extensions of time to file briefs are disfavored. *See* 10th Cir. R. 27.6(A).

31.5 Number of copies.

Counseled parties, including amicus curiae, must provide the court with 7 hard copies of all briefs filed electronically. This requirement is in addition to the court's ECF (Electronic Case Filing) requirements. The required hard copies must be received in the clerk's office within 2 business days of the electronic filing. In addition, counseled parties and amicus curiae must serve a copy of all briefs on each unrepresented party and all counsel for each separately represented party. Service may be provided electronically through the court's ECF system to attorneys and pro se filers who have received permission to file electronically and who are registered ECF users. Service must be made in another manner on persons who are entitled to notice but are not electronic filers in the case. For more information regarding filing briefs, please see the court's CM/ECF User Manual at Section III(E). *See* http://www.ca10.uscourts.gov.

Fed. R. App. P. Rule 32. Form of Briefs, Appendices, and Other Papers

(a) Form of a Brief.

(1) Reproduction.

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) Cover. Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray and any supplemental brief, tan. The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case (*See* Rule 12(a));

(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) Binding. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) Paper Size, Line Spacing, and Margins. The brief must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines

long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) Typeface. Either a proportionally spaced or monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10 ½ characters per inch.

(6) Type Styles. A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) Length.

(A) Page limitation. A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B).

(B) Type-volume limitation.

(i) A principal brief is acceptable if it:

- contains no more than 13,000 words; or
- uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

(b) Form of an Appendix. An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 ½ by 11 inches, and need not lie reasonably flat when opened.

(c) Form of Other Papers.

(1) Motion. The form of a motion is governed by Rule 27(d).

(2) Other Papers. Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.

(B) Rule 32(a)(7) does not apply.

(d) Signature. Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) Local Variation. Every court of appeals must accept documents that comply with the form requirements of this rule and the length limits set by these rules. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule or the length limits set by these rules.

(f) Items Excluded from Length. In computing any length limit, headings, footnotes, and quotations count toward the limit but the following items do not:

- the cover page;
- a corporate disclosure statement;
- a table of contents;
- a table of citations;
- a statement regarding oral argument;
- an addendum containing statutes, rules, or regulations;

- certificates of counsel;
- the signature block;
- the proof of service; and
- any item specifically excluded by these rules or by local rule.

(g) Certificates of Compliance.

(1) Briefs and Papers that Require a Certificate. A brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B)—and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), 35(b)(2)(A), or 40(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document.

(2) Acceptable Form. Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 28, 2016, eff. Dec. 1, 2016.)

10th Cir. R. 32

(A) Font sizes in briefs.

The court prefers 14-point type as required by Federal Rule of Appellate Procedure 32(a)(5)(A), but 13-point type is acceptable.

(B) Word count where glossary included.

In calculating the number of words and lines that count toward the word and line limitations, the glossary required by 10th Cir. R. 28.2(C)(4) may be excluded, in addition to the items listed in Federal Rule of Appellate Procedure 32(f).

Fed. R. App. P. 32.1. Citing Judicial Dispositions.

(a) Citation Permitted. A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as "unpublished," "not for publication," "non-precedential," "not precedent," or the like; and

(ii) issued on or after January 1, 2007.

(b) Copies Required. If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

(Eff. Dec. 1, 2006.)

10th Cir. R. 32.1

32.1 Citing judicial dispositions.

(A) Precedential value. The citation of unpublished decisions is permitted to the full extent of the authority found in Federal Rule of Appellate Procedure 32.1. Unpublished decisions are not precedential, but may be cited for their persuasive value. They may also be cited under the doctrines of law of the case, claim preclusion, and issue preclusion. Citation to unpublished opinions must include an appropriate parenthetical notation. *E.g.*, *United States v. Wilson*, No. 13-2047, 2015 WL 3072766 (10th Cir. Oct. 31, 2016) (unpublished); *United States v. Keeble*, 184 F. App'x 756 (10th Cir. 2011) (unpublished).

(B) Reference. If an unpublished decision cited in a brief or other pleading is not available in a publicly accessible electronic database, a copy must be attached to the document when it is filed and must be provided to all other counsel and pro se parties. Where possible, references to unpublished dispositions should include the appropriate electronic citation.

(C) Retroactive effect. Parties may cite unpublished decisions issued prior to January 1, 2007, in the same manner and under the same circumstances as are allowed by Federal Rule of Appellate Procedure 32.1(a)(i) and part (A) of this local rule.

Fed. R. App. P. Rule 33. Appeal Conferences

The court may direct the attorneys—and, when appropriate, the parties—to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 33

33.1 Mediation conference.

(A) Circuit mediation office; purpose of mediation conference. The circuit mediation office may schedule and conduct mediation conferences in any matter pending before the court. The primary purpose of a conference is to explore settlement, but case management matters may also be addressed.

(B) Participation of counsel and parties. Counsel must participate in every scheduled mediation conference and in related discussions. Generally a party may participate but need not unless required by the circuit mediation office. Conferences are conducted by telephone unless the circuit mediation office directs otherwise.

(C) Preparation of counsel for mediation conference; settlement authority. Counsel must consult with their clients and obtain as much authority as feasible to settle the case and agree on case management matters in preparing for the initial conference. These obligations continue throughout the mediation process.

(D) Confidentiality. Statements made during the conference and in related discussions, and any records of those statements, are confidential and must not be disclosed by anyone (including the circuit mediation office, counsel, or the parties, and their agents or employees), to anyone not participating in the mediation process. Proceedings under this rule may not be recorded by counsel or the parties.

(E) **Conference order; mediator authority.** The circuit mediation office may cause a judgment or order to be entered controlling the course of the case or the mediation proceedings. The circuit mediation office and its mediators are delegates of this court. Any conference orders or other communications from the circuit mediation office must be treated the same as any other court directive.

(F) **Extensions for ordering transcript or filing brief.** The time allowed by Federal Rule of Appellate Procedure 10(b)(1) for ordering a transcript and by Rule 31.1 for filing briefs is not automatically tolled pending a conference. If a conference has been scheduled, counsel may contact the circuit mediation office for an extension of time to order a transcript or to file a brief.

(G) **Request for mediation conference by counsel.** Counsel may request a mediation conference by contacting the circuit mediation office. The office will determine whether a conference will be held.

(H) **Sanctions.** The court may impose sanctions if counsel or a party violates this rule or an order entered under it.

Fed. R. App. P. Rule 34. Oral Argument

(a) In General.

(1) Party's Statement. Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) Standards. Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) Order and Contents of Argument. The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) Nonappearance of a Party. If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2005, eff. Dec. 1, 2005.)

10th Cir. R. 34

34.1 Oral argument.

(A) Responsibilities of counsel.

(1) Presence of counsel. Counsel for each party must be present for oral argument unless excused by the court. The established argument time is allocated by counsel as they see fit.

(2) Motion to waive oral argument. After the principal briefs have been filed, a party may file a motion to waive oral argument and to submit a case on the briefs. If filed within 10 days of the scheduled argument date, the motion must show why an earlier filing was not possible.

(3) Postponement. Only in extraordinary circumstances will an argument be postponed. Except in an emergency, a motion to postpone must be made more than 20 days before the scheduled argument date. In addition, any motion filed must include opposing counsel's position and must address whether the appeal is suitable for submission on the briefs.

(4) Recovery of expenses. A party prejudiced by the granting of a motion to waive or postpone oral argument filed within 10 days of the scheduled argument date may move for recovery of expenses.

(B) Joint appeals. Cases that have been consolidated for briefing purposes will be treated as one case for oral argument. The court disfavors divided arguments on behalf of a single party or multiple parties with the same interests.

(C) **Multiple counsel.** If more than one counsel argues on the same side, the time allowed is divided as they agree. If counsel do not agree, the court will allocate the time.

(D) **Preparation.** In preparing for oral argument, counsel should remember that the judges read the briefs before oral argument.

(E) **Recording and transcription.**

(1) **Recording**. The Clerk of Court shall post to the Tenth Circuit website audio recordings made from oral argument hearings unless the court directs otherwise. The recordings will generally be posted no later than 48 hours after the hearing.

(2) **Transcription**. Counsel or parties may move for permission to arrange, at their own expense, for a qualified court reporter to be present and to report and transcribe oral argument. A copy of the transcript must be filed with the circuit clerk.

(F) **No oral argument on petitions or motions.** Oral argument on petitions or motions is not ordinarily permitted.

(G) **Submission on briefs.** Except in pro se appeals or when both parties have waived oral argument, the court will advise the parties when a panel decides that oral argument is not necessary. That advisement may be at the time a decision is issued.

Fed. R. App. P. Rule 35. En Banc Determination

(a) When Hearing or Rehearing En Banc May be Ordered. A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

(b) Petition for Hearing or Rehearing En Banc. A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

(2) Except by the court's permission:

(A) a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and

(B) a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.

(3) For purposes of the limits in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a

single document even if they are filed separately, unless separate filing is required by local rule.

(c) Time for Petition for Hearing or Rehearing En Banc. A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) Number of copies. The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) Response. No response may be filed to a petition for an en banc consideration unless the court orders a response.

(f) Call for a Vote. A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 28, 2016, eff. Dec. 1, 2016.)

10th Cir. R. 35

35.1 En banc consideration.

(A) Extraordinary procedure. A request for en banc consideration is disfavored. Before seeking rehearing en banc litigants should be aware and take account of the fact that, before any published panel opinion issues, it is generally circulated to the full court and every judge on the court is given an opportunity to comment. En banc review is an extraordinary procedure intended to focus the entire court on an issue of exceptional public importance or on a panel decision that conflicts with a decision of the United States Supreme Court or of this court.

(B) Petition not required. Filing a petition for rehearing or for rehearing en banc is not required before filing a petition for certiorari in the United States Supreme Court.

(C) No reconsideration. The court will not reconsider either the denial of an en banc petition or an en banc disposition.

35.2 Request in petition for rehearing.

(A) Cover. The request for en banc consideration must appear on the cover page and in the title of the document requesting rehearing.

(B) Form of request. A copy of the opinion or order and judgment that is the subject of a request for rehearing en banc must be attached to every copy of the petition. *See* 10th Cir. R. 40.2. No other attachments may be included unless the petition is accompanied by a motion seeking permission which identifies the attachments with particularity and the reason for their inclusion.

35.3 Untimely request.

Untimely en banc requests will be transmitted to the full court only upon express order of the hearing panel.

35.4 Number of copies.

A party seeking en banc review must file 6 hard copies of a petition for en banc consideration. This requirement is in addition to all ECF (Electronic Case Filing) requirements. For information regarding filing petitions for rehearing en banc, please see the court's CM/ECF User Manual at section III(K). *See* www.ca10.uscourts.gov. A pro se party proceeding without prepayment of fees may file an original and 3 copies.

35.5 Who may vote; en banc panel.

A majority of the active judges who are not disqualified may order rehearing en banc. The en banc panel consists of this court's active judges who are not disqualified and any senior judge who was a member of the hearing panel, unless he or she elects not to sit.

35.6 Effect of rehearing en banc.

The grant of rehearing en banc vacates the judgment, stays the mandate, and restores the case on the docket as a pending appeal. The panel decision is not vacated unless the court so orders.

35.7 Matters not considered en banc.

The en banc court does not consider procedural and interim orders. These include, but are not limited to, stay orders; injunctions pending appeal; and denials of appointment of counsel, leave to appeal in forma pauperis, and leave to appeal from a nonfinal order. En banc

requests from these rulings are referred to the judge or panel that entered the order, in the same manner as a petition for rehearing.

