FEDERAL RULES OF APPELLATE PROCEDURE

Effective December 1, 2024~~3~~

And

TENTH CIRCUIT RULES

Effective January 1, 2025~~4~~

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, 2025~~4~~, and apply to all proceedings that have not been completed before that date.

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—or the appealable order—from which the appeal is taken; 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) The notice of appeal encompasses all orders that, for purposes of appeal, merge into the designated judgment or appealable order. It is not necessary to designate those orders in the notice of appeal.

(5) In a civil case, a notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Federal Rule of Civil Procedure 58, if the notice designates:

(A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or

(B) an order described in Rule 4(a)(4)(A).

(6) An appellant may designate only part of a judgment or appealable order by expressly stating that the notice of appeal is so limited. Without such an express statement, specific designations do not limit the scope of the notice of appeal.

(7) An appeal must not be dismissed for informality of form or title of the notice of appeal, for failure to name a party whose intent to appeal is otherwise clear from the notice, or for failure to properly designate the judgment if the notice of appeal was filed after entry of the judgment and designates an order that merged into that judgment.

(8) Forms 1A and 1B in the Appendix of Forms are suggested forms of notices of appeal.

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the filing of a notice of appeal by sending 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. 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 sends copies, with the date of sending. 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; Apr. 25, 2019, eff. Dec. 1, 2019; Apr. 14, 2021, eff. Dec. 1, 2021.)

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 is docketed in this court, 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~~ an appeal is docketed in this court, 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 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 with the circuit clerk and serve it 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; Apr. 25, 2019, eff. Dec. 1, 2019.)

10th Cir. R. 5

5.1 **Executive summary.** In addition to the contents required by Federal Rule of Appellate Procedure 5(b)(1), the petition must begin with a concise summary of the compelling reason(s) an interlocutory appeal should be permitted. The reason(s) must be articulated in terms of the considerations—as set forth in the relevant federal statute or circuit precedent—that guide this court's discretion in deciding whether to allow a permissive appeal. The summary shall not exceed 400 words

and shall not count against the word limit set forth in Federal Rule of Appellate Procedure 5(c).

5.2 Attachments. Apart from the attachments required by Federal Rule of Appellate Procedure 5(b)(1)(E), no other materials shall be submitted with a petition for permission to appeal. Responses and replies shall not include any attachments. If a party refers to lower court materials not attached to the petition, citation to those materials shall be by docket number, document title, and date of filing.

5.3 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 2,600 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).

5.4 Hard copies not required. Hard copies of petitions, responses and replies are not required.

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.

A motion for a stay or an injunction pending appeal must include a clear statement of the specific relief requested. No motion 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~~five days 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~~ docketing of the appeal or the filing of a motion for release in this court, 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. A reply is permitted only by order of the court.

9.4 Length.

Memorandum briefs filed under this rule shall be no longer than 5,200 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).

9.5 Hard copies.

No hard copies of the memorandum briefs or appendix are required.

9.6 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 or is an attorney representing himself or herself, the record on appeal is presented in an electronic appendix prepared by counsel or the pro se attorney 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 is docketed in this court.

(B) Ordering transcripts.

(1) Order form. Within 14 days after ~~an~~the appeal is docketed in this court, any necessary transcripts must be ordered using this court's transcript order form. The transcript order form must be ~~made on a form provided by the district court and must be~~ filed in the district court with a copy filed in the circuit court. 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 is docketed in this court.

(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 recording 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 judgment, when one has been entered;

(8) the notice of appeal; and

(9) 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 10.4(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;
- nonfinal pretrial reports or orders; and
- suggestions for voir dire.

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 the docketing of ~~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. R. 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.

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.

(C) District Court Ruling. Consistent with the Rules Governing Proceedings Under 28 U.S.C. § 2254 or § 2255 the district court shall, in every applicable case, issue or deny a certificate of appealability when it enters a final order adverse to the applicant.

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.

