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To: All Interested Parties

Date: November 24, 2015

Re: *10th Circuit Local Rules Changes for 2016*

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On January 1, 2016 changes to the 10th Circuit local rules will take effect. All of the changes are outlined below.

Litigants and counsel are encouraged to call the clerk's office at 303-844-3157 with any questions. Questions may also be directed via email to [clerk@ca10.uscourts.gov](mailto:clerk@ca10.uscourts.gov).

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## *2016 10th Circuit Local Rules*

### **10th Cir. R. 8.3(A)** **(addressing applications for stay made to a single judge)**

This change removes the language at the end of the former rule which stated applications for stay made to single judges were disfavored "except in an emergency." Given technical advancements, all emergency motions can be processed centrally.

### **10th Cir. R. 9.1(C)** **(regarding application of the Rule 46.3(B) motion requirement to bail appeals)**

This change modifies the rule to make clear the new motion practice announced in R. 46.3(B) does not apply to bail appeals.

### **10th Cir. R. 17.3** **(regarding filing an appendix in agency cases)**

This change modifies the rule to make clear that when an agency record is filed, the parties need not submit a separate appendix.

**10th Cir. R. 25.6**  
**(addressing CM technical failures)**

This new rule addresses procedures in the event of a CM/ECF system failure.

**10th Cir. R. 27.1**  
**(location of the “confer and consent” provision of the local rule on motions)**

The court’s “confer and consent” rule has been moved to the beginning of local rule 27 for greater visibility. In addition, the rule now makes clear CJA counsel need not confer on motions filed to withdraw or for continued appointment.

**10th Cir. R. 30.1(D)(6)**  
**(addressing motions to seal documents)**

This local rule addresses the submission of sealed materials. The change to the rule requires parties submitting materials under seal (except for presentence reports, which are exempt) to file a motion to do so. The change is made in accord with circuit case law emphasizing the presumption in favor of providing access to judicial records. *See Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey*, 663 F.3d 1124, 1135-1136 (10th Cir. 2011).

**10th Cir. R. 31.5**  
**(addressing the number of hard copies required for briefs)**

This modification adds a specific clause (as a reminder) regarding the court’s already-existing requirement that 7 hard copies of briefs must be received in the clerk’s office within 2 business days of the electronic filing.

**10th Cir. R. 33.2**  
**(removal of the requirement to have a private settlement discussion)**

This rule has been removed.

**10th Cir. R. 46.3(B) and R. 46.4(B)(1)**  
**(incorporating the new motion requirement from the amended CJA Plan adopted effective July 8, 2015)**

This section memorializes the new motion requirement created by virtue of the court’s amendment of the circuit Criminal Justice Act Plan in July of 2015. In addition, please note the language added to Rule 46.4(B)(1), which makes clear the new requirement is not a substitute for filing a motion to withdraw, as appropriate, in *Anders* cases. In addition, the court’s decision in *United States v. Cervantes*, 795 F.3d 1189 (10th

Cir. 2015) has been incorporated into the rule. Finally, Addendum I of the rules, which is a copy of the CJA Plan, has been updated.

### **Docketing Statement Form**

The docketing statement form has been updated to include questions regarding conditional cross appeals. The two new questions state:

- 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).

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- 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).

### **Addendum IV**

#### **(removal of the Rules for Judicial Misconduct and Judicial Disability Proceedings)**

Because they are now available on the court's website, the *Rules on Judicial Misconduct* have been deleted as an attachment to the Rules.