Fed. R. App. P. Rule 36. Entry of Judgment; Notice

(a) Entry. A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and enter the judgment:

(1) after receiving the court's opinion-but if settlement of the judgment's form is required, after final settlement; or

(2) if a judgment is rendered without an opinion, as the court instructs.

(b) Notice. On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion—or the judgment, if no opinion was written—and a notice of the date when the judgment was entered.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

10th Cir. R. 36

36.1 Orders and judgments.

The court does not write opinions in every case. The court may dispose of an appeal or petition without written opinion. Disposition without opinion does not mean that the case is unimportant. It means that the case does not require application of new points of law that would make the decision a valuable precedent.

36.2 Publication.

When the opinion of the district court, an administrative agency, or the Tax Court has been published, this court ordinarily designates its disposition for publication.

Fed. R. App. P. Rule 37. Interest on Judgment

(a) When the Court Affirms. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered.

(b) When the Court Reverses. If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 38. Frivolous Appeal—Damages and Costs

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 39. Costs

(a) Against Whom Assessed. The following rules apply unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) Costs For and Against the United States. Costs for or against the United States, its agency, or officer will be assessed under Rule 39(a) only if authorized by law.

(c) Costs of Copies. Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(d) Bill of Costs: Objections; Insertion in Mandate.

(1) A party who wants costs taxed must—within 14 days after entry of judgment—file with the circuit clerk, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within 14 days after service of the bill of costs, unless the court extends the time.

(3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must—upon the circuit clerk's request—add the statement of costs, or any amendment of it, to the mandate.

(e) Costs on Appeal Taxable in the District Court. The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a bond or other security to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009; Apr. 26, 2018, eff. Dec. 1, 2018.)

10th Cir. R. 39

39.1 Maximum rates.

Costs of making necessary copies of briefs, appendices, or other records are taxable at the actual cost, but no more than 20 cents per page.

39.2 Motion for attorneys' fees.

(A) Time to file. Absent a statutory provision or court order to the contrary, any motion requesting an award of appellate attorneys' fees must be filed by the later of: (1) if no timely petition for panel or en banc rehearing has been filed, 14 days after the time to file expires; or (2) 14 days after the court disposes of all timely petitions for rehearing or rehearing en banc.

(B) Contents. A motion requesting an award of attorneys' fees must set forth the legal basis for an award of appellate attorneys' fees. The motion need not contain an itemization of the tasks undertaken or the fees requested, unless requested by the court.

(C) Time to respond. If a party chooses to respond to a motion for attorneys' fees, the response must be filed within 14 days after the motion is served.

(D) Mandate. The court will not delay issuance of its mandate pending determination of a motion for attorneys' fees. If the court grants a motion for attorneys' fees after it issues the mandate, the Clerk will supplement the mandate with the attorneys' fee award.

Fed. R. App. P. Rule 40. Petition for Panel Rehearing

(a) Time to File; Contents; Answer; Action by the Court if Granted.

(1) Time. Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:

(A) the United States;

(B) a United States agency;

(C) a United States officer or employee sued in an official capacity; or

(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the court of appeals' judgment is entered or files the petition for that person.

(2) Contents. The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) Answer. Unless the court requests, no answer to a petition for panel rehearing is permitted. But ordinarily rehearing will not be granted in the absence of such a request.

(4) Action by the Court. If a petition for panel rehearing is granted, the court may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

(b) Form of Petition; Length. The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Except by the court's permission:

(1) a petition for panel rehearing produced using a computer must not exceed 3,900 words; and

(2) a handwritten or typewritten petition for panel rehearing must not exceed 15 pages.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998); Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 28, 2016, eff. Dec. 1, 2016.)

10th Cir. R. 40

40.1 Reasons for petition.

(A) Not routine. A petition for rehearing should not be filed routinely. Rehearing will be granted only if a significant issue has been overlooked or misconstrued by the court.

(B) Sanctions. If a petition for rehearing is found to be frivolous, vexatious, or filed for delay, the court may impose a money penalty of up to $500. Counsel may be required to pay the penalty personally to the opposing party. *See* 28 U.S.C. § 1927.

40.2 Form; copies and attachments.

If a petition for panel rehearing is accompanied by a request for rehearing en banc, the petitioner must file 6 hard copies with the Clerk, in addition to satisfying all ECF (Electronic Case Filing) requirements. A pro se party proceeding without prepayment of fees may file an original and 3 copies.

If the petition for panel rehearing also seeks en banc review, a copy of the opinion or order and judgment must be attached. No other attachments may be included unless the petition is accompanied by a motion seeking permission which identifies the attachments with particularity and the reason for their inclusion.

For information regarding filing petitions for panel rehearing and rehearing en banc, please see the CM/ECF User Manual at Section III(K). *See* www.ca10.uscourts.gov.

40.3 Successive petitions.

The court will accept only one petition for rehearing from any party to an appeal. No motion to reconsider the court's ruling on a petition for rehearing may be filed.

Fed. R. App. P. Rule 41. Mandate: Contents; Issuance and Effective Date; Stay

(a) Contents. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) When Issued. The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.

(c) Effective Date. The mandate is effective when issued.

(d) Staying the Mandate Pending a Petition for Certiorari.

(1) Motion to Stay. A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the petition would present a substantial question and that there is good cause for a stay.

(2) Duration of Stay; Extensions. The stay must not exceed 90 days, unless:

(A) the period is extended for good cause; or

(B) the party who obtained the stay notifies the circuit clerk in writing within the period of the stay:

(i) that the time for filing a petition has been extended, in which case the stay continues for the extended period; or

(ii) that the petition has been filed, in which case the stay continues until the Supreme Court's final disposition.

(3) Security. The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(4) Issuance of Mandate. The court of appeals must issue the mandate immediately on receiving a copy of a Supreme Court order denying the petition, unless extraordinary circumstances exist.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; May 7, 2009, eff. Dec. 1, 2009; Apr. 26, 2018, eff. Dec. 1, 2018.)

10th Cir. R. 41

41.1 Stay not routinely granted.

(A) Criminal cases. To minimize delay in the administration of justice, after the affirmance of a conviction the mandate will issue and bail will be revoked. A motion to stay the mandate will not be granted unless the court finds that it is not frivolous or filed merely for delay. The court—or a judge of the hearing panel—may revoke bail before the mandate is issued. *See* 18 U.S.C. § 3141(b).

(B) Civil cases. A motion to stay the mandate in a civil case will not be granted unless the court finds there is a substantial possibility that a petition for writ of certiorari would be granted.

41.2 Motion to recall mandate.

When a motion to recall the mandate is tendered for filing more than one year after issuance of the mandate, the Clerk shall not accept the motion for filing unless the motion states with specificity why it was not filed sooner. The court will not grant the request unless the movant has established good cause for the delay in filing the motion.

Fed. R. App. P. Rule 42. Voluntary Dismissal

(a) Dismissal in the District Court. Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) Dismissal in the Court of Appeals. The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 42

42.1 Dismissal for failure to prosecute.

When an appellant fails to comply with the Federal Rules of Appellate Procedure or these rules, the Clerk will notify the appellant that the appeal may be dismissed for failure to prosecute unless the failure to comply is remedied within a designated time. If the appellant fails to comply within that time, the Clerk will enter an order dismissing the appeal and issue a copy of the order as the mandate. The appellant may not remedy the failure to comply after the appeal is dismissed, unless the court orders otherwise.

42.2 Reinstatement.

A motion to reinstate an appeal dismissed for failure to prosecute may not be filed unless the failure is remedied or the remedy for the failure accompanies the motion.

Fed. R. App. P. Rule 43. Substitution of Parties

(a) Death of a Party.

(1) After Notice of Appeal Is Filed. If a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct appropriate proceedings.

(2) Before Notice of Appeal Is Filed—Potential Appellant. If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative—or, if there is no personal representative, the decedent's attorney of record—may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) Before Notice of Appeal Is Filed—Potential Appellee. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(b) Substitution for a Reason Other Than Death. If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) Public Officer: Identification; Substitution.

(1) Identification of Party. A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.

(2) Automatic Substitution of Officeholder. When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An

order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

Fed. R. App. P. Rule 44. Case Involving a Constitutional Question When the United States or the Relevant State Is Not a Party

(a) Constitutional Challenge to Federal Statute. If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) Constitutional Challenge to State Statute. If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

No local rule.

Fed. R. App. P. Rule 45. Clerk's Duties

(a) General Provisions.

(1) Qualifications. The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) When Court is Open. The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(b) Records.

(1) The Docket. The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.

(2) Calendar. Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

(3) Other Records. The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

(c) Notice of an Order or Judgment. Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) Custody of Records and Papers. The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon

disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

10th Cir. R. 45

45.1 Duties.

(A) Funds. The Clerk must account for all court funds.

(B) Court sessions. The Clerk or a deputy must attend court sessions.

45.2 Chief deputy clerk.

In the absence of the Clerk, the chief deputy clerk is acting clerk.

45.3 Office location.

The clerk's office is in the Byron White United States Courthouse, 1823 Stout Street, Denver, Colorado 80257. The telephone number is (303) 844-3157. The clerk's office email address is clerk@ca10.uscourts.gov. The court's website can be found at www.ca10.uscourts.gov.

Fed. R. App. P. Rule 46. Attorneys

(a) Admission to the Bar.

(1) Eligibility. An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).

(2) Application. An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

> "I, _____ , do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."

(3) Admission Procedures. On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(b) Suspension or Disbarment.

(1) Standard. A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) Procedure. The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) Order. The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) Discipline. A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 46

46.1 Entry of appearance.

(A) Attorneys. Within 14 days after an appeal or other proceeding is filed, counsel for the parties must file written appearances in a form approved by the court (*see* 10th Cir. Form 2). Other attorneys whose names subsequently appear on filed papers must also file written appearances.

While the court requires a separate, formal entry of appearance from all attorneys in the appeal or other proceeding, counsel should also note that attorneys who authorize their names to appear on filed papers have technically entered an appearance and are therefore responsible for the contents of such papers, and also for following all court rules and requirements. Attorneys who appear in a case in this court may not withdraw absent entry of a court order allowing them to do so.

(B) Pro se. A party appearing without counsel may notify the Clerk in writing of that status by filing an entry of appearance on a form approved by the court (*see* 10th Cir. Form 3).

(C) Change of address and obligation to keep account information current. Once an appearance has been entered, the Clerk must be notified of any subsequent change in address. This requirement applies to changes in both street addresses and changes made to email addresses. Registered attorneys are required to keep their email addresses current and may update ECF registration with the PACER Service Center. *See* www.pacer.psc.uscourts.gov.

(D) Certification of interested parties.

(1) Certificate. Each entry of appearance must be accompanied by a certificate listing the names of all interested parties not in the caption of the notice of appeal so that the judges may evaluate possible disqualification or recusal.

(2) List. The certificate must list all persons, associations, firms, partnerships, corporations, guarantors, insurers, affiliates, and other legal entities that are financially interested in the outcome of the litigation. For corporations, *see* Fed. R. App. P. 26.1.

(3) Generic description. An individual listing is not necessary if a large group of persons or firms can be identified by a generic description.

(4) Attorneys. Attorneys not entering an appearance in this court must be listed if they have appeared for any party in a proceeding sought to be reviewed, or in related proceedings that preceded the original action being pursued in this court.

(5) No additional parties. If there are no additional parties, entities, or attorneys in any of these categories not previously reported to the court, a report to that effect also is required.

(6) Obligation to amend. The certificate must be kept current.

46.2 Admission to Tenth Circuit bar.

(A) Prerequisite to practice. Upon filing a case or entering an appearance in this court, an attorney who is not admitted to the Tenth Circuit bar must apply for admission. Forms (as well as other information) are available on the court's website at www.ca10.uscourts.gov.

