

## **MEMORANDUM**

**TO:** Interested Parties

**FROM:** Christopher M. Wolpert, Clerk of Court

**RE:** 2023 Revisions to the Tenth Circuit Rules

**DATE:** September 7, 2022



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Changes to the Tenth Circuit Rules will take effect on January 1, 2023. The court invites comments regarding those changes, which are summarized below. Comments may be submitted via email to [Clerk@ca10.uscourts.gov](mailto:Clerk@ca10.uscourts.gov) from September 7, 2022 through October 9, 2022. The final 2023 Tenth Circuit Rules will be posted to the court's website no later than December 1, 2022.

### **10th Cir. R. 6.1 – The Record in Bankruptcy Appeals**

This proposed revision clarifies local requirements for the preparation, transmission, and filing of the record/appendix in a bankruptcy appeal.

### **10th Cir. R. 8.1 – Motion for Stay or Injunction Pending Appeal**

This proposed revision requires a clear statement of the specific relief requested in a motion for stay or injunction pending appeal.

### **10th Cir. R. 10.2(B)(1) – Ordering Transcripts**

This proposed revision makes clear that a transcript order form must be filed in the district court with a copy in this court. The revision also strikes an unnecessary phrase regarding compliance with the applicable Federal Rule of Appellate Procedure.

### **10th Cir. R. 11.3(C) – Sealed Materials**

The proposed revision adds pretrial services reports, which are confidential pursuant to 18 U.S.C. § 3153(c)(1), to the list of materials that the district court must transmit under seal as part of the record on appeal.

## **10th Cir. R. 25.5 – Privacy Redaction Requirements**

This proposed revision is for consistency in the manner of reference to the federal rules of civil, criminal, and bankruptcy procedure.

## **10th Cir. R. 26.1(A) – Filing and Amending the Disclosure Statement Required by Federal Rule of Appellate Procedure 26.1**

The proposed revisions require a standalone Federal Rule of Appellate Procedure 26.1 disclosure statement to be filed at the beginning of the appeal with the other preliminary documents, rather than in the parties' briefs, in order to provide the court earlier access to information that might trigger recusal concerns. The proposed revisions also (1) remind counsel of their obligation to promptly amend the disclosure statement if the information required by Rule 26.1 changes during the course of an appeal; and (2) make clear that hard copies of disclosure statements are not required. An additional proposed revision relocates the "Disclosure Statement in Appeals Based on Diversity Jurisdiction" requirement from Tenth Circuit Rule 26.1 to Tenth Circuit Rule 28.2(C)(5). This proposed revision also refers to the required statement as a "Citizenship Statement" rather than a "Disclosure Statement" to more precisely describe the nature of the required statement.

## **10th Cir. R. 28.2(C)(6) – Additional Requirements for Principal Briefs**

As explained above, the proposed revision relocates the "Disclosure Statement in Appeals Based on Diversity Jurisdiction" requirement from Tenth Circuit Rule 26.1 to this rule because that requirement pertains to the contents of a party's brief, which is more appropriately addressed here. The proposed revision also refers to the required statement as a "Citizenship Statement" rather than a "Disclosure Statement" to more precisely describe the nature of the required statement.

## **10th Cir. R. 30.1(D)(1) – Pagination of Appendix**

The proposed revision removes the recently enacted requirement to begin appendix pagination with the cover page, which does not function as intended with multi-volume appendices, and is not compatible with CM/ECF's "create-an-appendix" functionality.

## **10th Cir. R. 30.1(D)(7) – Sealed Documents in an Appendix**

Consistent with the proposed change to Rule 11.3(C), the proposed revision to this rule includes pretrial services reports in the list of sealed record materials that do not require a sealing motion because they are presumptively confidential.

## **10th Cir. R. 42.3 – Voluntary Dismissal of a Criminal/Post-Conviction Appeal**

In light of the new Fed. R. App. P. 42(d), which expressly permits local requirements to confirm that a defendant has consented to the dismissal of an appeal in a criminal case, this proposed revision moves the pre-existing local requirements from Tenth Circuit Rule 46.3(C), which speaks to the obligations of counsel who practice here, to a new Tenth Circuit Rule 42.3, which is a more logical place for these voluntary-dismissal requirements.

## **10th Cir. R. 46.3(C) – Responsibilities of Counsel in Criminal and Post-Conviction Cases**

Per the aforementioned proposed revisions to Tenth Circuit Rule 42.3, the proposed revisions to this rule relocate Tenth Circuit Rule 46.3(C) to a new Tenth Circuit Rule 42.3.

### **Counselled Entry of Appearance Form (10th Cir. Form 2)**

The proposed revisions to this form remove unnecessary instructions from the body of the form; add a footnote requiring counsel to list each party represented rather than using “et al.” or generic terms such as “Plaintiffs”; and add a certificate of service similar to that used in other Tenth Circuit forms.

### **Pro Se Entry of Appearance Form (10th Cir. Form 3)**

The proposed revisions to this form move the instructions and related information regarding service requirements out of the body of the form. The instructions and service information have also been revised to improve readability, promote compliance, and reflect recent changes to the Tenth Circuit Rules regarding service of pro se filings.

### **Disclosure Statement (New 10th Cir. Form 4)**

This proposed new Tenth Circuit Form implements the proposed revisions to Tenth Circuit Rule 26.1.