FEDERAL RULES OF APPELLATE PROCEDURE

Effective December 1, 20254

And

TENTH CIRCUIT RULES

Effective January 1, 20266~~5~~

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

(a) Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case or Proceeding. An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising original jurisdiction in a bankruptcy case or proceeding under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules. But the reference in Rule 4(a)(4)(A) to the time allowed for motions under certain Federal Rules of Civil Procedure must be read as a reference to the time allowed for the equivalent motions under the applicable Federal Rules of Bankruptcy Procedure, which may be shorter than the time allowed under the Civil Rules.

(b) Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case or Proceeding.

(1) Applicability of Other Rules. These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d)(1) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction in a bankruptcy case or proceeding under 28 U.S.C. § 158(a) or (b), but with these qualifications:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(c), 13-20, 22-23, and 24(b) do not apply;

(B) the reference in Rule 3(c) to "Forms 1A and 1B in the Appendix of Forms" must be read as a reference to Form 5; and

(C) when the appeal is from a bankruptcy appellate panel, "district court," as used in any applicable rule, means "bankruptcy appellate panel"; and

(D) in Rule 12.1, "district court" includes a bankruptcy court or bankruptcy appellate panel.

(2) Additional Rules. In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) Motion for Rehearing.

(i) If a timely motion for rehearing under Bankruptcy Rule 8022 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court

or bankruptcy appellate panel announces or enters a judgment, order, or decree—but before disposition of the motion for rehearing—becomes effective when the order disposing of the motion for rehearing is entered.

(ii) If a party intends to challenge the order disposing of the motion—or the alteration or amendment of a judgment, order, or decree upon the motion—then the party, in ~~compliance~~ accordance with Rules 3(c) and 6(b)(1)(B), must file a notice of appeal or amended notice of appeal. The notice or amended notice must be filed within the time prescribed by Rule 4—excluding Rules 4(a)(4) and 4(b)—measured from the entry of the order disposing of the motion.

(iii) No additional fee is required to file an amended notice.

(B) The Record on Appeal.

(i) Within 14 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8009—and serve on the appellee—a statement of the issues to be presented on appeal and a designation of the record to be certified and made available to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 14 days after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

- the redesignated record as provided above;
- the proceedings in the district court or bankruptcy appellate panel; and
- a certified copy of the docket entries prepared by the clerk under Rule 3(d).

(C) Making the Record Available.

(i) When the record is complete, the district clerk or bankruptcy-appellate-panel clerk must number the documents constituting the

record and promptly make it available to the circuit clerk. If the clerk makes the record available in paper form, the clerk will not send documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals, unless directed to do so by a party or the circuit clerk. If unusually bulky or heavy exhibits are to be made available in paper form, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble the record and make it available. When the record is made available in paper form, the court of appeals may provide by rule or order that a certified copy of the docket entries be made available in place of the designated record. But at any time during the appeal's pendency, any party may request ~~at any time during the pendency of the appeal~~ that the redesignated record be made available.

(D) Filing the Record. When the district clerk or bankruptcy-appellate-panel clerk has made the record available, the circuit clerk must note that fact on the docket. The date as noted ~~on the docket~~ serves as the filing date of the record. The circuit clerk must immediately notify all parties of that ~~the filing~~ date.

(c) Direct Appeal ~~Review~~ from a Judgment, Order or Decree of a Bankruptcy Court by Permission Under 28 U.S.C. § 158(d)(2).

(1) Applicability of Other Rules. These rules apply to a direct appeal from a judgment, order, or decree of a bankruptcy court by ~~permission~~ authorization under 28 U.S.C. § 158(d)(2), but with these qualifications:

(A) Rules 3-4, 5~~(a)(3)~~ (except as provided in this Rule 6(c)), 6(a), 6(b), 8(a), 8(c), 9-12, 13-20, 22-23, and 24(b) do not apply; and

(B) as used in any applicable rule, "district court" or "district clerk" includes—to the extent appropriate—a bankruptcy court or bankruptcy appellate panel or its clerk.~~; and~~

~~**(C)** the reference to "Rules 11 and 12(c)" in Rule 5(d)(3) must be read as a reference to Rules 6(c)(2)(B) and (C).~~

(2) Additional Rules. In addition to the rules made applicable by Rule 6(c)(1), the following rules apply:

(A) Petition to Authorize a Direct Appeal. Within 30 days after a certification of a bankruptcy court's order for direct appeal to the court of appeals under 28 U.S.C. § 158(d)(2) becomes effective under Bankruptcy Rule 8006(a), any party to the appeal may ask the court of appeals to authorize a direct appeal by filing a petition with the circuit under 8006(g).