(B) Method of admission and fees. Federal Rule of Appellate Procedure 46 applies to admission to the Tenth Circuit bar. The amount of the admission fee will be set by the court and is payable to the Clerk as trustee. The admission fee is waived for any attorney representing the United States or a federal agency or for any attorney appointed by the court to represent a party on appeal. Per the court's Plan For Attorney Disciplinary

Enforcement, any lawyer disbarred from practice before the Circuit will be required to pay the fee prior to being readmitted.

(C) Trust account. The Clerk will hold all admission fees in a trust account known as the "Attorney Admission Fund." The Clerk will disburse money from this account as the chief judge or a delegated judicial committee directs to defray expenses of the annual judicial conference and support other activities and purchases that will benefit the bench and the bar. The Clerk must account to the court annually for the trust funds.

46.3 Responsibilities in criminal and postconviction cases.

(A) Prosecution of appeal. Trial counsel must continue to represent the defendant until either the time for appeal has elapsed and no appeal has been taken or this court has relieved counsel of that duty. An attorney who files a notice of appeal in a criminal case or a postconviction proceeding under 28 U.S.C. § 2254 or § 2255, or who has not obtained an order from the district court granting permission to withdraw from further representation prior to the filing of a pro se notice of appeal, has entered an appearance in this court and may not withdraw without the court's permission. Before filing a proper motion to withdraw under 10th Cir. R. 46.4 counsel must file, at a minimum, an entry of appearance and docketing statement.

(B) Additional Motion Requirement. All counsel appearing in this court pursuant to an appointment made originally under the Criminal Justice Act must file a motion, within 14 days of case opening, seeking either a continued appointment for the appeal or permission to withdraw.

(1) all motions to withdraw must comply with 10th Cir. R. 46.4;

(2) all motions to continue the appointment on appeal must include:

(a) a statement regarding whether the attorney is currently, or was previously, a member of the Tenth Circuit Criminal Justice Act appellate panel; and

(b) a statement regarding why the continuation is sought and the benefit to the appeal by virtue of a continued appointment;

(3) in counsel's discretion, motions to continue may be filed ex parte and/or under seal;

(4) consistent with the provisions of Rule 46.3(A), this requirement applies equally if the defendant files a pro se notice of appeal.

(C) Voluntary dismissal. A voluntary motion to dismiss a criminal appeal or an appeal in a postconviction proceeding must contain a statement, signed by the appellant, demonstrating knowledge of the right to appeal and expressly electing to withdraw the appeal. If the statement is not included, counsel must show that exceptional circumstances prevented its inclusion. Proof of service must include service on the appellant him or herself.

46.4 Withdrawal.

(A) Motion requirements. Every motion to withdraw in a criminal appeal or in an appeal in a postconviction proceeding must include:

(1) the reasons for withdrawal;

(2) one of the following:

(a) a showing that new counsel has been retained or the client already has other counsel of record in the appeal;

(b) a showing that: (i) the client has been granted leave to proceed on appeal without prepayment of fees or has been found eligible for benefits under 18 U.S.C. § 3006A; and (ii) the client desires the appointment of counsel;

(c) if the client has been found ineligible for benefits under 18 U.S.C. § 3006A, a statement that counsel has advised the client to obtain other counsel promptly;

(d) if the client intends to proceed pro se: (i) a signed statement from the client demonstrating knowledge of the right to retain new counsel or apply for appointment of counsel and expressly electing to appear without counsel; and (ii) a statement from counsel that he or she has advised the client of the right to representation, if any, and of any pending obligations under the Federal Rules of Appellate Procedure or this court's local rules; or

(e) a showing that exceptional circumstances prevent counsel from meeting any of the other requirements of this subsection; and

(3) proof of service on the client and on all opposing parties.

(B) Frivolous appeals.

(1) Duty of counsel. In a direct criminal appeal, counsel who believes the appeal is frivolous and moves to withdraw or who believes opposition to a motion to dismiss would be frivolous must file an *Anders* brief and advise the court of the defendant's current address. *See Anders v. California*, 386 U.S. 738 (1967). If the defendant is a non-English speaker, the motion to withdraw must state counsel has made "reasonable efforts to contact the defendant in person or by telephone, with the aid of an interpreter if necessary, to explain to the defendant the substance of counsel's *Anders* brief, the defendant's right to oppose it, and the likelihood that the brief could result in dismissal of the appeal." *United States v. Cervantes*, 795 F.3d 1189, 1190 (10th Cir. 2015) (internal quotation and ellipses omitted). Written notice in a language understood by the defendant will also satisfy this duty. *Id*. The motion required by 10th Cir. R. 46.3(B) is separate from any motion filed later, in connection with the filing of the *Anders* brief. That is, the requirement set forth in Rule 46.3(B) is distinct from any motion later filed under *Anders*.

(2) Notice to defendant. Except as provided in (3), the Clerk will send the defendant by certified mail, return receipt requested, a copy of the *Anders* brief, the motion to withdraw, and a letter in the form set out in 10th Cir. Form 4.

(3) Incompetent defendant. If the defendant has been found incompetent or there is reason to believe that the defendant is incompetent, the motion to withdraw must so state, and the matter will be referred to the court for appropriate action.

(C) Attorney withdrawal in civil cases. Where counsel of record for any party files a motion to withdraw after the mandate has issued, the court will treat the motion as a notice of withdrawal. This rule applies in civil cases only and does not apply in postconviction proceedings filed under 28 U.S.C. § 2254 or § 2255.

46.5 Signing briefs, motions, and other papers; representations to court; sanctions.

(A) Signature. Every brief, motion, or other paper must be signed by at least one attorney of record—or, in a pro se case, by the party personally. The paper must state the signer's mailing address, email address, and telephone number. Unless a rule or statute provides otherwise, a paper need not be verified or accompanied by an affidavit.

(B) Representations to court. By presenting to the court—whether by signing (electronically or through an original signature), filing, submitting, or later advocating—a brief, motion, or other paper, an attorney or unrepresented party certifies that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or expense in the litigation;

(2) the issues presented are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or establishing new law; and

(3) the factual contentions or denials are supported in the record.

(C) Sanctions. If a brief, motion, or other paper is signed in violation of this rule, the court—on its own or on a party's motion—may impose upon the person who signed it, a represented party, or both, an appropriate sanction, including:

(1) dismissal or affirmance of the appeal;

(2) monetary sanctions;

(3) initiation of disciplinary proceedings under the Plan for Attorney Disciplinary Enforcement; and

(4) an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the paper, including reasonable attorney's fees.

46.6 Discipline of counsel or parties.

(A) Sanctions for increasing cost of litigation. After giving notice and an opportunity to respond, this court may impose sanctions

against parties and attorneys who unreasonably increase the cost of litigation. Examples of unreasonable cost increases include, but are not limited to, putting unnecessary material in records, briefs, appendices, addenda, and other papers.

(B) Court-appointed counsel. If court-appointed counsel for an appellant fails to comply with the Federal Rules of Appellate Procedure or with these rules, the Clerk may issue an order requiring counsel to show cause why disciplinary action should not be taken. Action by the court may include monetary sanctions.

(C) Inadequate representation. After giving notice, the court may take disciplinary action against attorneys for inadequate representation on appeal, which includes but is not limited to failing to follow the rules and directives of the court.

46.7 Student practice.

(A) Appearance by law students.

(1) Consent of party. An eligible law student may enter an appearance in the court on behalf of a party if the party has filed a statement of consent.

(2) Agreement of supervising attorney. A member of the Tenth Circuit bar must file an agreement to supervise the student. The agreement must contain:

(a) a certification by the supervising attorney that the student has satisfied the requirements of (C); and

(b) a copy of the law school certification required by (C)(3).

(B) Student participation.

(1) Briefs. A law student who has entered an appearance in a case under (A) may appear on a brief if the supervising attorney also appears on the brief.

(2) Oral argument. An eligible student may participate in oral argument if the supervising attorney is present in court.

(3) Other. The student may take part in other activities in connection with the case, subject to the direction of the supervising attorney.

(C) **Student eligibility.** To be eligible to make an appearance under this rule, the law student must provide a letter as described in Rule 46.7(D) or otherwise document that he or she:

(1) is enrolled and in good standing in a law school accredited by the American Bar Association; or is a recent law school graduate awaiting the first bar examination after the student's graduation or the result of that examination;

(2) has completed the equivalent of 4 semesters of legal studies;

(3) is certified to be of good character and competent legal ability, and is qualified to provide the legal representation permitted by this rule, by either the law school's dean or a faculty member designated by the dean; and

(4) is familiar with the Federal Rules of Civil, Criminal, and Appellate Procedure, the Federal Rules of Evidence, the American Bar Association Code of Professional Responsibility, and the rules of this court.

(D) **Dean's letter.** A letter from the law school's dean or the designated faculty member describing the student's qualifications under (C) may demonstrate eligibility.

(E) **Supervising attorney.** An attorney who supervises an eligible law student under this rule must:

(1) be a member in good standing of the Tenth Circuit bar;

(2) assume personal professional responsibility for the quality of the student's work;

(3) guide and assist the student as necessary or appropriate under the circumstances;

(4) sign all documents filed with the court (the student may also sign documents, but the attorney's signature is required);

(5) appear with the student in any oral presentations before the court;

(6) file a written agreement to supervise the student; and

(7) supplement any written or oral statement made by the student to this court or opposing counsel if the court so requests.

Fed. R. App. P. Rule 47. Local Rules by Courts of Appeals

(a) Local Rules.

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with—but not duplicative of —Acts of Congress and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There Is No Controlling Law. A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 47

47.1 Advisory committee.

As required by 28 U.S.C. § 2077(b), there is an advisory committee on procedures for the court of appeals.

(A) Membership. The committee consists of ten members: one circuit judge, one district judge, one United States attorney or assistant United States attorney, one federal public defender or assistant federal public defender, and one actively practicing member of the Tenth Circuit bar from each of the six states in the circuit. The committee may appoint ad hoc committees

consisting of persons who are not members of the advisory committee.

(B) Selection of members; organization.

(1) Circuit judge. The circuit judge member is the chief judge of the circuit or a circuit judge designated by the chief judge. This member serves as chair.

(2) District judge; United States attorney; federal public defender. The district judge member and representatives of the United States attorneys' offices and federal public defenders' offices are selected by their respective associations within the circuit.

(3) Bar members. The members of the bar are selected by the circuit judges residing in each respective state. Candidates must have substantial and active federal practices.

(4) Terms. Members serve 3 year terms, with a third of the terms expiring each year. Terms begin on April 1. No member, except the chief judge or a designee, may serve successive terms. But a person selected to fill an unexpired term may serve a successive term.

(5) Reporter; secretary. The chief staff counsel serves as reporter; the circuit executive, or a designee, serves as secretary.

(C) Meetings. The committee shall meet as called by the chair, and may meet and act in person, by telephone, or through other electronic means.

(D) Duties. The committee advises the court about its operating procedures and rules. Among other things, the committee may:

(1) provide a forum for continuous study of the operating procedures and published rules of the court;

(2) serve as a liaison between the bar, the public, and the court on procedural matters and suggestions for changes;

(3) consider and recommend amendments to the rules for adoption by the court;

(4) make suggestions for and assist with programs at the circuit judicial conference; and

(5) make any other studies, reports, and recommendations that the court requests or that the committee determines are appropriate.

47.2 Circuit library.

The circuit's central library and most satellite law libraries are open to all members of the Tenth Circuit bar. Books and materials may not be removed without the librarian's permission.

47.3 Judicial conference.

(A) **Authorization.** As permitted by 28 U.S.C. § 333, a judicial conference will be convened every other year, at a time and place designated by the chief judge, or at another court-determined interval that the law permits. In alternate years, the circuit may hold a conference for judges only.

