

10th Circuit Ct. of Appeals Briefing and Appendix Checklists for Counseled Cases
Updated to Comply with 2020 Rules
1/2/2020

Briefing Checklist

The checklist below includes all the requirements (in both the Federal Rules of Appellate Procedure and 10th Circuit local rules) for filing a *primary* brief (please note memorandum briefs, such as those filed on jurisdictional issues, do not need to comply with all these requirements). The checklist begins as a brief would begin—at the cover page—then moves through the requirements from there. If you have questions please don't hesitate to contact the clerk's office at 303-844-3157.

- Is the cover page the correct color (for the required hard copies)? *See* Fed. R. App. P. 32(a)(2) and Fed. R. App. P. 28.1(d).
 - a. The appellant's and the first cross-appeal's brief is blue;
 - b. The appellee's and second cross-appeal's brief is red;
 - c. The third brief on cross-appeal is yellow;
 - d. The appellant's reply and the fourth brief on cross-appeal's is grey;
 - e. Amicus and intervenor covers are green.

- Is the brief in either 13- or 14-point font (14-point font is preferred)? *See* 10th Cir. R. 32(A).

- Is your brief double-spaced except for quotations and footnotes? *See* Fed. R. App. P. 32(a)(4).

- Does the cover page of your brief contain the name of the district of origin and the name of the judge (or agency) that entered the underlying judgment (in addition, have you included the district court case number as well)? *See* 10th Cir. R. 28.2(C) and Fed. R. App. P. 32(a)(2).

- Does the cover page of your brief include a statement as to whether or not oral argument is requested? *See* 10th Cir. R. 28.2(C)(2). If argument is requested, the brief must contain a statement of reasons why argument is necessary (generally that statement must follow the brief's conclusion).

- Is your brief single-sided? *See* Fed. R. App. P. 32(a)(1)(A).

- Does the brief contain a disclosure statement if one is required? *See* Fed. R. App. P. 26.1(a). In addition, if your appeal is based on diversity jurisdiction, have you included the additional disclosure required by 10th Cir. R. 26.1(A)?
- Does the brief contain a table of contents, including page references? *See* Fed. R. App. P. 28(a)(2). Please note the table of contents must list all attachments to the brief. *See* 10th Cir. R. 28.2(C)(5).
- Does the brief contain a table of authorities including cases, statutes and other authorities? *See* Fed. R. App. P. 28(a)(3).
- Does the brief contain a statement of prior or related appeals (including prior state court matters which may be relevant)? *See* 10th Cir. R. 28.2(C)(3). The “prior and related” cases statement should be included following the table of authorities/cases. Please note a statement in the negative is required if there are no prior or related cases.
- If applicable, does your brief include a glossary of terms following the table of cases/authorities? *See* 10th Cir. R. 28.2(C)(4).
- If you are submitting a primary brief in a case with multiple appellants or appellees, and the parties on that side intend to file separate briefs, have you included a statement (following the table of cases/authorities) stating the reasons a separate brief is necessary? *See* 10th Cir. R. 31.3(B). Please note in this regard that even if multiple appellees’ briefs are filed the appellant may only file a single reply except upon motion to the court seeking an exemption. *See* 10th Cir. R. 31.3(A).
- If you are the appellant, does your brief include a jurisdictional statement which satisfies the requirements of the rules? *See* Fed. R. App. P. 28(a)(4). If the basis for jurisdiction is 28 U.S.C. § 1332 or diversity, does your brief include a separate disclosure statement identifying its members and their states of citizenship? *See* 10th Cir. R. 26.1(A).
- If you are the appellant, does your brief include a statement of the issues, a statement of the facts that includes a recitation of the relevant procedural history, and a summary of the argument before the actual argument section? *See* Fed. R. App. P. 28(a)(5) through (7).
- If you are the appellant, does your brief contain an argument section including, for each issue raised, (1) a precise reference, with appendix or record citation to the decision under review (*See* Fed. R. App. P. 28(a)(8)(A); 10th Cir. R.

28.1(A)(appendix citations) or 28.1(B)(record on appeal citations)); **and** (2), a statement of the applicable standard of review. *See* Fed. R. App. P. 28(a)(8)(B)?