(B) Contents of the Petition. The petition must include the material required by Rule 5(b)(1) and an attached copy of:

(i) the certification; and

(ii) the notice of appeal of the bankruptcy court's judgment, order, or decree filed under Bankruptcy Rule 8003 or 8004.

(C) Answer or Cross-Petition; Oral Argument. Rule 5(b)(2) governs an answer or cross-petition. Rule 5(b)(3) governs oral argument.

(D) Form of Papers; Number of Copies; Length Limits. Rule 5(c) governs the required form, number of copies to be filed, and length limits applicable to the petition and any answer or cross-petition.

(E) Notice of Appeal; Calculating Time. A notice of appeal to the court of appeals need not be filed. The date when the order authorizing the direct appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(F) Notification of the Order Authorizing Direct Appeal; Fees; Docketing the Appeal.

(i) When the court of appeals enters an order authorizing the direct appeal, the circuit clerk must notify the bankruptcy clerk and the district court clerk or bankruptcy-appellate-panel clerk of the entry.

(ii) Within 14 days after the order authorizing the direct appeal is entered, the appellant must pay the bankruptcy clerk any unpaid required fee, including:

- the fee required for the appeal to the district court or bankruptcy appellate panel; and

- the difference between the fee for an appeal to the district court or bankruptcy appellate panel and the fee required for an appeal to the court of appeals.

(iii) The bankruptcy clerk must notify the circuit clerk once the appellant has paid all required fees. Upon receiving the notice, the circuit clerk must enter the direct appeal on the docket.

(G) Stay Pending Appeal. Bankruptcy Rule 8007 governs any stay pending appeal.

(H) **The Record on Appeal**. Bankruptcy Rule 8009 governs the record on appeal. If a party has already filed a document or completed a step required to assemble the record for the appeal to the district court or bankruptcy appellate panel, the party need not repeat that filing or step.

~~**(B)**~~**(I) Making the Record Available**. Bankruptcy Rule 8010 governs completing the record and making it available. When the court of appeals enters the order authorizing the direct appeal, the bankruptcy clerk must make the record available to the circuit clerk.

~~**(C) Stays Pending Appeal.** Bankruptcy Rule 8007 applies to stays pending appeal.~~

~~**(D)**~~**(J) Duties of the Circuit Clerk.** When the bankruptcy clerk has made the record available, the circuit clerk must note that fact on the docket. The date as noted ~~on the docket~~ serves as the filing date of the record. The circuit clerk must immediately notify all parties of that ~~the filing~~ date.

~~**(E)**~~**(K) Filing a Representation Statement**. Unless the court of appeals designates another time, within 14 days after ~~entry of~~ the order ~~granting permission to appeal,~~ authorizing the direct appeal is entered, the attorney for each party to the appeal ~~the attorney who sought permission~~ must file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009; Apr. 25, 2014, eff. Dec. 1, 2014; Apr. 14, 2021, eff. Dec. 1, 2021, April 23, 2025 eff. Dec. 1, 2025.)

6.1 Applicability of other Tenth Circuit Rules.

Rule 5 applies to petitions to authorize a direct appeal under Federal Rule of Appellate Procedure 6(c), except that all attachments required by Federal Rule of Appellate Procedure 6(c)(2)(B) may be attached to the petition notwithstanding the limitations imposed by Rule 5.2.

6.2 The record on appeal in bankruptcy appeals.

(A) Appendix required for counseled appeals. Rules 30.1, 30.2, and 30.3 apply to all counseled bankruptcy appeals.

