

MEMORANDUM

TO: Interested Parties
FROM: Christopher M. Wolpert, Clerk of Court
RE: Revisions to Federal and Local Rules
DATE: November 30, 2020



Amendments to the Federal Rules of Appellate Procedure take effect on December 1, 2020. In addition, changes to the Tenth Circuit Rules will take effect on January 1, 2021. This memorandum summarizes the changes to both sets of rules.

Changes to the Federal Rules of Appellate Procedure Effective December 1, 2020

Fed. R. App. P. 35 (Length Limits for Responses to En Banc Petitions)

Currently, the rules do not restrict the length of a response to a petition for en banc consideration or panel rehearing. The 2020 change to Rule 35 makes clear that the length limits applicable to a petition for en banc consideration also apply to a response to such a petition, if the court orders one.

Fed. R. App. P. 40 (Length Limits for Responses to Petitions for Rehearing)

Like the change to Rule 35, the change to Rule 40 makes clear that the length limits applicable to a petition for panel rehearing also apply to a response to a petition for panel rehearing, if the court orders one. In addition, for consistency with Rule 35, the language of the rule is updated to replace “answer” with “response.”

Changes to the Tenth Circuit Rules Effective January 1, 2021

10th Cir. R. 9.3 (Replies in bail appeals)

The addition to Rule 9.3 makes clear that replies in bail appeals are permitted only by order of the court.

10th Cir. R. 10.4 (Required contents of record on appeal)

A new subsection (C)(7) requires inclusion of the district court’s judgment (if one was entered) in the record on appeal. Subsequent subsections are renumbered.

10th Cir. R. 11.3 (Sealed materials)

The revision to Rule 11.3 makes clear that statements of reasons, which are often transmitted with presentence reports (“PSR”), are treated the same as PSRs.

10th Cir. R. 22.2 (Procedures in death penalty cases)

A new subsection requires counsel in capital habeas cases to provide the court with paper copies of motions for issuance of a certificate of appealability, responses, and replies.

10th Cir. R. 25.3 (Electronic filing)

A new sentence makes clear that the court does not accept filings via email absent the express permission of the clerk or chief deputy clerk, which is given in only the most extraordinary and exigent circumstances. Additional revisions facilitate clarity, promote internal consistency, and eliminate variable information.

10th Cir. R. 27.3(A)(4) (Replies to motions for summary disposition)

A new sentence states that the time to file a reply in support of a motion for summary disposition is governed by Fed. R. App. P. 27(a)(4).

10th Cir. R. 27.4 (Certification of questions of state law)

A new sentence in subsection (D) states that the time to file a reply in support of a motion for certify a question of state law is governed by Fed. R. App. P. 27(a)(4). A new subsection (F) informs parties that they may be ordered to provide additional copies of their briefs, appendix, motion to certify, and other materials if this court grants a motion to certify a question of state law.

10th Cir. R. 27.5 (Clerk authorized to act on certain motions)

An addition to Rule 27.5(A)(1) gives the Clerk’s Office authority to grant unopposed motions for an extension of time to file an attorneys’ fees motion.

10th Cir. R. 29.2 (Paper copies of amicus briefs)

A new Rule 29.2 clarifies the paper-copy requirement for amicus briefs.

10th Cir. R. 30.1(A)(2) (Required hard copy of appellant’s appendix)

The revision to this rule makes clear that the five-day deadline to provide the required paper copy of an appendix runs from the date the Clerk’s Office issues notice that the electronically-filed appendix is compliant (i.e., not from the date of receipt of the notice).

10th Cir. R. 30.1(D) (Form of appellant’s appendix)

The additional language at the beginning of Rule 30.1(D)(1) makes clear that (1) a cover page is required for each volume of an appendix, and (2) the cover page(s) must include the information required by Fed. R. App. P. 32(a)(2). In addition, the index/table of contents requirement is moved from subsection (D)(1) into its own subsection (D)(2) to highlight the importance of the requirement and to facilitate compliance. The remaining subsections are renumbered accordingly.

10th Cir. R. 30.1(D)(7) (Sealed documents included in an appendix)

Consistent with the revision to Rule 11.3(C), this subsection is revised to state that a sealing motion is not required for statements of reasons.

10th Cir. R. 30.2 (Appellee’s supplemental appendix)

Rule 30.2(A)(1) is revised to make clear that the form requirements for an appendix apply to an appellee’s supplemental appendix.

10th Cir. R. 31.5 (Required hard copies of briefs)

Consistent with the revision to Rule 30.1(A)(2), this rule is revised to make clear that the five-day deadline to provide required paper copies of merits briefs runs from the issuance of notice that the electronically-filed brief is compliant.

10th Cir. R. 35.4 (Paper copies of en banc petitions)

This revision eliminates the paper-copy requirement for en banc petitions.

10th Cir. R. 39.2(C) (Replies to motions for attorneys’ fees)

A new sentence in this subsection states that the time to file a reply in support of a motion for attorneys’ fees is governed by Fed. R. App. P. 27(a)(4).

10th Cir. R. 40.2 (Paper copies of rehearing petitions)

This revision makes clear that paper copies of rehearing petitions are not required.

10th Cir. R. 46.3(A) (Responsibilities in criminal and postconviction cases)

The inclusion of “§ 2241” in Rule 46.3(A) makes this rule consistent with the related appointment and continuity provisions of the Criminal Justice Act (“CJA”). *See* 18 U.S.C. § 3006A(a)(2)(B) (authorizing appointment of CJA counsel for financially-eligible persons seeking relief under §§ 2241, 2254, or 2255 of Title 28); and 18 U.S.C. § 3006A(c) (CJA appointment continues through every stage of the proceedings, including on appeal).