- If you are the appellant, does your brief include “a short conclusion stating the precise relief sought”? *See* Fed. R. App. P. 28(a)(9).
- If you are the appellee, have you reviewed Fed. R. App. P. 28(b) to determine which parts of the Rule 28 requirements should be included in your brief?
- If you are the appellant, is a copy of the decision under review (that is, copies of “all pertinent written findings, conclusions, opinions or orders” including a magistrate’s Report and Recommendation if applicable) attached to the opening brief? *See* 10th Cir. R. 28.2(A)(1)? In this regard, appellants/petitioners in social security and immigration cases should take special note of 10th Cir. R. 28.2(A)(3) and (4). Is the final judgment attached? *See* 10th Cir. R. 28.2(A)(5). Please note that all attachments to the brief must be identified in the Table of Contents. *See* 10th Cir. R. 28.2(C)(5).
- If you are the appellee, and the appellant has not attached the rulings prescribed in 10th Cir. R. 28.2(A) have you done so? *See* 10th Cir. R. 28.2(B).
- Does your brief contain, at the conclusion, a certificate of compliance including verification of the applicable type volume limitations? *See* Fed. R. App. P. 32(g)(1), excluding the items listed under Fed. R. App. P. 32(f) and 10th Cir. R. 32(B) in the word count? Please note that word and page limits for briefs have changed, effective December 1, 2016. *See* Fed. R. App. P. 32(a)(7) and Fed. R. App. P. 28.1(e). *See* also Appendix A to the Fed. R. App. P.
- Does your brief include, at the end, **separate certifications** that **(1)** all required privacy redactions have been made (*See* 10th Cir. R. 25.5 and *ECF User Manual*, Section II, Part J(a), page 11), **(2)** that the hard copies to be submitted to the court are exact copies of the version submitted electronically (*ECF User Manual*, Section II, Policies and Procedures for Filing Via ECF, Part J(b), page 11), and **(3)** that the electronic submission was scanned for viruses with the most recent version of a commercial virus scanning program, and is free of viruses (*ECF User Manual*, Section II, Part J(c), page 11)?
- Have you signed the brief (please note electronic signatures are proper under the rule but must include an s/ plus your name)? *See* 10th Cir. R. 46.5(A); 10th Cir. R. 46.5(C), and *ECF User Manual*, Section II, Part I, page 10.

- Does your brief include a separate and proper certificate of service? *See* Fed. R. App. P. 25(d) and 10th Cir. R. 25.4.
- Is the hard copy of your brief (which you will forward to the clerk's office after your electronic brief is deemed compliant—please note seven copies are required) securely bound and will it lie reasonably flat when opened? *See* Fed. R. App. P. (a)(3).
- Have you made arrangements to have seven hard copies of the brief forwarded to the clerk's office within five business days of the court issuing notice that your electronic brief is compliant? *See* 10th Cir. R. 31.5. Please note in this regard that the hard copies should be *received* in the clerk's office in five business days of the court issuing notice that the electronic brief is compliant and has been accepted for filing. *See ECF User Manual*, Section III, Part E, pages 17-18.
- Effective January 1, 2015, appendices must be submitted electronically. *See* 10th Cir. R. 30.1(A) through (E). In addition, one *hard copy* of any appendix filed must also be submitted to the court and received in the clerk's office within 5 business days of the court issuing notice that the electronic appendix has been accepted for filing (see the court's appendix checklist for additional information on filing appendices). *See* 10th Cir. R. 30.1(A)(2).
- Advisory Note:** Briefs may (but are not required to) contain hyperlinks to documents *already on the docket* or to *attachments to the brief* being filed. Consequently, if you plan on hyperlinking to an appendix, you must first file the appendix using the court's ECF system. Once the appendix is filed, you may then create hyperlinks in your brief to the docketed appendix volumes. *See ECF User Manual*, Section V, Part A, page 40 for instructions on creating hyperlinks.
- Advisory Note:** If you have insufficient time to create hyperlinks to the appendix at the time of the original electronic filing, but wish to do so later you may, by motion, request leave to file a substitute hyperlinked brief. Any motion in this regard must be filed via ECF within seven days of the original electronic filing of the brief. Submission of a substitute hyperlinked brief does not toll or otherwise impact any other filing deadlines.