(B) Pro se appeals from district court. Rules 10.2, 10.3, and 10.4 apply to all pro se appeals from a district court in a bankruptcy case.

(C) Pro se appeals from the Bankruptcy Appellate Panel. Fed. R. App. P. 6(b)(2)(B)-(D) governs preparation, transmission, and filing of the record in a pro se appeal from a decision of the Bankruptcy Appellate Panel.

Fed. R. App. P. Rule 10. The Record on Appeal

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

(1) Appellant's Duty to Order. Within 14 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

(2) Unsupported Finding or Conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) Partial Transcript. Unless the entire transcript is ordered:

(A) the appellant must—within the 14 days provided in Rule 10(b)(1)—file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 14 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

(C) unless within 14 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 14 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) Payment. At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it—together with any additions that the district court may consider necessary to a full presentation of the issues on appeal—must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

10th Cir. R. 10

10.1 Tenth Circuit Record on Appeal.

In this circuit, the record on appeal is presented in one of three forms:

- When the appellant is represented by retained counsel or is an attorney representing himself or herself, the record on appeal is presented in an electronic appendix prepared by counsel or the pro se attorney in accordance with 10th Cir. R. 30.1 and filed concurrently with the opening brief.
- When the appellant is represented by counsel appointed pursuant to 18 U.S.C. § 3006A, the district court prepares and forwards a record on appeal comprised of district-court filings designated by counsel in accordance with 10th Cir. R. 10.3(A) and 11.2(A).
- When the appellant is pro se, the court prepares and dockets a record on appeal compiled in accordance with 10th Cir. R. 10.4.

10.2 Transcripts.

(A) Appropriate transcripts.

(1) Appellant's duty. The appellant must provide all portions of the transcript necessary to give the court a complete and accurate record of the proceedings related to the issues on appeal.

(a) When sufficiency of the evidence is raised, the entire relevant trial transcript must be provided.

(b) When sufficiency of the evidence is not raised, the appellant should order only the relevant portions of the transcript and enter into stipulations that will avoid or reduce the need for transcripts.

(c) The appellant must omit the examination of jurors unless specifically at issue on appeal.

(**2**) **No transcript ordered.** An appellant who does not intend to order a transcript must so state on a transcript order form filed in both the district court and in this~~, with a copy filed in the circuit~~ court, within 14 days after the appeal is docketed in this court.

(B) Ordering transcripts.

(1) **Order~~ed~~ing party's duty ~~form~~.** Within 14 days after the appeal is docketed in this court, the appellant must order any necessary transcripts ~~must be ordered~~ using this court's transcript order form. To order a transcript, any party must:

(a) transmit a completed order form to the court reporter;

(b) make satisfactory payment arrangements for the transcripts;

(c) arrange for the court reporter to complete the "Court Reporter's Certificate of Compliance"; and

(d) file the completed transcript order form~~ must be filed~~ in both the district court ~~with a copy filed~~and in thi~~s~~s~~e~~ ~~circuit~~ court. ~~If counsel is appointed under the Criminal Justice Act, appropriate payment arrangements must be made in the eVoucher system at the time the transcript is ordered.~~

(2) **Court ~~R~~reporter's duty.** Upon receipt of a properly completed transcript order form from an ordering party, the reporter must promptly:

(a) acknowledge receipt of the order;

(b) complete the "Court Reporter's Certificate of Compliance";~~state on the form an anticipated date~~

~~of completion within the time set by the Appellate Transcript Management Plan for the Tenth Circuit (*see* Local Appendix A)~~; and

(c) return the transcript order form to the ordering party for filing~~promptly send a copy of the order form to the circuit clerk~~.

~~**(3) Completion.** A transcript order is not complete until satisfactory financial arrangements have been made with the reporter.~~

(C) Preparing, filing, and delivering transcripts.

(1) Preparation and filing. The Appellate Transcript Management Plan for the Tenth Circuit governs the preparation and filing of transcripts for cases on appeal. *See* Local Appendix A.

(2) Delivery. When the transcript is complete, the court reporter must:

(a) deliver the original to the requesting party or to counsel later appointed;

(b) file a certified copy with the district court clerk; and

(c) notify the circuit clerk.

