

# MEMO

To: All Interested Parties

Date: November 27, 2017

Re: *10th Circuit Local Rules Changes for 2018*

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The 10th Circuit local rules changes for 2018 have been approved and posted. Please see below for information regarding the changes. In addition, please note that effective December 1, 2017 two corrections will also be applied to the Fed. R. App. P. and they are outlined below. There are no major changes to the Fed. R. App. P. for 2018.

## *Amendments to the Federal Rules of Appellate Procedure*

For 2018 (to take effect December 1, 2017), the only impact to the Fed. R. App. P. comes in Rule 4(a)(4)(B)(iii), which addresses fees when an amended notice of appeal is filed (there is no additional fee in that circumstance). The change for 2018 re-inserts a sentence confirming that no fees are due. It was deleted accidentally when the rules were published nationally in 2009. The Tenth Circuit had already added the language back in, so as a practical matter this is not a change for us.

In addition, please note Fed. R. App. P. 28.1(e)(3) has been deleted. This was a scrivener's error (the rule addressed certificates of compliance—it was not a substantive provision) and should have been deleted last year.

## *Proposed Changes to the 10th Circuit Local Rules*

In addition to updating the verbiage of the local rules generally, and also updating citations to the ECF User Manual, we have updated several rules for clarity and to confirm procedures. Those changes are outlined below.

### **10th Circuit Rules 3.4(A) and 9.1(D)**

These updates clarify and confirm that docketing statements are not required in bail appeals (because they are expedited proceedings).

### **10th Circuit Rule 10.1(B)(1) Regarding Ordering Transcripts**

This addition reminds Criminal Justice Act counsel that when ordering transcripts they must make appropriate payment arrangements in the eVoucher system. The court converted to eVoucher from a paper system in 2015, and counsel must now take extra steps to pay for transcripts.

### **10th Circuit Rules 10.2(C), 11.2(A), and 30.1 Regarding Pro Se Records**

These rules have been updated to provide cross references and to update language.

### **10th Circuit Rule 28.3 Regarding Disfavored Practices in Briefs and the Use of *Passim***

This update adds a new rule 28.3(C), which discourages the use of *passim* as a citation form. That revision also prompted a reorganization of prior Rule 28.3 to include in one section all disfavored practices (including filing motions to exceed word counts and incorporation by reference).

### **10th Circuit Rule 30.1(D) Regarding the Form of the Appendix**

Language was added to this rule to highlight the section of the ECF Manual referencing appendices, and also to add a requirement in part (D)(5) directing counsel to include additional cover pages in multivolume appendices. Rule 30.1(D)(1) was also amended, and it now includes a requirement that counsel include an index in each volume of any multivolume appendix. In addition, language was added to the rule to remind counsel that motions to seal materials do not need to be filed under seal unless there is a particular reason or need to do so (that is, if the motion does not disclose sealed material it need not be sealed).

### **10th Circuit Rules 35.2(B) and 40.2 Regarding Attachments to Panel and En Banc Rehearing Petitions**

These rules were amended to state that if a party seeks to attach materials to a Petition for Rehearing going beyond the court's decision and judgment a motion must be filed which "identifies the attachments with particularity and [provides] the reason for [the attachments'] inclusion."

### **10th Circuit Rule 35.7 Regarding Matters Not Considered En Banc**

This rule outlines those interim and procedural orders and rulings which the court will not consider en banc (including stay orders, injunctions pending appeal, appointment of counsel orders and *ifp* orders, among others). The language of the rule has been updated.

## **10th Circuit Rule 46.4(A)(5)(b) Regarding Motions to Withdraw in Criminal Cases**

Local rule 46.4 governs filing motions to withdraw in criminal cases. The proposed change addresses situations where retained counsel has the case in district court, but on appeal there is a desire for appointed counsel under the CJA. The current rule requires only that the retained lawyer *file* a motion for *ifp* or seeking CJA eligibility in the district court before seeking withdrawal in this court. The change makes clear there must be an actual *finding* before counsel may seek withdrawal. That is, moving forward a retained lawyer could not properly seek the appointment of CJA counsel for the client in this court until the district court has ruled he or she is eligible.