(4) ~~Counsel must provide the court with 7 h~~Hard copies of ~~all~~ electronically filed motions for issuance of a certificate of

appealability, responses, and replies are required only if ordered by the court. ~~The required hard copies must be received in the Clerk's Office within 5 business days of the electronic filing of the motion, response, or reply.~~

(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 the circuit 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 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 Fees in Appeals Subject to the Prison Litigation Reform Act.

All prisoners bringing civil actions or appeals subject to the Prison Litigation Reform Act 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 Rules 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. The provisions on remote electronic access in Federal Rule of Civil Procedure 5.2(c)(1) and (2) apply in a petition for review of a benefits decision of the Railroad Retirement Board under the Railroad Retirement Act.

(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 if it was served other than through the court's electronic-filing system:

(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; Apr. 25, 2019, eff. Dec. 1, 2019; Apr. 11, 2022, eff. Dec. 1, 2022.)

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 circuit 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 persons represented by counsel of record. The court does not accept filings via email by any person absent the express permission of the clerk or chief deputy clerk, which will be given in only the most extraordinary and exigent circumstances.

All electronically filed pleadings shall be submitted in compliance with the procedures adopted by the court and set forth in the CM/ECF User Manual. During the electronic-filing process, ECF users will certify compliance with the court's ECF requirements. Consistent with Federal Rule of Appellate Procedure 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 CM/ECF 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 and nonelectronic service; proof of service.

(A) Electronic service of electronically filed papers. Except for case-initiating petitions filed under Federal Rules of Appellate Procedure 5, 15, and 21, which must be served in accordance with Federal Rule of Appellate Procedure 25(c)(1) or (c)(2)(B), ~~In accordance with Federal Rule of Appellate Procedure 25(c)(2),~~ electronic filers may use the court's electronic-filing system to serve papers, including an appendix, on registered ECF users and other parties who have consented to electronic service in the particular case. Please see the court's CM/ECF User Manual at Section II(E) for information regarding service requirements.

Proof of service is not required for service via the court's electronic-filing system.

(B) Nonelectronic service of electronically filed papers. Electronic filers must continue to serve parties who are not registered ECF users and have not consented to electronic service in the case via nonelectronic means. *See* Fed. R. App. P. 25(c)(1). Proof of service is required for all papers served other than through the court's electronic-filing system.

(C) Electronic service by the Clerk on behalf of nonelectronic filers. When the Clerk dockets a paper submitted by a nonelectronic filer, for purposes of Federal Rule of Appellate Procedure 26(c) the notice of docket activity (NDA) issued via the court's ECF system shall constitute electronic service on registered ECF users and other parties who have consented to electronic service in the case. The nonelectronic filer need not include proof of service for service made via the NDA.

(D) Nonelectronic service by nonelectronic filers. Nonelectronic filers are responsible for serving papers in accordance with Federal Rule of Appellate Procedure 25(c)(1) upon parties who are not registered ECF users and have not consented to electronic service in the case. Nonelectronic filers must include a certificate of service that identifies the method of service used for all service made other than via the NDA.

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 bankruptcy procedure. *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(B) or 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 Rule 27.1.

The motion to seal should 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 26.1. Disclosure Statement

(a) Nongovernmental Corporations. Any nongovernmental corporation that is a 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. The same requirement applies to a nongovernmental corporation that seeks to intervene.

(b) Organizational Victims in Criminal Cases. In a criminal case, unless the government shows good cause, it must file a statement that identifies any organizational victim of the alleged criminal activity. If the organizational victim is a corporation, the statement must also disclose the information required by Rule 26.1(a) to the extent it can be obtained through due diligence.

(c) Bankruptcy Cases. In a bankruptcy case, the debtor, the trustee, or, if neither is a party, the appellant must file a statement that:

(1) identifies each debtor not named in the caption; and

(2) for each debtor that is a corporation, discloses the information required by Rule 26.1(a).

(d) Time for Filing; Supplemental Filing. The Rule 26.1 statement must:

(1) be filed 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;

(2) be included before the table of contents in the principal brief; and

(3) be supplemented whenever the information required under Rule 26.1 changes.