(B) **Purpose.** The conference will consider the business of the circuit's federal courts and devise ways of improving the administration of justice within the circuit.

(C) **Duties of circuit executive.** The circuit executive, who serves as secretary of the conference, is responsible for all records and accounts of the conference, and may perform other conference duties as the chief judge or circuit judicial council may require.

(D) **Agenda.** During judicial conferences, all judges of the Tenth Circuit will meet to discuss the dockets and the administration of justice in the circuit's judicial districts. The chief judge of each district will report on the condition of judicial business in that district and make recommendations about judicial business. In those years in which an open conference is held, all general meetings are open to attorney attendees and are devoted to improving the administration of justice in the Tenth Circuit.

(E) **Registration fee.** A registration fee, set by the judicial council, will be collected from each attorney attendee of the conference. The money collected must be used as directed by the chief judge to defray the expense of the conference. The circuit executive must maintain a judicial conference bank account and keep a record of all receipts and disbursements. During the year after each conference, the circuit executive must make a fiscal report to the judicial council.

Fed. R. App. P. Rule 48. Masters

(a) Appointment; Powers. A court of appeals may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:

(1) regulating all aspects of a hearing;

(2) taking all appropriate action for the efficient performance of the master's duties under the order;

(3) requiring the production of evidence on all matters embraced in the reference; and

(4) administering oaths and examining witnesses and parties.

(b) Compensation. If the master is not a judge or court employee, the court must determine the master's compensation and whether the cost is to be charged to any party.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

No local rule.

APPENDIX

Length Limits Stated in the Federal Rules of Appellate Procedure

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure. Please refer to the rules for precise requirements, and bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 32(f).
- If you use a word limit or a line limit (other than the word limit in Rule 28(j)), you must file the certificate required by Rule 32(g).
- For the limits in Rules 5, 21, 27, 35, and 40:
  - You must use the word limit if you produce your document on a computer; and
  - You must use the page limit if you handwrite your document or type it on a typewriter.
- For the limits in Rules 28.1, 29(a)(5), and 32:
  - You may use the word limit or page limit, regardless of how you produce the document; or
  - You may use the line limit if you type or print your document with a monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.

	Rule	Document Type	Word limit	Page limit	Line limit
Permission to Appeal	5(c)	• Petition for permission to appeal • Answer in opposition • Cross-petition	5,200	20	Not applicable

Extraordinary writs	21(d)	• Petition for writ of mandamus or prohibition or other extraordinary writ	7,800	30	Not applicable
		• Answer			
Motions	27(d)(2)	• Motion	5,200	20	Not applicable
		• Response to a motion			
		• Reply to a response to a motion	2,600	10	
Parties' briefs (where no cross-appeal)	32(a)(7)	• Principal brief	13,000	30	1,300
		• Reply brief	6,500	15	650
Parties' briefs (where cross-appeal)	28.1(e)	• Appellant's principal brief	13,000	30	1,300
		• Appellant's response and reply brief	13,000	30	1,300
		• Appellee's principal and response brief	15,300	35	1,500
		• Appellee's reply brief	6,500	15	650
Party's supplemental letter	28(j)	• Letter citing supplemental authorities	350	Not applicable	Not applicable
Amicus briefs	29(a)(5)	• Amicus brief during initial consideration of case on merits	One-half the length set by the Appellate Rules for a party's principal brief	One-half the length set by the Appellate Rules for a party's principal brief	One-half the length set by the Appellate Rules for a party's principal brief
	29(b)(4)	• Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable
Rehearing and en banc filings	35(b)(2) & 40(b)	• Petition for hearing en banc	3,900	15	Not applicable
		• Petition for panel rehearing; petition for rehearing en banc			

Federal Rules of Appellate Procedure
FORMS

Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court

UNITED STATES DISTRICT COURT

for the

<_____> DISTRICT OF <_____>

<Name(s) of plaintiff(s)>, Plaintiff(s) v. <Name(s) of defendant(s)>, Defendant(s)	)	Case No. <Number>

NOTICE OF APPEAL

Notice is hereby given that <Name all parties taking the appeal>, [plaintiffs] [defendants] in the above named case <See Rule 3(c) for permissible ways of identifying appellants.>, hereby appeal to the United States Court of Appeals for the <_____> Circuit [from the final judgment] [from an order <describing it>] entered in this action on <Date>.

Date: <Date>

<Signature of the attorney or unrepresented party>

_____

<Printed name>
Attorney for <party>
<Address>
<E-mail address>
<Telephone number>

[**Note to inmate filers**: *If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal*.]

See Fed. R. App. P. 3(c) for permissible ways of identifying appellants.

(As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003, Apr. 28, 2016, eff. Dec. 1, 2016.)

Form 2. Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court

UNITED STATES TAX COURT

Washington, DC

<Name of petitioner>, Petitioner v. Commissioner of Internal Revenue, Respondent	)	Docket No. <Number>

NOTICE OF APPEAL

Notice is hereby given that <Name all parties taking the appeal>, <See Rule 3(c) for permissible ways of identifying appellants.>, hereby appeal to the United States Court of Appeals for the <_____> Circuit from <that part of> the decision of this court entered in the above captioned proceeding on <Date> <relating to _____>.

Date: <Date>

<Signature of the attorney or unrepresented party>

_____

<Printed name>
<Counsel for _____>
<Address>
<E-mail address>
<Telephone number>

See Fed. R. App. P. 3(c) for permissible ways of identifying appellants.
(As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 28, 2016, eff. Dec.1, 2016.)

Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer

United States Court of Appeals

for the

<_____> CIRCUIT

<Name of petitioner>,	)
	)
Petitioner	)
	)
v.	)
	)
<XYZ Commission>,	)
	)
Respondent	)
	)
	)
	)

PETITION FOR REVIEW

<Here name all parties bringing the petition> hereby petition the court for review of the Order of the <XYZ Commission> <describe the order> entered on <Date>.

Date: <Date>

<Signature of the attorney or unrepresented party>

_____

<Printed name>
<Attorney for Petitioners>
<Address>
<E-mail address>
<Telephone number>

See Fed. R. App. P. 15.
(As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003.)

Form 4. Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis

UNITED STATES DISTRICT COURT

for the

<_____> DISTRICT OF <_____>

<Name(s) of plaintiff(s)>, Plaintiff(s) v. <Name(s) of defendant(s)>, Defendant(s)	)	Case No. <Number>

AFFIDAVIT ACCOMPANYING MOTION

FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

Affidavit in Support of Motion	**Instructions**
I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)	Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.
Signed: _____	Date: _____

My issues on appeal are:

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$	$	$	$
Self-employment	$	$	$	$
Income from real property (such as rental income)	$	$	$	$
Interest and dividends	$	$	$	$
Gifts	$	$	$	$
Alimony	$	$	$	$
Child support	$	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$	$	$	$
Disability (such as social security, insurance payments)	$	$	$	$
Unemployment payments	$	$	$	$
Public-assistance (such as welfare)	$	$	$	$
Other (specify):	$	$	$	$
Total monthly income:	**$**	**$**	**$**	**$**

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	**Address**	**Dates of employment**	**Gross monthly pay**
			$
			$
			$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	**Address**	**Dates of employment**	**Gross monthly pay**
			$
			$
			$

4. *How much cash do you and your spouse have? $_____*

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	**Type of Account**	**Amount you have**	**Amount your spouse has**
		$	$
		$	$
		$	$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.*

Home	**Other real estate**	**Motor vehicle #1**
(Value) $	(Value) $	(Value) $
		Make and year:
		Model:
		Registration #:

Motor vehicle #2	**Other assets**	**Other assets**
(Value) $	(Value) $	(Value) $
Make and year:		
Model:		
Registration #:		

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse money	**Amount owed to you**	**Amount owed to your spouse**
	$	$
	$	$
	$	$

. *State the persons who rely on you or your spouse for support.*

Name [or, if under 18, initials only]	**Relationship**	**Age**

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	**Your Spouse**
Rent or home-mortgage payment (including lot rented for mobile home) Are real estate taxes included? [ ] Yes [ ] No Is property insurance included? [ ] Yes [ ] No	$	$
Utilities (electricity, heating fuel, water, sewer, and telephone)	$	$
Home maintenance (repairs and upkeep)	$	$
Food	$	$
Clothing	$	$
Laundry and dry-cleaning	$	$
Medical and dental expenses	$	$
Transportation (not including motor vehicle payments)	$	$
Recreation, entertainment, newspapers, magazines, etc.	$	$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner′s or renter′s:	$	$
Life:	$	$
Health:	$	$
Motor vehicle:	$	$
Other:	$	$
Taxes (not deducted from wages or included in mortgage payments) (specify):	$	$

Installment payments		
Motor Vehicle:	$	$
Credit card (name):	$	$
Department store (name):	$	$
Other:	$	$
Alimony, maintenance, and support paid to others	$	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$	$
Other (specify):	$	$
Total monthly expenses:	**$**	**$**

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

   [ ] Yes [ ] No If yes, describe on an attached sheet.

10. *Have you spent—or will you be spending—any money for expenses or attorney fees in connection with this lawsuit?* [ ] Yes [ ] No

    If yes, how much? $ _____

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

12. *State the city and state of your legal residence.*

Your daytime phone number: (____) _____

Your age: _____ *Your years of schooling*: _____

(As amended Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 26, 2018, eff. Dec. 1, 2018.)

Form 5. Notice of Appeal to a Court of Appeals from a Judgment or Order of a District Court or a Bankruptcy Appellate Panel

UNITED STATES DISTRICT COURT

for the

<_____> DISTRICT OF <_____>

In re <Name of debtor>, Debtor <Name of plaintiff>, Plaintiff v. <Name of defendant>, Defendant	)	File No. <Number>

NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS FOR THE <_____> CIRCUIT

<Name of party>, the [plaintiff] [defendant] [other party], appeals to the United States Court of Appeals for the <_____> Circuit from the [final judgment] [order] [decree] of the [district court for the district of <_____>] [bankruptcy appellate panel of the <_____> circuit], entered in this case on <Date>.

<Here describe the judgment, order, or decree.>

The parties to the [judgment] [order] [decree] appealed from and the names and addresses of their respective attorneys are as follows:

Date: <Date>

<Signature of the attorney for appellant>

_____

<Printed name>
Attorney for Appellant
<Address>
<E-mail address>
<Telephone number>

[**Note to inmate filers**: *If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal*.]

(Added Apr. 25, 1989, eff. Dec. 1, 1989; amended Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 28, 2016, eff. Dec. 1, 2016.)

Form 6. Certificate of Compliance With Type-Volume Limit

Certificate of Compliance With Type-Volume Limit, Typeface Requirements and Type Style Requirements

1. This document complies with [the type-volume limit of Fed. R. App. P. [*insert Rule citation; e.g., 32(g)*]] [the word limit of Fed. R. App. P. [*insert Rule citation; e.g., 5(c)(1)*]] because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) [and [insert applicable Rule citation, if any]]:

   [ ] this document contains <state the number of> words, **or**

   [ ] this brief uses a monospaced typeface and contains <state the number of> lines of text.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

   [ ] this document has been prepared in a proportionally spaced typeface using <state name and version of word processing program> in <state font size and name of type style>, **or**

   [ ] this document has been prepared in a monospaced typeface using <state name and version of word processing program> with <state number of characters per inch and name of type style>.

Date: <Date>

<Signature of the attorney>

_____

<Printed name>
Attorney for <_____>
<Address>
<E-mail address>
<Telephone number>

(As amended Apr. 28, 2016, eff. Dec. 1, 2016.)