10.3 Designation of record (when filed).

(A) Appointed counsel. In appeals in which any appellant is represented by appointed counsel—including companion and consolidated appeals—a designation of record must be filed in district court, with a copy filed with the circuit court. No Rule 30.1 appendix is required.

(1) Filing. The appellant's designation of record must be filed within 14 days after the appeal is docketed in this court.

(2) Appellee's designation. The appellee may file an additional designation within 14 days after service of the appellant's designation.

(B) Retained counsel. In appeals in which all appellants are represented by retained counsel—including companion and consolidated appeals—no designation is required and the record will be presented in an appendix prepared by the appellant. For

requirements regarding the appendix, *see* 10th Cir. R. 30.1 (Appellant's appendix), 30.2 (Supplemental appendix), and 30.3 (Appendix exemptions). Retained counsel includes counsel for national, state, or local government entities. If the appellee's counsel is appointed, Rule 30.2(A) also applies.

(C) Pro se cases. In pro se cases, no designation is required. The court will prepare a pro se record. *See* 10th Cir. Rule 11.2(B); 30.1.

10.4 Content of record.

(A) Essential items. Counsel must designate a record on appeal or prepare an appendix that is sufficient for considering and deciding the appellate issues. Only essential parts of the district court record should be designated for the record on appeal.

(B) Inadequate record. The court need not remedy any failure by counsel to designate an adequate record or to prepare an adequate appendix. When the party asserting an issue fails to provide a record or appendix sufficient for considering that issue, the court may decline to consider it.

(C) Required contents. Every record on appeal or appendix filed must include:

(1) the district court's docket entries;

(2) the last amended complaint and answer, or the indictment or information and any superseding indictment or information;

(3) the final pretrial order;

(4) pertinent written reports and recommendations, findings and conclusions, opinions, or orders of a district judge, bankruptcy judge, or magistrate judge, or, if the findings and conclusions were made orally, a copy of the transcript pages recording those findings and conclusions;

(5) all jury instructions when an instruction is at issue on appeal, as well as proposed instructions that were refused; when a finding or conclusion is an issue on appeal, proposed findings and conclusions that were refused;

(6) the decision or order from which the appeal is taken;

(7) the judgment, when one has been entered;

(8) the notice of appeal; and

(9) in a social security appeal, the entire administrative record.

(D) Additional items.

(1) Evidence; instructions. If an appeal is based on a challenge to the admission or exclusion of evidence, the giving or failure to give a jury instruction, or any other ruling or order, a copy of the pages of the reporter's transcript must be included in the record or appendix to show where the evidence, offer of proof, instruction, ruling or order, and any necessary objection are recorded.

(2) Documents. When the appeal is from an order disposing of a motion or other pleading, the motion, relevant portions of affidavits, depositions and other supporting documents (including any supporting briefs, memoranda, and points of authority) filed in connection with that motion or pleading, and any responses and replies filed in connection with that motion or pleading, must be included in the record or appendix.

(3) Presentence report. The presentence investigation report must be included if the appeal is from a sentence imposed under 18 U.S.C. § 3742. *See* Rule 11.3(C).

(4) Other. Other items, such as trial exhibits and transcript excerpts, must be included when they are relevant to an issue raised on appeal and are referred to in the brief.

(5) Trial exhibits. Copies of relevant trial exhibits released by the district court before appeal but referred to in a party's brief may be presented in an appendix where one is filed, or may be submitted via motion as a supplement to the record on appeal in cases where the record is created via designation.

(E) Exclusions. The following items may not be included in the record on appeal or appendix unless they are relevant to the issues on appeal:

- appearances;
- bills of costs;
- briefs, memoranda, and points of authority, except as specified in Rule 10.4(D)(2);

- certificates of service;
- depositions, interrogatories, and other discovery matters, unless used as evidence;
- lists of witnesses or exhibits;
- notices and calendars;
- procedural motions or orders;
- returns and acceptances of service;
- subpoenas;
- summonses;
- setting orders;
- unopposed motions granted by the trial court;
- nonfinal pretrial reports or orders; and
- suggestions for voir dire.