(e) Number of Copies. If the Rule 26.1 statement is filed before the principal brief, or if a supplemental statement is filed, 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.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2019, eff. Dec. 1, 2019.)

10th Cir. R. 26.1

(A) Filing and Amending the Disclosure Statement Required by Federal Rule of Appellate Procedure 26.1.

Within 14 days after an appeal or other proceeding is ~~filed~~docketed in this court, or upon filing a motion, response, answer, or amicus brief in the court of appeals, whichever occurs first, counsel for any party or movant must file the disclosure statement required by Federal Rule of Appellate Procedure 26.1 (*see* 10th Cir. Form 4). The disclosure statement is a separate filing—it need not be included in a party's principal brief, and hard copies are not required. If any of the information required by Federal Rule of Appellate Procedure. 26.1 changes, counsel must promptly file an amended disclosure statement.

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~~ Hard copies not required.

Attorneys and pro se parties filing electronically need not provide the court with ~~paper~~ hard 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 and dismiss the entire appeal. Any request for dismissal of fewer than all claims or issues in an appeal based upon an appeal waiver (as opposed to a request for dismissal of an entire appeal), should be asserted in the merits brief and not by a preliminary motion filed under this rule.

(2) Contents.

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

(b) A motion under Rule 27.3(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) If a~~A~~ motion to dismiss the entire case for lack of appellate jurisdiction or pursuant to a claims-processing deadline is filed, it must be filed within 14 days after the appeal or other proceeding is docketed in this court, ~~under Rule 27.3(A)(1)(a) through (c) should be filed within 14 days after the notice of appeal is filed,~~ unless good cause is shown for later filing.

(b) If any other motion under Rule 27.3(A)(1)(a) through (c) is filed, it should be filed within 14 days after the appeal or other proceeding is docketed in this court, unless good cause is shown for later filing.

(c) If a~~A~~ motion under Rule 27.3(A)(1)(d) is filed, it must be filed within 20 days after:

(i) the district court's notice, pursuant to Rule 11.1, that the record is complete, or;

(ii) the district court's notice that it is transmitting the record pursuant to Rule 11.2.

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

(4) Responses and replies. If a party chooses to respond to a motion, the response must be filed within 14 days after the motion is served. The time to file a reply is governed by Federal Rule of Appellate~~.~~ Procedure 27(a)(4).

(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 Rule 27.3(A) or notice of action by the court under Rule 27.3(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. The time to file a reply is governed by Federal Rule of Appellate Procedure 27(a)(4).

(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.

(F) Additional ~~paper~~ hard copies of briefs and other materials. If a motion to certify is granted, the parties may be ordered to submit additional copies of the briefs, appendix, motion to certify, and any other materials required by the state supreme court.

27.5 Clerk authorized to act.

(A) Motions. Subject to review by the court, the Clerk is authorized to act for the court on any of the following matters, either sua sponte or on motion:

(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, 39.2, 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, continue, or abate cases;

(8) to withdraw or substitute counsel in a civil case or, after compliance with Rule 46.4, in a criminal case;

(9) by appellant to dismiss an appeal (in criminal and postconviction cases, *see* 10th Cir. R. 42.3), 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) for relief under Rule 30.2 or 30.3; or

(12) any other motion or matter the court may authorize.

(B) Opposed motions. If any motion for relief listed in Rule 27.5(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 3 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 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.

Federal Rule of Appellate Procedure 29(a)(2)-(4) and (6)-(8) govern amicus filings after the court has granted rehearing en banc. Proposed amicus briefs filed after the court has granted en banc rehearing may be no longer than one-half the maximum length permitted for any briefs ordered by the court.

29.2 Disclosure of all parties' positions.

Every motion filed under Federal Rule of Appellate Procedure 29 and this Rule must contain a statement of all parties' positions on the relief requested or why the moving party was unable to learn the parties' positions. Amici should make reasonable efforts to contact the parties well in advance of filing a motion for leave to file an amicus brief.