Form 7. Declaration of Inmate Filing

_____

[insert name of court; for example,
United States District Court for the District of Minnesota]

A.B., Plaintiff v. C.D., Defendant	Case No._____

I am an inmate confined in an institution. Today, _____ [*insert date*], I am depositing the _____ [*insert title of document; for example, "notice of appeal"*] in this case in the institution's internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Sign your name here _____

Signed on _____ [*insert date*]

[***Note to inmate filers:*** *If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of Fed. R. App. P. 4(c)(1) or Fed. R. App. P. 25(a)(2)(A)(iii).*]

(As amended Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018.)

TENTH CIRCUIT FORMS

10th CIR. FORM 1. DOCKETING STATEMENT INSTRUCTIONS AND FORM

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
www.ca10.uscourts.gov

DOCKETING STATEMENT INSTRUCTIONS

PLEASE FOLLOW THE INSTRUCTIONS REGARDING CONTENT CAREFULLY. IN PARTICULAR, PLEASE NOTE THAT AS OF JANUARY 1, 2019, THE COURT NO LONGER REQUIRES ATTACHMENTS TO THE DOCKETING STATEMENT.

I. APPEALS FROM DISTRICT COURT

The appellant must complete a Docketing Statement and file it in the court of appeals within 14 days after filing the notice of appeal. The docketing statement must be filed via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF can be found on the court's website, www.ca10.uscourts.gov

Please complete all sections of the Docketing Statement except Sections I-B and I-C. Section II should only be completed in criminal appeals.

II. PETITIONS FOR REVIEW OR APPLICATIONS FOR ENFORCEMENT OF AGENCY ORDERS

The petitioner must complete a Docketing Statement and file it in the court of appeals within 14 days after filing a petition for review or application for enforcement. The docketing statement must be filed via the court's Electronic Case Filing System

(ECF). Instructions and information regarding ECF can be found on the court's website, www.ca10.uscourts.gov

Please complete all sections of the Docketing Statement except Sections I-A, I-C, and II.

III. APPEALS FROM UNITED STATES TAX COURT

The appellant must complete a Docketing Statement and file it in the court of appeals within 14 days after the appeal is docketed. The docketing statement must be filed via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF can be found on the court's website, www.ca10.uscourts.gov .

Please complete all sections of the Docketing Statement except Sections I-A, I-B, and II.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOCKETING STATEMENT

Appeal Number	
Case Name	
Party or Parties Filing Notice of Appeal Or Petition	
Appellee(s) or Respondent(s)	
List all prior or related appeals in this court with appropriate citation(s).	

I. JURISDICTION OVER APPEAL OR PETITION FOR REVIEW

A. APPEAL FROM DISTRICT COURT

1. Date final judgment or order to be reviewed was **entered** on the district court docket: _____

2. Date notice of appeal was **filed**: _____

3. State the time limit for filing the notice of appeal (cite the specific provision of Fed. R. App. P. 4 or other authority): _____

a. Was the United States or an officer or an agency of the United States a party below? _____

b. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing the notice of appeal: _____

4. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).

a. Give the filing date of any motion that tolls the time to appeal pursuant to Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A):

_____

b. Has an order been entered by the district court disposing of any such motion, and, if so, when?

_____

5. Is the order or judgment final (i.e. does it dispose of **all** claims by and against **all** parties)? *See* 28 U.S.C. § 1291. _____

(If your answer to Question 5 is no, please answer the following questions in this section.)

a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?

_____

b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)? _____

c. If none of the above applies, what is the **specific** legal authority for determining that the judgment or order is appealable? _____

6. Cross Appeals.

a. If this is a cross appeal, what relief do you seek beyond preserving the judgment below? *See United Fire & Cas. Co. v. Boulder Plaza Residential, LLC*, 633 F.3d 951, 958 (10th Cir. 2011) (addressing jurisdictional validity of conditional cross appeals).

_____

b. If you do not seek relief beyond an alternative basis for affirmance, what is the jurisdictional basis for your appeal? *See Breakthrough Mgt. Group, Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173, 1196-98 and n.18 (10th Cir. 2010) (discussing protective or conditional cross appeals). _____

B. REVIEW OF AGENCY ORDER (To be completed only in connection with petitions for review or applications for enforcement filed directly with the court of appeals.)

1. Date of the order to be reviewed: _____

2. Date petition for review was filed: _____

3. Specify the statute or other authority granting the Tenth Circuit Court of Appeals jurisdiction to review the order: _____

4. Specify the time limit for filing the petition (cite specific statutory section or other authority): _____

C. APPEAL OF TAX COURT DECISION

1. Date of entry of decision appealed:_____

2. Date notice of appeal was filed: _____

(If notice was filed by mail, attach proof of postmark.)

3. State the time limit for filing notice of appeal (cite specific statutory section or other authority): _____

4. Was a timely motion to vacate or revise a decision made under the Tax Court's Rules of Practice, and if so, when? *See* Fed. R. App. P. 13(a) _____

II. ADDITIONAL INFORMATION IN CRIMINAL APPEALS.

A. Does this appeal involve review under 18 U.S.C. § 3742(a) or (b) of the sentence imposed? _____

B. If the answer to A (immediately above) is yes, does the defendant also challenge the judgment of conviction? _____

C. Describe the sentence imposed. _____

_____

D. Was the sentence imposed after a plea of guilty? _____

E. If the answer to D (immediately above) is yes, did the plea agreement include a waiver of appeal and/or collateral challenges? _____

F. Is the defendant on probation or at liberty pending appeal? _____

G. If the defendant is incarcerated, what is the anticipated release date if the judgment of conviction is fully executed? _____

NOTE: In the event expedited review is requested and a motion to that effect is filed, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered by completing and delivering the transcript order form to the Clerk of the district court with a copy filed in the court of appeals.

III. GIVE A BRIEF DESCRIPTION OF THE NATURE OF THE UNDERLYING CASE AND RESULT BELOW.

IV. IDENTIFY TO THE BEST OF YOUR ABILITY AT THIS STAGE OF THE PROCEEDINGS, THE ISSUES TO BE RAISED IN THIS APPEAL. You must attempt to identify the issues even if you were not counsel below. *See* 10th Cir. R. 3.4(B).

V. ATTORNEY FILING DOCKETING STATEMENT:

Name: _____ Telephone: _____

Firm: _____

Email Address: _____

Address: _____

_____

_____

_____ _____

Signature Date

NOTE: The Docketing Statement must be filed with the Clerk via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF can be found on the court's website, www.ca10.uscourts.gov.

The Docketing Statement must be accompanied by proof of service. The following Certificate of Service may be used.

CERTIFICATE OF SERVICE

I, _____, hereby certify that on
[attorney for appellant/petitioner]

_____, I served a copy of the foregoing **Docketing Statement**, to:
[date]

_____, at _____
[counsel for/or appellee/respondent]

_____

_____

_____, the last known address/email address, by

_____.
[state method of service]

_____
Signature

_____
Date

_____
_____
_____
_____
Full name and address of attorney

10th CIR. FORM 2. ENTRY OF APPEARANCE AND CERTIFICATE OF INTERESTED PARTIES UNDER 10th Cir. R. 46.1

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Entry of Appearance and Certificate of Interested Parties

v.	Case No.

INSTRUCTIONS: COUNSEL FOR A PARTY MUST FORTHWITH EXECUTE AND FILE THIS FORM, INDICATING METHOD(S) OF SERVICE ON ALL OTHER PARTIES. MULTIPLE COUNSEL APPEARING FOR A PARTY OR PARTIES AND WHO SHARE THE SAME MAILING ADDRESS MAY ENTER THEIR APPEARANCES ON THE SAME FORM BY EACH SIGNING INDIVIDUALLY.

In accordance with 10th Cir. R. 46.1, the undersigned attorney(s) hereby appear(s) as counsel for

_____
[Party or Parties]

_____, in the subject case(s).
[Appellant/Petitioner or Appellee/Respondent]

Further, in accordance with 10th Cir. R. 46.1, the undersigned certify(ies) as follows: **(Check one.)**

☐ On the reverse of this form is a completed certificate of interested parties and/or attorneys not otherwise disclosed, who are now or have been interested in this litigation or any related proceeding. Specifically, counsel should not include in the certificate any attorney or party identified immediately above.

☐ There are no such parties, or any such parties have heretofore been disclosed to the court.

_____	_____
Name of Counsel	Name of Counsel
_____	_____
Signature of Counsel	Signature of Counsel
_____	_____
Mailing Address and Telephone Number	Mailing Address and Telephone Number
_____	_____
E-Mail Address	E-Mail Address

I hereby certify that a copy of this Entry of Appearance and Certificate of Interested Parties was served on

(please insert date) _____ via (state method of service)

_____

to _____

(*See* Fed. R. App. P. 25(b)) (Signature) _____

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

v.	Case No.

Certificate of Interested Parties

The following are not direct parties in this appeal but do have some interest in or a relationship with the litigation or the outcome of the litigation. *See* 10th Cir. R. 46.1(D). In addition, attorneys not entering an appearance in this court but who have appeared for any party in prior trial or administrative proceedings, or in related proceedings, are noted below.

(Attach additional pages if necessary.)

10th CIR. FORM 3. ENTRY OF APPEARANCE—PRO SE

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Entry of Appearance - Pro Se

v.	Case No.

INSTRUCTIONS: A PARTY DESIRING TO APPEAR WITHOUT COUNSEL SHALL NOTIFY THE CLERK BY COMPLETING AND SIGNING THIS FORM. THE FEDERAL RULES OF APPELLATE PROCEDURE AND TENTH CIRCUIT RULES REQUIRE THAT ALL PAPERS SUBMITTED TO THE COURT FOR FILING BE SIGNED BY THE FILING PARTY AND THAT COPIES BE SERVED ON OPPOSING PARTIES OR THEIR COUNSEL, IF REPRESENTED BY COUNSEL. THE ORIGINAL OF EVERY PAPER SUBMITTED FOR FILING MUST CONTAIN PROOF OF SERVICE IN A FORM SIMILAR TO THAT ON THE REVERSE OF THIS FORM. ANY PAPER THAT DOES NOT CONTAIN THE REQUIRED PROOF OF SERVICE MAY BE DISREGARDED BY THE COURT OR RETURNED.

I hereby notify the clerk that I am appearing pro se as the

_____
(Appellant, Petitioner, Appellee or Respondent)

in this case. All notices regarding the case should be sent to me at the address below. If my mailing address changes, I will promptly notify the clerk in writing of my new address.

Further, in accordance with 10th Cir. R. 46.1, I certify: **(Check one.)**

☐ All parties to this litigation, including parties who are now or have been interested in this litigation, are revealed by the caption on appeal, or

☐ There are parties interested in this litigation that do not appear in the caption for this appeal, and they are listed on the back of this form.

_____ _____

Signature Name

_____

Mailing Address

_____

City State Zip Code

CERTIFICATE OF SERVICE

I hereby certify that on _____ I sent a copy of
[date]

the Pro Se Entry of Appearance Form to: _____

at _____

_____, the last known address/email address, by

_____.
[state method of service]

_____

Date

_____

Signature

CERTIFICATE OF INTERESTED PARTIES

(attach additional pages if necessary)

10th CIR. FORM 4. LETTER NOTICE THAT COUNSEL HAS MOVED TO WITHDRAW UNDER 10th CIR. R. 46.4(B)(2)

Your attorney filed a brief on _____, 20__, stating a belief that your appeal is frivolous and requesting permission to withdraw from the case. Please be advised:[**]

(1) You have 30 days from the date this notice was mailed to raise any points to show why your conviction and/or sentence should be set aside.

(2) If you do not respond within 30 days, the court may affirm your conviction and/or sentence, or dismiss your appeal. An affirmance or dismissal would mean that your appeal would be decided against you.