TITLE VII. GENERAL PROVISIONS

Fed. R. App. P. Rule 25. Filing and Service

(a) Filing.

(1) Filing with the Clerk. A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

(2) Filing: Method and Timeliness.

(A) Nonelectronic filing.

(i) In General. For a paper not filed electronically, filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

(ii) A Brief or Appendix. A brief or appendix not filed electronically is timely filed, however, if on or before the last day for filing, it is:

- mailed to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage prepaid; or
- dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(iii) Inmate Filing. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(A)(iii). A paper not filed electronically by an inmate is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

- it is accompanied by: a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid; or
- the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(A)(iii).

(B) Electronic Filing and Signing.

(i) By a Represented Person—Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(ii) By an Unrepresented Person—When Allowed or Required. A person not represented by an attorney:

- may file electronically only if allowed by court order or by local rule; and
- may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.

(iii) Signing. A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(iv) Same as a Written Paper. A paper filed electronically is a written paper for purposes of these rules.

(3) Filing a Motion with a Judge. If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.

(4) Clerk's Refusal of Documents. The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(5) Privacy Protection. An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case. The provisions on remote electronic access in Federal Rule of Civil Procedure 5.2(c)(1) and (2) apply in a petition for review of a benefits decision of the Railroad Retirement Board under the Railroad Retirement Act.

(b) Service of All Papers Required. Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) Manner of Service.

(1) Nonelectronic service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail; or

(C) by third-party commercial carrier for delivery within 3 days.

(2) Electronic service of a paper may be made (A) by sending it to a registered user by filing it with the court's electronic-filing system or (B) by sending it by other electronic means that the person to be served consented to in writing.

(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on filing or sending, unless the party making service is notified that the paper was not received by the party served.

(d) Proof of Service.

(1) A paper presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(A)(ii), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies. When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007; May 7, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018; Apr. 25, 2019, eff. Dec. 1, 2019; Apr. 11, 2022, eff. Dec. 1, 2022.)

10th Cir. R. 25

25.1 File stamped copies of papers.

For pro se parties submitting hard copies, file stamped copies of papers filed with the court will be sent to the filer only if that party provides necessary copies and a self-addressed envelope bearing sufficient postage.

25.2 Papers subject to being stricken.

If papers submitted to the circuit clerk do not comply with the Federal Rules of Appellate Procedure and these Rules, they may be stricken.

25.3 Electronic filing.

As authorized by Federal Rule of Appellate Procedure 25(a)(2)(B), the court has converted to *mandatory* electronic case filing (ECF) for all persons represented by counsel of record. The court does not accept filings via email by any person absent the express permission of the Clerk or Chief Deputy Clerk, which will be given in only the most extraordinary and exigent circumstances.

All electronically filed pleadings shall be submitted in compliance with the procedures adopted by the court and set forth in the CM/ECF User Manual. During the electronic-filing process, ECF users will certify compliance with the court's ECF requirements. Consistent with Federal Rule of Appellate Procedure 25(a)(2)(B)(i), any party may move to be exempt from electronic filing requirements, including the filing of an electronic appendix. *See* 10th Cir. R. 30.3(A). Copies of, and information regarding, the court's CM/ECF User Manual and training materials may be obtained by contacting the Office of the Clerk or by visiting the court's website at www.ca10.uscourts.gov.

25.4 Electronic and nonelectronic service; proof of service.

Case-initiating petitions under Federal Rule of Appellate Procedure 5, 6(c), 15, and 21 must be served in accordance with Federal Rule of Appellate Procedure 25(c)(1) or (c)(2)(B), and proof of service in accordance with Federal Rule of Appellate Procedure 25(d) is required. Service of all other papers is governed by the remaining provisions of this rule.

(A) Electronic service of electronically filed papers. ~~Except for case-initiating petitions filed under Federal Rules of Appellate Procedure 5, 15, and 21, which must be served in accordance~~

~~with Federal Rule of Appellate Procedure 25(c)(1) or (c)(2)(B),~~ ~~e~~Electronic filers may use the court's electronic-filing system to serve papers, including an appendix, on registered ECF users and other parties who have consented to electronic service in the particular case. Please see the court's CM/ECF User Manual at Section II(E) for information regarding service requirements. Proof of service is not required for service via the court's electronic-filing system.