29.3 ~~Paper~~ Hard copies of amicus briefs.

~~Paper~~ Hard copies of amicus briefs ~~must be provided to the court in accordance with Rule 31.5~~are required only if ordered by the court.

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 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 or is an attorney representing himself or herself. *See* 10th Cir. R. 10.1. The remainder of this Rule does not apply to appeals in which the appellant is pro se or is 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~~A ~~single~~ hard copy of the electronic appendix is required only if ordered by the court ~~to the office of the Clerk~~. If a hard copy is ordered, it~~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.** The single required hard copy must be received in the office of the Clerk, along with the required number of hard copies of the opening brief, within 5 business days following issuance of notice from the Clerk's Office that the electronic filing is compliant. *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 who is represented by retained counsel, or who is an attorney representing himself or herself, 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* 10th Cir. R. 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 Rule 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) Cover; pagination. Each volume of an appendix must have a white cover with the information required by Federal Rule of Appellate Procedure 32(a)(2) and (b). The appendix must be consecutively paginated. However, volumes within a multi-volume appendix may be paginated independently. That is, while the appendix need not be paginated consecutively across multiple volumes, each volume must be paginated consecutively. Citations to the appendix must make clear the volume and page cited.

(2) Index or table of contents. All appendices must include an index or table of contents of documents with appropriate volume and page numbers noting where the documents appear. If the appendix consists of multiple volumes, each volume must include an index or table of contents.

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

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

(5) 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.

(6) 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. If a hard copy of the appendix is ordered, t~~T~~he 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~~ ; and the use of three-ring binders is prohibited.

(7) 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 Rule 25.6. Pretrial services reports, presentence reports, and statements of reasons 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 Rule 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 comply with Rule 30.1(D)(1)-(7), and shall be filed electronically and served in the same manner as is described in Rule 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 party may move to be exempt from the electronic appendix requirement by filing a motion at least 7 days prior to the due date for the principal brief and appendix. Except as provided in Rule 30.1(B)(2) for Social Security cases, if an exemption is granted, two hard copies of the required appendix must be filed with the Clerk within 5 business days following issuance of notice that the electronic brief ~~and appendix are~~is compliant. A hard copy of the appendix must be served on all other parties to the appeal within that same 5 business day period.

(B) **Particular documents.** If certain record materials cannot be readily copied, put in electronic form, or electronically filed, a party may seek to exempt those materials from the electronic appendix by filing a motion at least 7 days prior to the due date for the principal brief and appendix.

(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 Rule 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 Rule 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~~Hard copies and service of briefs.

~~Counseled parties, including amicus curiae and attorneys representing themselves, must provide the court with 7 h~~Hard copies of ~~all~~ electronically filed briefs ~~filed electronically~~are required only if ordered by the court. ~~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 5 business days following issuance of notice that the electronic filing is compliant.~~ 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 to pro se parties who have consented to electronic service or received permission to file electronically. 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:

- cover page;
- disclosure statement;
- table of contents;
- table of citations;
- statement regarding oral argument;
- addendum containing statutes, rules, or regulations;

- certificates of counsel;
- signature block;
- 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; Apr. 25, 2019, eff. Dec. 1, 2019; Apr. 2, 2024, eff. Dec. 1, 2024.)

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. Footnote font size should be the same as that used in the body of the brief.

(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 Rule 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. While citation to published authority is preferred, citation of unpublished decisions is permitted as authorized 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 for which a Federal Appendix cite is unavailable must include an "unpublished" parenthetical. *E.g.*, *United States v. Wilson*, No. 13-2047, 2015 WL 3072766 (10th Cir. Oct. 31, 2016) (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 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.

(a) Timing. Except in an emergency, a motion to postpone must be made more than 20 days before the scheduled argument date.

(b) Additional requirements. ~~In addition, a~~Any motion ~~filed~~ to postpone must include:

(i) opposing counsel's position on postponement;

(ii) all parties' positions on ~~and must address~~ whether the ~~appeal~~ case is suitable for submission on the briefs; and

(iii) a statement of all counsel's availability for argument during the next regularly scheduled term of court.