(3) If you want to make a showing why the court should not affirm your conviction and/or sentence, or dismiss your appeal, and you believe that there is a very good reason why you will not be able to file your response within the 30-day limit, you should write immediately to the court and ask for up to 30 more days. If additional time is granted, you must file your objections and state the reasons why the court should not affirm your conviction and/or sentence, or dismiss your appeal before your additional time expires.

(4) You do not have a right to another attorney unless this court finds, based upon your objections and the reasons for them, that your case requires further briefing or argument. If the court finds that your case requires further briefing or argument, an attorney will be appointed to handle your appeal.

[**] Si Usted no habla inglés, su abogado tiene el deber legal de explicarle las siguientes cosas en su idioma nativo: su abogado tiene que explicarle el contenido del documento que ha registrado con la corte de acuerdo con *Anders v. California*, 386 U.S. 738 (1967); tiene que avisarle que Usted tiene el derecho de registrar con la corte una objeción al documento *Anders* que ha registrado su abogado, y tiene que informarle de la posibilidad de que su apelación será despedida basado en el documento *Anders*. *United States v. Cervantes*, 795 F.3d 1189, 1190 (10th Cir. 2015). Su abogado puede explicarle estas cosas con la asistencia de un intérprete si es necesario o por escrito en su idioma nativo.

If you want to write to this court, you should address your letter to:

Clerk of the Court
United States Court of Appeals
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257

Be sure to show the name and number of your case clearly on any material you send to the court.

Notice mailed _____ _____

Date Deputy Clerk, U.S. Court of Appeals

LOCAL APPENDIX A

APPELLATE TRANSCRIPT MANAGEMENT PLAN FOR THE TENTH CIRCUIT

The Court Reporter Management Plans adopted by the district courts within this circuit and approved by the Judicial Council are incorporated and made a part of this Plan to the extent that they provide for the production of appellate transcripts. To further promote the prompt production of transcripts, which contributes to the timely processing of appeals, the Judicial Council of the Tenth Circuit adopts the following guidelines:

1. *District Court Reporter Coordinators*

Each district court must appoint a Court Reporter Coordinator within the Clerk's Office, who will be responsible for:

(a) Monitoring the preparation and filing of transcripts, and ensuring compliance with this Plan.

(b) Bringing to the attention of the Clerk of the court of appeals violations of this Plan, which cannot be resolved locally, and

(c) Ensuring that communications are forwarded to and received by the appropriate parties.

2. *Calculation of Times*

No transcript order will be deemed complete for purposes of calculation of delivery dates until satisfactory financial arrangements have been made with the court reporter. The Tenth Circuit Transcript Order Form contains the reporter's certification that arrangements for payment have been made. If the arrangements subsequently fail, the burden will be on reporters to notify this court in writing that the litigant has failed to abide by the arrangements for payment. This notification shall include copies of letters requesting payment or deposit. The court will enforce reporters' legitimate requests for payment by threat of dismissal of appeals for failure to prosecute.

3. *Extensions of Time*

An extension of time pursuant to Federal Rule of Appellate Procedure 11(b)(1)(B) does not waive the mandatory fee reduction. To obtain a waiver, a separate request alleging appropriate circumstances **must** be made.

4. *Waiver of Mandatory Fee Reduction*

The Clerk of the court of appeals may waive the mandatory fee reduction or other sanctions imposed by this Plan, upon receipt of a timely request, in circumstances such as the following:

(a) *Illness or Incapacity of the Reporter*

A reporter requesting a waiver of the fee reduction due to illness or other incapacity must provide a letter from the district court reporter coordinator which verifies the nature and expected duration of the illness or other incapacity. This certification must be attached to a request for extension and will be kept confidential. The request must include the date by which the transcript will be completed.

(b) *Planned Vacation*

The reporter must submit a vacation schedule approved by the trial judge. The request must include the date by which the transcript will be completed.

(c) *Lengthy or Complex Litigation, Excessive Pages Ordered*

When the transcript in a particular case will require additional time, the reporter must provide a certification from the district judge stating the reason additional time is required. When multiple orders are received at the same time, the reporter may request an extension in all cases, but must provide copies of the orders and the estimated length of the transcripts involved. The request must include the date by which each transcript will be completed.

A form for requesting an extension of time and/or fee reduction waiver is attached as Exhibit 1. The Judicial Council prefers that this form be used.

No provision is made for extensions of time for transcript backlog. Transcript production is considered by the Administrative Office to be compensated by transcript fees. Reporters are expected to hire note readers or substitutes when transcripts cannot be completed within specified times. The hiring of note readers and/or substitutes does not excuse reporters, however, from

requesting extensions of time under Fed. R. App. P. 11(b) when a transcript cannot be completed within the prescribed time.

Occasionally, counsel may request that a reporter suspend production of a transcript. Transcript production may be stopped only by order of the court of appeals. It is the responsibility of the party who ordered the transcript to move for suspension of production.

5. *Substitute Court Reporters*

Pursuant to Judicial Conference policy, reporters are expected to hire substitutes when they are unable to complete transcripts on time. A reporter who cannot file a transcript before the ninetieth day after it is ordered must remove him or herself from courtroom duties and provide a substitute.

Official reporters are responsible for transcript production by their substitutes. Requests for extensions received from substitute reporters will be returned to the district court reporter coordinator so the appropriate official reporter can make a proper request.

6. *Court Reporters' Manual*

The *Court Reporters' Manual*, Volume 6 of the *Guide to Judiciary Policy* is incorporated into these guidelines. Reporters in this circuit are expected to know and abide by the rules, regulations and policies contained in it.

The pages of a transcript are to be numbered in a single series of consecutive numbers for each proceeding, regardless of the number of days involved. Pages in a multiple-volume transcript must be numbered consecutively for an entire multiple-volume transcript. *See Volume 6, Guide to Judiciary Policy, Chapter 5, § 520 et. seq. See also United States v. Davis*, 953 F.2d 1482, 1487 n.2 (10th Cir. 1992).

7. *Miscellaneous Provisions*

Where there are multiple reporters responsible for a single transcript order, one must take the lead. The lead reporter must be an official court reporter. When a transcript is being paid for under the Criminal Justice Act the lead reporter must assist in obtaining the district judge's signature on the completed form CJA 24. If a transcript order form is incomplete or inaccurate, the lead reporter must give written notice of the deficiency to the ordering party with a copy to this court.

EXHIBIT 1 TO LOCAL APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Court of Appeals Docket Number(s): _____

Short Title: _____

District Court Docket Number(s): _____

REQUEST FOR EXTENSION OF TIME TO FILE TRANSCRIPT

I request an extension of time to file the transcript until _____.
This extension is necessary because _____

_____

_____

Attach letter from court reporter coordinator if necessary.

I understand that the grant of an extension does not waive the mandatory fee reduction.

Signature: _____
Official Court Reporter

REQUEST FOR WAIVER OF MANDATORY FEE REDUCTION

I request waiver of the mandatory fee reduction for (check one):

___ Illness or other incapacity—I have attached the required certification.
___ Planned vacation—I have attached the required certification.
___ Lengthy or Complex Litigation or Excessive Pages Ordered—I have attached the required documentation.

Signature: _____
Official Court Reporter

ATTACH PROOF OF SERVICE ON ALL COUNSEL

LOCAL APPENDIX B

GENERAL ORDER REGARDING SCHEDULING CONFLICTS FOR THE TENTH CIRCUIT

In re:

Guidelines for Resolving Scheduling Conflicts with Oklahoma Courts

GENERAL ORDER
FILED May 21, 1998

Before **SEYMOUR,** Chief Judge, **PORFILIO, ANDERSON, TACHA, BALDOCK, BRORBY, EBEL, KELLY, HENRY, BRISCOE, LUCERO,** and **MURPHY.**

For the purpose of resolving conflicts that arise in scheduling between this court and the federal district courts in Oklahoma or the Oklahoma state courts, the court adopts the following guidelines:

(A) An attorney shall not be deemed to have a conflict unless:

(1) the attorney is lead counsel in two or more of the actions affected, and

(2) the attorney certifies that the matters cannot be adequately handled, and the client's interest adequately protected, by other counsel for the party in the action or by other attorneys in lead counsel's firm; certifies compliance with this rule and has nevertheless been unable to resolve the conflicts; and certifies in the notice a proposed resolution by list of such cases in the order of priority specified by this rule.

(B) When an attorney is scheduled for a day certain by trial calendar, special setting or court order to appear in two or more courts (trial or appellate; state or federal), the attorney shall give prompt written notice, as specified in (A) above, of the conflict to opposing counsel, to the Clerk of each court and to the judge before whom each action is set for hearing (or to an appropriate judge if there has been no designation of a presiding judge). The written notice shall contain the attorney's proposed resolution of the appearance conflicts in accordance with the priorities established by this rule and shall set forth the order of cases to be tried with a listing of the date and data required by (B)(1)-(4) as to each case arranged in the order in which the cases should prevail under this rule. Attorneys confronted by such conflicts are expected to give written notice as soon as the conflict arises but in any event at least seven (7) days prior to the date of the conflicting settings. In resolving scheduling conflicts, the following priorities should ordinarily prevail:

(1) Criminal (felony) actions shall prevail over civil actions set for trial or appellate proceedings;

(2) Jury trials shall prevail over non-jury matters, including trials and administrative proceedings;

(3) Trials shall prevail over appellate arguments, hearing and conferences;

(4) Appellate proceedings prevail over all trial hearings, other than actual trials;

(5) Within each of the above categories only, the action which was first set shall take precedence.

(C) In addition to the above priorities, consideration should be given to the comparative age of the cases, their complexity, the estimated trial time, the number of attorneys and parties involved, whether the trial involves a jury, and the difficulty or ease of rescheduling.

(D) The judges of the courts involved in a scheduling conflict shall promptly confer, resolve the conflict, and notify counsel of the resolution. The judge presiding over the older case (i.e., the earliest filed case) will be responsible for initiating this communication.

(E) Conflict resolution shall not require the continuance of the other matter or matters not having priority. In the event the matter determined to have

priority is disposed of prior to the scheduled time set, the attorney shall immediately notify all affected parties, including the court affected, of the disposal and shall, absent good cause shown to the court, proceed with the remaining case or cases which did not have priority if the setting was not vacated.

(F) Nothing in these guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.

Entered for the Court

Patrick Fisher
Clerk of Court

ADDENDUM I

CRIMINAL JUSTICE ACT PLAN
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
(as amended eff. Dec. 15, 2015)

PREAMBLE

Pursuant to the Criminal Justice Act of 1964 (hereinafter, "Act"), codified as 18 U.S.C. § 3006A(b), the Court adopts the following Criminal Justice Act Plan (hereinafter, "Plan") for furnishing representation in criminal cases on appeal. This Plan supersedes all previous Plans adopted by the Circuit, and will take effect on December 15, 2015.

I. Establishment of the Appellate Panel

The Court has established a Panel of private attorneys (hereinafter, "Panel") who are capable and willing to accept appointments under the Act. These attorneys, along with the Office of the Federal Public Defender for the Districts of Colorado and Wyoming, shall constitute the core group from which appointments shall be made. The Court shall approve private attorneys for membership on the Panel after receiving recommendations from the Court's Standing Committee on the Criminal Justice Act.

II. Appointment of Counsel in the Tenth Circuit

When requested, counsel will be appointed for every person who is entitled to representation under the Act. Absent a change in financial conditions, any determination that a person is eligible for Criminal Justice Act counsel made in the district court shall continue on appeal. The Court of Appeals may appoint the Office of the Federal Public Defender for the Districts of Colorado and Wyoming, another Federal Public Defender office within the Circuit, an attorney from the Court's Criminal Justice Act Panel, or counsel from the trial court.