(B) Nonelectronic service of electronically filed papers. Electronic filers must continue to serve parties who are not registered ECF users and have not consented to electronic service in the case via nonelectronic means. *See* Fed. R. App. P. 25(c)(1). Proof of service is required for all papers served other than through the court's electronic-filing system.

(C) Electronic service by the Clerk on behalf of nonelectronic filers. When the Clerk dockets a paper submitted by a nonelectronic filer, for purposes of Federal Rule of Appellate Procedure 26(c) the notice of docket activity (NDA) issued via the court's ECF system shall constitute electronic service on registered ECF users and other parties who have consented to electronic service in the case. The nonelectronic filer need not include proof of service for service made via the NDA.

(D) Nonelectronic service by nonelectronic filers. Nonelectronic filers are responsible for serving papers in accordance with Federal Rule of Appellate Procedure 25(c)(1) upon parties who are not registered ECF users and have not consented to electronic service in the case. Nonelectronic filers must include a certificate of service that identifies the method of service used for all service made other than via the NDA.

25.5 Privacy redaction requirements.

All filers are required to follow the privacy and redaction requirements of Federal Rule of Appellate Procedure 25(a)(5), as well as the applicable federal rules of civil procedure, criminal procedure, and bankruptcy procedure. *See* Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1; Fed. R. Bankr. P. 9037. Required redactions include social security numbers and tax identification numbers (filers may disclose the last

four digits of a social security or tax identification number), birth dates (use year of birth only), minors' names (initials may be used), and financial account numbers (except those identifying property allegedly subject to forfeiture in a forfeiture proceeding). It is the sole responsibility of the filer to redact pleadings appropriately.

25.6 Filing under seal.

Any party who seeks to file any document under seal in this court must overcome a presumption in favor of access to judicial records. *See Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey*, 663 F.3d 1124, 1135 (10th Cir. 2011).

(A) Motions to seal. Except as provided in Rule 11.3(B) or 11.3(C) any document—motion, response, attachment, brief, appendix, or other paper—submitted under seal must be accompanied by a motion for leave to file the document under seal. The motion must

(1) identify with particularity the specific document containing the sensitive information;

(2) explain why the sensitive information cannot reasonably be redacted in lieu of filing the entire document under seal;

(3) articulate a substantial interest that justifies depriving the public of access to the document;

(4) cite any applicable rule, statute, case law, and/or prior court order having a bearing on why the document should be sealed, keeping in mind that this court is not bound by a district court's decision to seal a document below, *see Williams v. FedEx Corporate Services*, 849 F.3d 889, 905 (10th Cir. 2017); and

(5) comply with Rule 27.1.

The motion to seal should not be filed under seal unless required by the nature of the request or the need to protect sealed information.

(B) Redaction in lieu of sealing. Redaction is preferable to filing an entire document under seal. Thus, unless redaction is impracticable, the party seeking to protect sensitive information shall publicly file a redacted version of the document concurrently with the motion to seal.

25.7 Technical failure.

The Clerk may deem the ECF system to be subject to a technical failure on any given day if the system is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon MT on that day. Filings due on the day of a declared technical failure that were not filed solely due to that failure shall be due the next business day. All delayed filings shall be accompanied by a declaration or affidavit attesting to and describing the filer's failed attempts to file electronically.

Fed. R. App. P. Rule 26.1. Disclosure Statement

(a) Nongovernmental Corporations. Any nongovernmental corporation that is a party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.

(b) Organizational Victims in Criminal Cases. In a criminal case, unless the government shows good cause, it must file a statement that identifies any organizational victim of the alleged criminal activity. If the organizational victim is a corporation, the statement must also disclose the information required by Rule 26.1(a) to the extent it can be obtained through due diligence.

(c) Bankruptcy Cases. In a bankruptcy case, the debtor, the trustee, or, if neither is a party, the appellant must file a statement that:

(1) identifies each debtor not named in the caption; and

(2) for each debtor that is a corporation, discloses the information required by Rule 26.1(a).