(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 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 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~~ (Transferred to Rule 40)

~~**(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. The length limits in Rule 35(b)(2) apply to 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; Apr. 27, 2020, eff. Dec. 1, 2020; Apr. 2, 2024, eff Dec. 1, 2024.)

10th Cir. R. 35 – Transferred to 10th Cir. R. 40

~~**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 Hard copies.

Hard copies of petitions for en banc consideration are not required.

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 40. ~~Petition for~~ Panel Rehearing; En Banc Determination

(a) **A Party's Options.** A party may seek rehearing of a decision through a petition for panel rehearing, a petition for rehearing en banc, or both. Unless a local rule provides otherwise, a party seeking both forms of rehearing must file the petitions as a single document. Panel rehearing is the ordinary means of reconsidering a panel decision; rehearing en banc is not favored.~~**Time to File; Contents; Response; 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) Response.** Unless the court requests, no response to a petition for panel rehearing is permitted. Ordinarily, rehearing will not be granted in the absence of such a request. If a response is requested, the requirements of Rule 40(b) apply to the response.~~

~~**(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.~~

(b) Content of a Petition.

(1) Petition for Panel Rehearing. A petition for panel rehearing must:

(A) state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended; and

(B) argue in support of the petition.

(2) Petition for Rehearing En Banc. A petition for rehearing en banc must begin with a statement that:

(A) the panel decision conflicts with a decision of the court to which the petition is addressed (with citation to the conflicting case or cases) and the full court's consideration is therefore necessary to secure or maintain uniformity of the court's decisions;

(B) the panel decision conflicts with a decision of the United States Supreme Court (with citation to the conflicting case or cases;

(C) the panel decision conflicts with an authoritative decision of another United States court of appeals (with citation to the conflicting case or cases); or

(D) the proceeding involves one or more questions of exceptional importance, each concisely stated.

(c) When Rehearing En Banc May Be Ordered. On their own or in response to a party's petition, 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 reheard en banc. Unless a judge calls for a vote, a vote need not be taken to

determine whether the case will be so reheard. Rehearing en banc is not favored and ordinarily will be allowed only if one of the criteria in Rule 40(b)(2)(A)-(D) is met.

(d) Time to File; Form; Length; Responses; Oral Argument.

(1) Time. Unless the time is shortened or extended by order or local rule, any petition for panel rehearing or rehearing en banc must be filed within 14 days after judgment is entered—or, if the panel later amends its decision (or rehearing or otherwise), within 14 days after the amended decision is entered. 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 or of an amended decision 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 dueties 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 that person's petition.

(2) Form of the Petition. The petition must comply in form with Rule 32. Copies must be filed and served as Rule 31 prescribes, except that the number of filed copies may be prescribed by local rule or altered by order in a particular case.

(3) Length. Unless the court or a local rule allows otherwise, the petition (or a single document containing a petition for panel rehearing and a petition for rehearing en banc) must not exceed:

(A) 3,900 words if produced using a computer; or

(B) 15 pages if handwritten or typewritten.

(4) Response. Unless the court so requests, no response to the petition is permitted. Ordinarily, the petition will not be granted without such a request.

If a response is requested, the requirements of Rule 40(d)(2)-(3) apply to the response.

(5) Oral Argument. Oral argument on whether to grant the petition is not permitted.

(e) If a Petition is Granted. If a petition for panel rehearing or rehearing en banc is granted, the court may;

(1) Dispose of the case without further briefing or argument;

(2) order additional briefing or argument;

(3) issue any other appropriate order.

(f) Panel's Authority After a Petition for Rehearing En Banc. The filing of a petition for rehearing en banc does not limit the panel's authority to take action described in Rule 40(e).