While the Court recognizes there may be benefits to maintaining continuity of counsel, it also recognizes that trial counsel may not have the requisite skills, or the desire, to represent an individual on appeal. Because each proceeding is unique in this regard, all counsel continuing in appeals from the trial court will be required, through procedures established by the court, to file either a motion for continued appointment or a motion to withdraw. As appropriate, and in the discretion of the Court, new counsel may be appointed from the Panel or the Office

of the Federal Public Defender. The Court may also, however, authorize continued appointment of a trial attorney who is not a member of the Court's panel.

Trial counsel is always required to continue to represent the defendant until relieved of that duty by the Court, consistent with 10th Cir. R. 46.3 and 46.4.

III. Composition of the Panel

A. *Application for Membership*

Applications for membership on the Panel shall be available in the Office of the Clerk of Court and on the Circuit's website at http://www.ca10.uscourts.gov/cja/becoming-tenth-circuit-appellate-panel-attorney. Completed applications must be submitted to the Clerk of Court for transmittal to the Court's Standing Committee on the Criminal Justice Act.

B. *Eligibility and Qualifications*

CJA Panel members will be selected on the basis of demonstrated commitment, qualification and skill in federal criminal appellate practice.

To be eligible for service on the Panel, lawyers must be or become, and remain, members in good standing of the Tenth Circuit's bar. Panel attorneys must certify they have a working knowledge of this Plan, the Tenth Circuit Rules, Federal Rules of Appellate Procedure, Federal Rules of Evidence, Federal Rules of Criminal Procedure, United States Sentencing Guidelines, and relevant provisions of the United States Code. Panel members must also certify their willingness to accept at least one appellate appointment each year. Finally, they must also show they have an established law practice in the Tenth Circuit.

C. *Size of the Panel*

The Panel will not have a size limitation. It shall be large enough to provide an adequate number of experienced attorneys who possess the necessary skills to effectively litigate federal criminal appeals. To that end, membership shall be reserved for attorneys who meet the Court's criteria. The Panel will also be small enough that each attorney receives a sufficient number of appointments to maintain proficiency in litigating federal criminal appeals. To the extent possible, the Panel will include qualified attorneys from every judicial district within the Tenth Circuit.

Not every qualified applicant will be selected for Panel membership. To ensure that qualified applicants are given the opportunity to serve, Panel membership will be for three-year terms. Reapplication is required at the conclusion of the first three-year term. Attorneys may be reappointed to serve a second three-year term, but at the conclusion of that six year period they must wait a minimum of one year before reapplying for Panel membership.

D. *Membership Terms*

Panel members shall be appointed for a three-year term, but may be removed by the Court prior to the expiration of their term.

1. *Renewal of Membership Term*—A Panel member will be given written notice in advance of the expiration of Panel membership. To be considered for renewal, the Panel member must submit an application for renewal prior to the expiration of the current term. Renewal applications shall be made available in the Office of the Clerk of Court and on the Circuit's website at http://www.ca10.uscourts.gov. Completed applications must be submitted to the Clerk of Court for transmittal to the Court's Standing Committee on the Criminal Justice Act. Renewal shall not be automatic, but may be granted at the Court's discretion, taking into account the provisions of this Plan. Panel members may serve two consecutive terms. If any Panel member chooses to reapply after the expiration of a second consecutive term, the Panel member must wait a minimum of one year before reapplying.

2. *Removal from the Panel*—Membership on the Panel is not a property right. A Panel member may be removed whenever the Court, in its discretion, determines that the member has failed to fulfill the obligations of Panel membership, including the duty to provide competent and effective representation, or has engaged in other conduct that renders inappropriate his or her continued service on the Panel. Removal may also result if a Panel member refuses three times to accept an appointment during the membership term.

The Standing Committee shall make all removal recommendations to the Court in writing. If the Court decides to accept the recommendation, counsel will be given notice of the proposed basis for removal and will be provided an opportunity to respond in writing. The Court of Appeals will make all final decisions regarding removal. An attorney who is removed will receive a written explanation of removal from the Court.

Attorneys who are removed from the Panel may file a renewal application no earlier than one year from the date of removal. In the application, counsel must note the earlier removal and explain why re-appointment to the Panel should be granted.

E. *Maintaining the Panel List*

The Clerk of Court shall maintain the list of Panel members, including their current name, business address, business email, and business telephone number. Panel attorneys must promptly notify the Clerk of Court of any changes in business address, business telephone number, or email address. The Panel roster shall be public information.

IV. Standing Committee on the Criminal Justice Act

A. *Membership and Structure*

The Chief Judge, or the Chief Judge's delegate, shall appoint the Standing Committee. The Federal Public Defender for the Districts of Colorado and Wyoming shall be a permanent member of the Standing Committee. The remaining membership shall consist of two lawyers from Oklahoma, and one lawyer from the remaining states in the Circuit. At least one of these positions must be filled with one of the other Federal Public Defenders from the Circuit. Two of the other positions must be filled with attorneys who are not current members of the Panel. In addition, those members of the Standing Committee who remain on the Panel may not accept new appointments from the court during their tenure as Committee members. All members of the Standing Committee shall serve staggered three-year terms, and may serve two consecutive terms.

The Chief Judge may also appoint a liaison to the Committee from the Court's legal staff. That person will not be a Committee member, but will be available to both the Court and members for support and consultation. The liaison may sit in on, but shall not participate in, the Committee's deliberations.

B. *Duties of the Committee*

The Standing Committee shall meet in person at least once per year. Additional meetings may be convened by the Chair.

The Committee shall review the qualifications of applicants for membership on the Panel, conduct further inquiries as necessary, and make recommendations to the Court for placement or removal. The Standing Committee shall also review the

operation of the Panel on a periodic basis and shall make recommendations to the Court regarding any suggested changes. At the Court's discretion, the Standing Committee may also investigate complaints concerning deficient performance by Panel members and report its findings and recommendations to the Court. The Standing Committee's written recommendations to the Court on any issue shall remain confidential.

V. Change in Financial Conditions Affecting Representation on Appeal

A person previously represented by private counsel in the district court who becomes financially unable to employ counsel on appeal, must first obtain an order in the district court finding that he or she qualifies for court-appointed appellate counsel. Trial counsel is responsible for filing the application for court-appointed counsel in the district court, and must comply with all other provisions of 10th Cir. R. 46.3 and 46.4. This Court may, at any time, review the financial status of the defendant. If the Court finds that the defendant has become financially able to obtain counsel or make partial payments for representation, the Court may deny or terminate an appointment pursuant to subsection (c) of the Act or require partial payment to be made pursuant to subsection (f) of the Act.

VI. Death Penalty Cases

Pursuant to the Guidelines for Administering the Criminal Justice Act (CJA Guidelines), the Court may, in an appropriate death penalty case, appoint and compensate under the Act an attorney or attorneys from a state or local public defender organization or from a legal aid agency or other non-profit organization.

VII. Petition for Writ of Certiorari

Counsel's appointment does not terminate until, if the person loses the appeal, counsel informs the person of his or her right to petition for certiorari in the United States Supreme Court, and the deadline for filing the petition. Additionally, counsel must prepare and file the petition if the person requests it and there are reasonable grounds for counsel properly to do so (see Rule 10 of the Rules of the Supreme Court of the United States).

If counsel determines that there are no reasonable grounds for filing a petition and declines the person's request to file a petition, counsel shall inform the person and, after entry of judgment, shall move to withdraw under 10th Cir. R. 46.4. Upon entry of an order terminating the appointment, counsel shall promptly

notify the represented person and advise the person of his or her right to file a pro se petition for certiorari.

VIII. Compensation

A. *Claims*

All claims for compensation and expenses must be submitted to the clerk in the manner found on the Court's website. See http://www.ca10.uscourts.gov/cja. All claims must be supported as required by the CJA Guidelines and the Court's Advice to CJA Counsel letter(s). In each case, the Court will fix the compensation to be paid the attorney as provided in the Act. Counsel appointed in direct criminal appeals and non-death penalty 28 U.S.C. §§ 2254 and 2255 matters should review the Court's general Advice to Counsel letter for detailed information and guidelines regarding compensation issues. Counsel appointed in death penalty matters should review the Court's separate Death Penalty Advice to Counsel letter.

Copies of those letters are available online at
http://www.ca10.uscourts.gov/sites/default/files/adv20-mod.pdf
http://www.ca10.uscourts.gov/sites/default/files/adv30-mod.pdf

Although the Act provides for limited compensation, the Court recognizes that the compensation afforded often does not reflect the true value of the services rendered. Consequently, it is the Court's policy not to cut or reduce claims which are reasonable and necessary. If the Court intends to reduce a claim for compensation, it will provide the attorney prior notice of the proposed reduction with a brief statement of the reason(s) for it, and will provide an opportunity to address the matter. Notice will not be given where the reduction is based on mathematical or technical errors.

B. *Other Payments*

Except as authorized or directed by the Court, no appointed attorney and no person or organization authorized by the Court to furnish representation under the Act may request or accept any payment or promise of payment for representation of a defendant.

IX. Application of Guidelines

Appointment of counsel under the Act will be governed generally by the Guidelines for Administering the CJA and related statutes. See Volume 7, Guide to

Judiciary Policy, Appointment and Payment of Counsel, Part A. Online at: http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel/CJAGuidelinesForms.aspx

ADDENDUM II

PLAN FOR APPOINTMENT OF COUNSEL IN SPECIAL CIVIL APPEALS

PURPOSE:

To provide representation in special cases for persons who are financially unable to obtain the services of counsel.

CRITERIA:

Under this plan, the court may appoint counsel to represent a party or parties to a civil matter pending before the court when:

1. the person is financially unable to obtain the services of counsel;

2. the person is not entitled to appointed counsel under the provisions of the Criminal Justice Act or other source of legal assistance;

3. the litigation presents complex and significant legal issues, the outcome of which may have wide impact;

4. it is manifestly clear that the services of counsel are necessary for the effective presentation of the issues to the court; and

5. the interests of justice require that counsel be assigned to assist the litigant who would otherwise be compelled to proceed *pro se*.

PROCEDURE:

When, upon the application of a party or upon the court's motion, it is determined that in an appeal or other proceeding criteria required by this plan are satisfied, a judge may order the appointment of counsel to represent the eligible party.

The assignment of counsel under this plan may be made from a panel of attorneys maintained pursuant to the court's plan to implement the provisions of the Criminal Justice Act or otherwise.

The appointment will remain effective throughout all stages of a proceeding in this court, including the filing of a petition for writ of certiorari to the Supreme

Court, if requested to do so by the client, but subject to the provisions of Section VII of the Court's Criminal Justice Act Plan.

PRO BONO SERVICES AND EXPENSES:

The court is very appreciative of the service of the attorneys taking appointments under this plan. Due to limited resources, however, the court is generally unable to compensate counsel for either attorney time or expenses. Appointments are made with the understanding that services will be provided pro bono and that expenses will be absorbed by counsel. In an exceptional case counsel may submit a motion seeking limited reimbursement of out-of-pocket costs or expenses. Any motion filed must address the exceptional nature of the case.

If a motion is filed and granted, reimbursement for reasonable and necessary out-of-pocket expenses will be subject to the limitations applicable to counsel appointed under the Criminal Justice Act. Those limitations are outlined in the court's CJA *Advice to Counsel* guidelines, and in the *Guidelines for Administering the Criminal Justice Act and Related Statutes*. Both documents may be found on the court's website. The chief judge, or any judge on the panel assigned to the appeal or other proceeding, may address a motion for expenses and may authorize payment of expenses from the Attorney Admission Fund.

