

# MEMO

To: All Interested Parties

Date: November 21, 2013

Re: *Rules Changes for 2014 (Fed. R. App. P. and 10th Circuit Local Rules)*

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On December 1, 2013, changes to the Federal Rules of Appellate Procedure will take effect. Those changes are outlined below. On January 1, 2014 changes to the 10th Circuit local rules will take effect. The primary changes for the local rules are outlined below as well. In addition, all interested parties should note that both clean and redlined versions of the new rules are posted on the court's website. 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 [10<sup>th</sup> Circuit Clerk@ca10.uscourts.gov](mailto:10<sup>th</sup>CircuitClerk@ca10.uscourts.gov).

## ***Federal Rules of Appellate Procedure (effective December 1, 2013)***

The changes to the Federal Rules fall into two primary categories. **Rules 13, 14, and 24** have been updated to clarify procedures in cases coming from the Tax Court. Specifically, changes were made to recognize the status of the Tax Court, and to confirm procedures addressing permissive interlocutory appeals taken per 26 U.S.C. § 7482(a)(2).

In addition, practitioners should take special note of the second category of changes, which are to **Federal Rules 28 and 28.1**. Both rules address briefing requirements (noting Rule 28.1 applies to cross appeals). **The changes allow parties to combine a statement of the case and the factual recitation for the appeal into a single section.** The current rule(s) require separate sections.

Finally, practitioners should note minor changes have been made to Form 4, which is the national *in forma pauperis* application form.

## ***Tenth Circuit Proposed Local Rules Changes for 2014 (effective January 1, 2014)***

Every year the court reviews the rules to identify places where language can be updated for clarity and to reflect technical advances and requirements. This year several changes are proposed in this regard. In addition, proposed changes in more substantive areas include the following:

### **10<sup>th</sup> Cir. R. 3.2(A)**

Eliminating the words “via hard copy” from the rule requiring the district court to send a preliminary record. All preliminary records are now received electronically.

### **10<sup>th</sup> Cir. R. 10.2(A)**

This change edits the language of the rule to require that designations of record be “filed with” rather than “submitted to” the circuit court. This change codifies current practices. All designations are now received electronically.

### **10<sup>th</sup> Cir. R. 10.3(D)(5)**

This rule previously required parties to include trial exhibits in a separate “addendum” if they were returned to the parties following the district court proceedings. The rule now allows those exhibits to be included in either the appendix or as a supplement to the record on appeal, as applicable to the proceeding.

### **10<sup>th</sup> Cir. R. 21.1**

Language was added to this rule to make clear that fees due for mandamus petitions are payable to the circuit court rather than the district court.

### **10<sup>th</sup> Cir. R. 24.1 and 24.2**

These local rules address application of the Prison Litigation Reform Act. The changes are in the nature of language updates.

### **10<sup>th</sup> Cir. R. 27.1(A)(2)**

In this rule, which addresses certified questions of state law generally, the word “stay” was changed to “abate” when referencing the status of the case during the period when the appellate court is awaiting the ruling of the state court.

### **10<sup>th</sup> Cir. R. 28.2(C)(5)**

This change adds clarifying language to the local rule to make clear that brief covers should always include the originating case number from the district court or agency as applicable to the proceeding.

### **10<sup>th</sup> Cir. R. 35.1(A)**

In this rule, language was added to advise counsel and litigants that in seeking rehearing en banc, consideration should be given to the fact that all published

panel opinions are circulated to the full court before filing and that every judge is given the opportunity to comment.

Also—all interested parties should be aware the court has made changes to its **Plan for the Appointment of Counsel in Special Civil Cases**. The changes make clear that while the court is very appreciative of the service of attorneys taking these appointments, they will, except in exceptional circumstances, be considered full pro bono appointments. That is, the court will generally not be in a position to compensate counsel for attorney time nor reimburse counsel for expenses. **The Plan is Addendum II to the rules.**

Finally, please note updates have been made to the court's **Criminal Justice Act Plan**, which is **Addendum I to the rules**. Those changes are found in section II(C).