

MEMORANDUM

TO: Interested Parties
FROM: Chris Wolpert, Clerk of Court
RE: FRAP and Tenth Circuit Rule Changes
DATE: November 30, 2021



Amendments to the Federal Rules of Appellate Procedure take effect on December 1, 2021. In addition, changes to the Tenth Circuit Rules will take effect on January 1, 2022. This memorandum summarizes the changes to both sets of rules.

Changes to the Federal Rules of Appellate Procedure Effective December 2, 2021

Fed. R. App. P. 3(c) - Contents of the Notice of Appeal

Currently, Fed. R. App. P. 3(c)(1)(B) states that the judgment must be designated in the notice of appeal. The revised rule adds the option of designating either the judgment or an appealable order.

Further revisions to Rule 3(c) add the following new subsections intended to clarify the required contents of a notice of appeal and the effect thereof on the scope of an appeal:

Fed. R. App. P. 3(c)(4) clarifies that a notice of appeal encompasses all orders that merge into the designated judgment or appealable order, regardless of whether all such merged orders are listed in the notice of appeal.

Fed. R. App. P. 3(c)(5) specifies that in a civil case, a notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document, if the notice designates either an order that adjudicates all remaining claims, or an order described in Rule 4(a)(4)(A).

Fed. R. App. P. 3(c)(6) explains that an appellant may designate only part of a judgment or appealable order by expressly stating that the notice of appeal is limited to that designated part. However, without an express statement such designations do not limit the scope of the notice of appeal.

Fed. R. App. P. 3(c)(7) includes both the entirety of former Rule 3(c)(4) and additional content precluding the dismissal of an appeal for failure to properly designate the judgment if the notice of appeal was filed after entry of the judgment and designates an order that merged into that judgment.

With the addition of the new subsections described above, Fed. R. App. P. 3(c)(5) becomes (8) and it is revised to note there are now two suggested forms for a notice of appeal. The new Forms 1A and 1B replace the former Form 1 in the appendix to the rules.

Fed. R. App. P. 6 – Appeal in a Bankruptcy Case

This change amends Fed. R. App. P. 6(b)(1)(B) to reflect that Form 1 has been replaced by Forms 1A and 1B.

Proposed Changes to the 10th Circuit Local Rules Effective January 1, 2022

10th Cir. R. 25.3 – Electronic Filing

This rule is revised to note that required electronic-filing certifications are now completed during the electronic-filing process, which obviates the need for counsel to prepare a written certification with the electronically filed document.

10th Cir. R. 25.4 – Electronic and nonelectronic service; proof of service

The changes to Rule 25.4:

- Bring this court's service rule in line with Federal Rule of Appellate Procedure 25(d), which requires a certificate or acknowledgement of service only when a paper is served other than through the court's electronic-filing system;
- Permit the Clerk's Office's docketing of a nonelectronic filer's paper filings to constitute electronic service pursuant to Fed. R. App. P. 26(c)(2) on both registered ECF users and parties who have consented to electronic service in a particular case; and
- Make clear that (1) non-ECF users who have not consented to electronic service in a particular case must still be served via nonelectronic means, and (2) proof of such nonelectronic service is still required.

10th Cir. R. 27.5 – Clerk’s authority to act for the court on certain matters

The revisions to this rule are intended to clarify that the Clerk has delegated authority not only to act for the court on certain unopposed motions, but also to sua sponte issue orders as authorized by the court.

10th Cir. R. 28.1(A)(1) – Appendix-reference examples

The appendix-reference example in this rule is simplified by eliminating “Aplt.” and “Aplee.”

10th Cir. R. 29.1 – Amicus briefs on rehearing

The revisions to this rule are intended to provide guidance for amicus filings after the court has granted rehearing en banc.

10th Cir. R. 30.1(D)(1) – Pagination of Appendices

The revision to this rule requires appendix page numbers to start with the cover page so that they match the page numbers in the Adobe Acrobat toolbar.

10th Cir. R. 30.3 – Conforming changes to appendix-exemption rule

This rule is revised to conform with previous changes in the wording of related rules.

10th Cir. R. 32(A) – Font sizes in briefs

The revision to this rule clarifies that the court’s font-size requirements apply to footnotes.

10th Cir. R. 32.1(A) – Citing judicial dispositions; precedential value

The revisions to this rule (1) clarify that citation to published authority is preferred, and (2) require an “unpublished” parenthetical only when a Federal Appendix is unavailable because all court of appeals decisions in the Federal Appendix are unpublished.