(d) Time for Filing; Supplemental Filing. The Rule 26.1 statement must:

(1) be filed with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing;

(2) be included before the table of contents in the principal brief; and

(3) be supplemented whenever the information required under Rule 26.1 changes.

(e) Number of Copies. If the Rule 26.1 statement is filed before the principal brief, or if a supplemental statement is filed, an original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2019, eff. Dec. 1, 2019.)

10th Cir. R. 26.1

(A) ~~**Filing and Amending the**~~ **Disclosure Statement Require**ment.~~d by Federal Rule of Appellate Procedure 26.1.~~ Each party, as well as movants and amici, subject to the disclosure-statement requirement of Federal Rule of Appellate Procedure 26.1 must file a disclosure statement using Tenth Circuit Form 4. The disclosure statement is a separate filing – it need not be included in a party's principal brief, and hard copies are not required.

(B) Timing. The disclosure statement required by this rule must be filed within 14 days after an appeal or other proceeding is docketed in this court, or ~~upon~~ concurrently when a party subject to Federal Rule of Appellate Procedure 26.1 files~~ing~~ a motion, response, answer, or amicus brief in the court of appeals, whichever occurs first~~, counsel for any party or movant must file the disclosure statement required by Federal Rule of Appellate Procedure 26.1 (*see* 10th Cir. Form 4). The disclosure statement is a separate filing – it need not be included in a party's principal brief, and hard copies are not required~~.

(C) Amendment. If any of the information required by Federal Rule of Appellate Procedure. 26.1 changes, ~~counsel~~ a party covered by this rule must promptly file an amended disclosure statement.

Fed. R. App. P. Rule 29. Brief of an Amicus Curiae

(a) During Initial Consideration of a Case on the Merits.

(1) Applicability. This Rule 29(a) governs amicus filings during a court's initial consideration of a case on the merits.

(2) When Permitted. The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a court of appeals may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification.

(3) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:

(A) the movant's interest; and

(B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(4) Contents and Form. An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but must include the following:

(A) if the amicus is a corporation, a disclosure statement like that required of parties by Rule 26.1;

(B) a table of contents, with page references;

(C) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

(D) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(E) unless the amicus curiae is one listed in the first sentence of Rule 29(a)(2), a statement that indicates whether:

(i) a party's counsel authored the brief in whole or in part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;

(F) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

(G) a certificate of compliance under Rule 32(g)(1), if length is computed using a word or line limit.

(5) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(6) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.

(8) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission.

(b) During Consideration of Whether to Grant Rehearing.

(1) Applicability. This Rule 29(b) governs amicus filings during a court's consideration of whether to grant panel rehearing or rehearing en banc, unless a local rule or order in a case provides otherwise.

(2) When Permitted. The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.

(3) Motion for Leave to File. Rule 29(a)(3) applies to a motion for leave.

(4) Contents, Form, and Length. Rule 29(a)(4) applies to the amicus brief. The brief must not exceed 2,600 words.

(5) Time for Filing. An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file the brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018.)

10th Cir. R. 29

29.1 Amicus briefs on rehearing.

The court will receive but not file proposed amicus briefs submitted in connection with a petition for ~~on~~ rehearing. Filing will be considered shortly before ~~the oral argument on rehearing en banc if granted, or before~~ the grant or denial of ~~panel~~ rehearing.

Federal Rule of Appellate Procedure 29(a)(2)-(4) and (6)-(8) governs amicus filings after the court has granted rehearing en banc. Proposed amicus briefs ~~filed~~ submitted after the court has granted rehearing en banc ~~rehearing~~ may be no longer than one-half the maximum length permitted for any briefs ordered by the court. Filing will be considered shortly before oral argument.

29.2 Disclosure of all parties' positions.

Every motion filed under Federal Rule of Appellate Procedure 29 and this Rule must contain a statement of all parties' positions on the relief requested or why the moving party was unable to learn the parties' positions. Amici should make reasonable efforts to contact the parties well in advance of filing a motion for leave to file an amicus brief.