Appendix Checklist*

The checklist below is applicable in all cases in which retained counsel appears for the appellant. Please note it is the responsibility of the appellant to submit the appendix but the appellee may file a supplemental appendix in accordance with 10th Cir. R. 30.2(A)(1).

Please note that effective January 1, 2015, all appendices accompanying briefs must be filed electronically. In addition, a single paper copy of the appendix (an exact replica of the electronic version) must be received in the clerk's office within five business days of the court issuing notice that the electronic appendix has been accepted for filing. Appendices must be in searchable (i.e. native) PDF format and must be bookmarked. The first volume of each appendix must include a certificate of service and additional certifications. 10th Cir. R. 30.1(A) through (F). In addition, see *ECF User Manual*, Section III, Part G, Page 19 for additional information.

- Generally, does your appendix comply with 10th Cir. R. 30.1(D)(1) through (6) as to form, and have you reviewed and considered 10th Cir. R. 30.1(B) with respect to content? Counsel filing appendices in social security cases should pay particular attention to 10th Cir. R. 30.1(B)(2).
- Does your appendix include, at the beginning, an index (which acts as a table of contents, *see* Fed. R. App. P. 30(d)) of all the documents, including in that index page numbers showing where in the appendix the particular documents appear? *See* 10th Cir. R. 30.1(D)(1).
- Is your appendix paginated consecutively? *See* 10th Cir. R. 30.1(D)(1).
- Are the documents in your appendix arranged in chronological order according to the filing date, and have you included a copy of the district court's docket entries as the first document in your appendix? *See* 10th Cir. R. 30.1(D)(3) and (4).
- Is your appendix single-sided? *See* Fed. R. App. P. 32(a)(1)(A)(*as made applicable to appendices via* Fed. R. App. P. 32(b)).

* If you are counsel representing an appellant under the Criminal Justice Act, no appendix is required. Instead, you are required to file a designation of record within 14 days. *See* 10th Cir. R. 10.3 and 10.4. In these cases, the record on appeal will be forwarded to this court electronically, and it will appear on the CM docket.

- Is your hard copy appendix securely bound and will each volume lie reasonably flat when opened? Are your volumes less than 300 pages? If necessary, have you divided your hard copy appendix into separate volumes to ensure each will lie reasonably flat when opened? Have you used spiral binding? *See* 10th Cir. R. 30.1(D)(5). Note: 3-ring binders are prohibited.
- Have you included certificates of service and compliance with your appendix (noting it was served via ECF)? *See* 10th Cir. R. 30.1(E). If you received an exemption on the electronic filing of your appendix, have you served a hard copy on all other parties to the appeal? *Id.*
- Have you submitted one (1) hard copy of the appendix to the clerk's office at the time the hard copies of the brief are submitted (noting the appendix must now be filed electronically)? Please note in this regard that the hard copies should be *received* in the clerk's office in five business days after the court issues notices that they electronic versions have been accepted for filing. *See* 10th Cir. R. 30.1, 30.1(A)(2). Also, *see ECF User Manual*, Section III, Part G, page 19.
- If you have sealed materials as part of your appendix, have you reviewed 10th Cir. R. 30.1(D)(6)? If an appendix includes sealed materials it must be accompanied by a separate motion to seal. Sealed volumes of the appendices must also be filed electronically as a separate PDF. Call the clerk's office at 303-844-3157 with any questions in that regard.
- Is the electronic version of your appendix searchable? *See* 10th Cir. R. 30.1(A) through (F). Also, *ECF User Manual*, Section III, Part G, Page 19.
- Is each volume of your electronic appendix bookmarked? *See ECF User Manual*, Section III, Part G, Page 19. Bookmarks should clearly identify the district court docket number, the pleading name, and the date of filing in the district court (for example: 10 Response to Motion: 2/10/2013).
- Is your electronic appendix an exact replica of the hard copy version (the number of paper copy volumes must be identical to the number of electronic volumes required filed; if you split a single volume into multiple parts when you file electronically, each part is considered a separate volume for purposes of the requirement that the number of hard copy volumes match the number of electronic volumes). *See* 10th Cir. R. 30.1(D)(5) and *ECF User Manual*, Section III, Part G, Page 19.