(g) Initial Hearing En Banc. On its own or in response to a party's petition, a court may hear an appeal or other proceeding initially en banc. A party's petition must be filed no later than the date when its principal brief is due. The provisions of Rule 40(b)(2), (c), and (3)(2)-(5) apply to an initial hearing en banc. But initial hearing en banc is not favored and ordinarily will not be ordered.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 2011, eff. Dec. 1, 2011; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 27, 2020, eff. Dec. 1, 2020; Apr. 2, eff. Dec. 1, 2024.)

10th Cir. R. 40

[With the consolidation of Federal Rules of Appellate Procedure 35 and 40, Tenth Circuit Rules 35 and 40 must also be consolidated. Given the extensive revisions necessary to consolidate the rules, a redline is not useful. Instead, the text of the proposed consolidated rule (i.e., the new Tenth Circuit Rule 40), and the current versions of Tenth Circuit Rules 35 and 40, are included in a separate document.]

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.

Hard copies of petitions for rehearing are not required.

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 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~~docketed in this court, 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.

(D) Required Notification of Suspension or Disbarment. An attorney admitted to practice in this court who is disbarred or suspended by the bar of a state or another court must file with the Clerk a copy of that disciplinary order within 30 days. For purposes of this rule, an attorney who resigns from the bar of a state or court while under investigation for alleged misconduct is deemed disbarred by that state or court, and the attorney's resignation, along with any acknowledgment or acceptance of that resignation by the state or court, is deemed an order of disbarment.

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. § 2241, § 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 Rule 46.4 counsel must file, at a minimum, an entry of appearance and docketing statement.

(B) Additional mMotion rRequirement for CJA counsel. All counsel appearing in this court pursuant to an Criminal Justice Act appointment made originally in the district court ~~under the Criminal Justice Act~~ must file a motion, within 14 days after the appeal or other proceeding is docketed in this court~~of case opening~~, seeking either a continued appointment for the appeal or permission to withdraw.

(1) All motions to withdraw must comply with Rule 46.4(A).

(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.

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.

(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 Rule 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 Rule 46.7(C); and

(b) a copy of the law school certification required by Rule 46.7(C)(3).

(B) Student participation.

(1) Briefs. A law student who has entered an appearance in a case under Rule 46.7(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 Rule 46.7(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.

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 is docketed in this court. 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 is docketed in this court. 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 in this court. 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 statutory 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 the 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

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*

Pursuant to Volume 6, Chapter 5, § 530.70.60(a)(1)(A) of the *Guide to Judiciary Policy*, "[t]ranscripts for appealed cases must be delivered within 30 days from the date order or from the date satisfactory payment arrangements have been made." Accordingly, ~~N~~no transcript order will be deemed complete for purposes of calculation of delivery dates until satisfactory ~~financial~~ payment 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. ***Mandatory Fee Reduction***

In accordance with the Judicial Conference policy regarding the late delivery of transcripts for cases on appeal as set forth in Volume 6, Chapter 5, § 530.70.60(b)(1)(A) of the *Guide to Judiciary Policy* the following fee reductions apply:

(a) For a transcript not delivered to the ordering party and filed on the district court docket within 30 days after satisfactory payment arrangements have been made, the reporter may charge only 90 percent of the prescribed fee.

(b) For a transcript not delivered to the ordering party and filed on the district court docket within 60 days after satisfactory payment arrangements have been made, the reporter may charge only 80 percent of the prescribed fee.

(c) In the event the fee has already been received, the court reporter must disgorge the amount of the mandatory reduction.

(d) The circuit Clerk may waive the mandatory fee reduction as set forth in Section 5 of this Plan.

4. ***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.

45. ***Waiver of Mandatory Fee Reduction***

The circuit 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~~6. *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~~7. *Court Reporters' Manual*

~~The *Court Reporters' Manual*~~Judicial Conference policy governing court reporting, as set forth in Volume 6 of the *Guide to Judiciary Policy* is incorporated into ~~these guidelines~~ this Plan. Reporters in this circuit are expected to know and abide by the ~~rules, regulations and policies contained in it~~ applicable provisions of the *Guide*.

~~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~~8. *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