Counsel appointed and compensated under this plan may not accept payment for their services from their clients or anyone on their behalf.

ADDENDUM III

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PLAN FOR ATTORNEY DISCIPLINARY ENFORCEMENT

Section 1. Definitions.

1.1 "The Court" means the United States Court of Appeals for the Tenth Circuit.

1.2 "Another Court" means any court of the United States, the District of Columbia, or any state, territory, or commonwealth of the United States.

1.3 "Serious Crime" means any felony or any lesser crime involving false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit such a lesser crime.

1.4 "Disciplinary Panel" means a panel of judges specially constituted to consider an attorney disciplinary matter.

1.5 "Attorney" means any attorney admitted to practice or who as appeared before this court.

Section 2. Grounds for Discipline.

An attorney may be disciplined by this court as a result of:

2.1 conviction in another court of a serious crime;

2.2 disbarment or suspension or reprimand by another court, with or without the attorney's consent, or the resignation from the bar of another court while an investigation into allegations of misconduct is pending;

2.3 any act or omission which violates the federal laws or federal statutes or Federal Rules of Appellate Procedure, the rules of this court, orders or other instructions of this court, or the Code of Professional Responsibility adopted by the highest court of any state to which the attorney is admitted to practice.

Section 3. Disciplinary Sanctions.

3.1 Discipline may consist of (a) disbarment, (b) suspension from practice before the court for a definite or indefinite period, (c) reprimand, (d) monetary sanction, (e) removal from the roster of attorneys eligible for appointment as court-appointed counsel, or (f) any other sanction that the court may deem appropriate.

3.2 The identical discipline imposed by another court may be appropriate for discipline imposed as a result of that other court's suspension or disbarment or reprimand of an attorney. However, any discipline imposed by another court will not limit the range of disciplinary sanctions available to the disciplinary panel or a panel of the court of appeals.

3.3 A monetary sanction imposed on disciplinary grounds is the personal responsibility of the attorney disciplined, and may not be reimbursed by a client directly or indirectly. Notice to that effect is to be sent to the client by the Clerk whenever a monetary sanction is imposed.

3.4 Proceedings for the award of damages, costs, expenses, or attorney's fees under 28 U.S.C. § 1927, Fed. R. App. P. 38, or 10th Cir. R. 46.5(C)(4) are not covered by this Plan.

Section 4. Discipline Imposed by a Panel of the Court or by a Disciplinary Panel

4.1 A panel of the court may impose in a case pending before it any sanction other than suspension or disbarment in accordance with Section 4.2.

4.2 Before imposing a sanction, a panel of the court will notify the attorney of the alleged conduct which may justify sanction and afford the attorney an opportunity to be heard, in writing or in person at the option of the panel.

4.3 Any matter of attorney discipline in which suspension or disbarment may be considered an appropriate sanction will be referred to a disciplinary panel or, in the case of an uncontested matter, to the chief judge or chief judge's designee. The disciplinary panel consists of three circuit judges appointed by the chief judge. The judge most senior in service on the court will be designated and

serve as chair. If any member of the disciplinary panel is unable to hear a particular matter, the chief judge will designate another active circuit judge as a member of the panel to hear that matter.

4.4 The disciplinary panel may at any time appoint counsel to investigate or to prosecute a disciplinary matter. Generally, the court will appoint as disciplinary counsel the disciplinary agency of the highest court of the state in which the attorney maintains his or her principal office. If no such disciplinary agency exists or such disciplinary agency declines appointment or such appointment is clearly inappropriate, this court will appoint as disciplinary counsel one or more members of the bar of this court to investigate allegations of misconduct or to prosecute disciplinary proceedings.

4.5 The disciplinary panel may designate a special master for purposes of conducting an evidentiary hearing. The special master may establish whatever procedural and evidentiary rules are appropriate. At the conclusion of the evidentiary hearing, the special master must promptly make a report of findings to the disciplinary panel.

Section 5. Duties of Clerk.

5.1 Upon being informed that an attorney admitted to practice before this court has been either convicted of any crime or subjected to discipline by another court, the Clerk will determine whether a copy of the judgment of conviction or disciplinary judgment or order has been forwarded to this court. If not, the Clerk will promptly obtain a copy of the judgment of conviction or disciplinary judgment or order and file it with this court.

5.2 Whenever any person is disbarred, suspended, or reprimanded, on consent or otherwise, or otherwise disciplined by this court and is shown on the records of the court to be admitted to practice in any other jurisdiction or before any other court, the Clerk will, within ten days of that disbarment, suspension, reprimand, or imposition of discipline transmit to the disciplinary authorities in such other jurisdiction or for such other court, a certified copy of the judgment or order of disbarment, suspension, censure, reprimand or discipline, as well as the last known office address of the attorney.

5.3 The Clerk shall refer to the disciplinary panel or the chief judge or the chief judge’s designee all information received concerning disbarments, suspensions, resignations during the pendency of misconduct investigations, and

other conduct sufficient to cast doubt upon the continuing qualification of a member of the bar to practice before it.

Section 6. Initiation of Disciplinary Proceedings.

6.1 Upon the receipt of a copy of a judgment, order, or other court document demonstrating that an attorney has been convicted of a serious crime, has been either suspended or disbarred or reprimanded by another court, or has resigned from the bar of another court during the pendency of a misconduct investigation, the Clerk shall issue an order directing the attorney to show cause why the court should not impose upon the attorney the discipline described in Section 3. With the order to show cause, the Clerk also may send a copy of the judgment of conviction or disciplinary judgment, order, or other court document indicating the form of disciplinary action.

6.2 When misconduct or allegations of misconduct concerning the appellate process which, if substantiated, would warrant discipline on the part of an attorney comes to the attention of the Clerk or a judge, whether by complaint, grievance, or otherwise, the Clerk shall issue an order to show cause why discipline should not be imposed by this court. The order will set forth the alleged conduct which is the subject of the proceeding and the reason the conduct may justify such discipline. If the disciplinary panel determines that cause does not exist for disciplinary action, the proceeding will be dismissed with appropriate notice.

6.3 All orders to show cause under this section will require the attorney to respond within twenty (20) days. In the response to the order to show cause, the attorney must include a declaration of the other bars to which the attorney is admitted.

Section 7. Uncontested Proceedings.

7.1 If an attorney acquiesces to the imposition of discipline by failing to timely respond to an order to show cause, the Clerk will issue an order imposing discipline as indicated in the order to show cause.

7.2 Any attorney who is the subject of an investigation by this court into allegations of misconduct may consent to disbarment by filing with the Clerk's Office an affidavit stating that the attorney desires to consent to disbarment.

Section 8. Contested Proceedings.

All contested matters, except those before a panel under Section 4.1, will be referred to a disciplinary panel.

8.1 If an attorney's response to an order to show cause specifically requests to be heard in person in defense or in mitigation, the disciplinary panel may set the matter for a hearing before a special master. If an evidentiary hearing is held before the special master, findings of fact must be promptly prepared and forwarded to the disciplinary panel and the attorney. Exceptions to the special master's findings may be filed within ten (10) days of the date the findings are transmitted by the special master to the disciplinary panel. After the disciplinary panel has resolved any timely exceptions, it may then make a decision.

8.2 If an attorney's response to an order to show cause does not specifically request to be heard in person, the disciplinary panel may then direct entry of an order imposing discipline or take other appropriate action.

8.3 A certified copy of a judgment of conviction for any crime will be prima facie evidence of the commission of that crime in any disciplinary proceeding instituted against an attorney based upon the conviction. If the conviction is subsequently reversed or vacated, any discipline imposed on the basis thereof will be promptly reviewed by the disciplinary panel, the chief judge or the chief judge's designee upon submission of a certified copy of the relevant mandate.

8.4 A certified copy of a disciplinary judgment or order demonstrating that a member of the bar has been disbarred or suspended or reprimanded by another court will be prima facie evidence that the conduct for which the discipline was imposed in fact occurred.

8.5 An attorney to whom an order to show cause is issued pursuant to Section 6 may be represented by counsel at all hearings.

8.6 The disciplinary panel may compel by subpoena the attendance of witnesses, including the attorney whose conduct is the subject of the proceeding, and the production of pertinent documents. If a hearing is held, the disciplinary panel may compel by subpoena the attendance of any witness and the production of any document reasonably designated by the disciplinary counsel and the attorney as relevant for adequate prosecution or defense or mitigation.

8.7 If disciplinary action is imposed by this court on an attorney who has entered an appearance in a representational capacity in any type of proceeding in this court, the disciplinary panel may require the attorney to:

(a) promptly notify all clients who are represented by the attorney in this court of the nature of the disciplinary action imposed; and

(b) furnish sufficient evidence of compliance with (a).

Section 9. Suspension During Pendency of a Disciplinary Proceeding.

9.1 Upon a sufficient showing that an attorney has been convicted of a serious crime, disbarred, suspended or reprimanded, the disciplinary panel may summarily suspend the attorney's privilege to practice before this court pending the determination of appropriate discipline.

9.2 The court or the disciplinary panel, after notice and an opportunity to be heard, may suspend an attorney's privilege to practice before this court during the course of any disciplinary investigation and proceeding.

Section 10. Reinstatement.

10.1 An attorney suspended for six months or less is automatically reinstated at the end of the period of suspension upon the filing of an affidavit of compliance with the provisions of the disciplinary order. An attorney suspended for more than six months or disbarred may not resume practice until reinstated by order of the court.

10.2 An attorney who has been disbarred may not apply for reinstatement until the expiration of five years from the effective date of the disbarment.

10.3 No petition for reinstatement may be filed within one year following an adverse determination on the attorney's petition for reinstatement.

10.4 Any attorney who has been disbarred by a district court must provide proof of reinstatement to that court or demonstrate the futility of making an application to the district court.

10.5 The Clerk refers petitions for reinstatement to the disciplinary panel. If the disciplinary panel is satisfied that reinstatement is appropriate based upon the findings of another court or otherwise, it will grant the petition. If the disciplinary panel is not so satisfied, the disciplinary panel may schedule a hearing by a special master on the petition. At the hearing, the petitioner has the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency, and learning in the law required for admission to practice before this court and that his or her resumption of the practice of law will

not be detrimental to the integrity and standing of the bar or to the administration of justice, or contrary to the public interest. The special master must submit a report and recommendation to the disciplinary panel who will act upon the petition.

10.6 Reinstatement may be on such terms and conditions as the disciplinary panel directs. If the attorney has been disbarred or suspended for five years or more, this may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice.

10.7 A condition precedent to reinstatement under this rule is payment of the prevailing attorney admission fee. That requirement is in addition to any other terms and conditions imposed by the disciplinary panel.

Section 11. Service of Papers and Other Notices.

11.1 Service of an order to show cause instituting formal disciplinary proceedings will be made by personal service or by certified mail addressed to the attorney at the last known office address as shown on the records or in the most recent pleading or other document filed by the attorney in the course of any proceeding before this court. Service also will be deemed complete if the notice is addressed to counsel for the attorney.

Section 12. Payment of Fees and Costs.

12.1 At the conclusion of any disciplinary investigation or prosecution, if any, under these rules, disciplinary counsel may make application to this court for an order awarding reasonable attorney's fees and reimbursing costs expended in the course of such disciplinary investigation or prosecution. The court may require the attorney to pay such reasonable attorney's fees and costs.

Section 13. Access to Disciplinary Information.

13.1 Subject to 13.3 of this plan, orders to show cause why discipline should not be imposed, orders imposing discipline, records created by the disciplinary panel, are public records and are accessible to the public in the same manner as other records of the court.

13.2 Subject to 13.3 of this plan, hearings before the special master are open to the public.

13.3 The court or the disciplinary panel may, upon application and for good cause, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order.