29.3 Hard copies of amicus briefs.

Hard copies of amicus briefs are required only if ordered by the court.

Fed. R. App. P. Rule 36. Entry of Judgment; Notice

(a) Entry. A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and enter the judgment:

(1) after receiving the court's opinion—but if settlement of the judgment's form is required, after final settlement; or

(2) if a judgment is rendered without an opinion, as the court instructs.

(b) Notice. On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion—or the judgment, if no opinion was written—and a notice of the date when the judgment was entered.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

10th Cir. R. 36

36.1 ~~Orders and judgments~~Publication.

The court does not ~~write~~ publish its decision ~~opinions~~ in every case. ~~The court may dispose of an appeal or petition without written opinion.~~ Disposition without ~~opinion~~ publication does not mean that the case is unimportant. It means that the case does not require application of new points of law that would make the decision a valuable precedent.

When the opinion of the district court, an administrative agency, or the Tax Court has been published, this court ordinarily designates its disposition for publication.

36.2 ~~Publication~~Separate Judgment.

The Clerk of Court will not prepare a separate judgment when a case is disposed of by order. The order disposing of the case serves as the judgment when it is entered. ~~When the opinion of the district court, an administrative agency, or the Tax Court has been published, this court ordinarily designates its disposition for publication.~~

Fed. R. App. P. Rule 39. Costs

(a) ~~Against Whom Assessed~~Allocating Costs Among the Parties. The following rules apply to allocating taxable costs among the parties unless the law provides, the parties agree, or the court orders otherwise:

(1) if an appeal is dismissed, costs are ~~taxed~~ allocated against the appellant~~, unless the parties agree otherwise~~;

(2) if a judgment is affirmed, costs are ~~taxed~~allocated against the appellant;

(3) if a judgment is reversed, costs are ~~taxed~~allocated against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, each party bears its own costs~~costs are taxed only as the court orders~~.

(b) Reconsideration. Once the allocation of costs is established by the entry of judgment, a party may seek reconsideration of that allocation by filing a motion in the court of appeals within 14 days after entry of judgment. But issuance of the mandate under Rule 41 must not be delayed awaiting a determination of the motion. The court of appeals retains jurisdiction to decide the motion after the mandate issues.

(c) Costs Governed by Allocation Determination. The allocation of costs applies both to costs taxable in the court of appeals under Rule 39(e) and to costs taxable in the district court under Rule 39(f).

(d) Costs For and Against the United States. Costs for or against the United States, its agency, or officer will be ~~assessed~~ allocated under Rule 39(a) only if authorized by law.

(~~e~~e) Costs on Appeal Taxable in the Court of Appeals.

(1) Costs Taxable~~of Copies~~. The following costs on appeal are taxable in the court of appeals for the benefit of the party entitled to costs:

(A) the production of necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f);

(B) the docketing fee; and

(C) a filing fee paid in the court of appeals.

(2) Costs of Copies. Each court of appeals must, by local rule, set~~fix~~ the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(3)

~~(d)~~ **Bill of Costs: Objections; Insertion in Mandate.**

(A~~1~~) A party who wants costs taxed in the court of appeals must—within 14 days after judgment is entered~~entry of judgment~~—file with the circuit clerk, and serve an itemized and verified bill of those costs.

(B~~2~~) Objections must be filed within 14 days after ~~service of~~ the bill of costs is served, unless the court extends the time.

(C~~3~~) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must—upon the circuit clerk's request—add the statement of costs, or any amendment of it, to the mandate.

(fe) Costs on Appeal Taxable in the District Court. The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs ~~under this rule~~:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a bond or other security to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009; Apr. 26, 2018, eff. Dec. 1, 2018; Apr. 25, 2019, eff. Dec. 1, 2019; April 23, 2025, eff. Dec. 1, 2025.)

39.1 Maximum rates.

Costs of making necessary copies of briefs, appendices, or other records are taxable at the actual cost, but no more than 20 cents per page.

39.2 Motion for attorneys' fees.

(A) Time to file. Absent a statutory provision or court order to the contrary, any motion requesting an award of appellate attorneys' fees must be filed by the later of: (1) if no timely petition for panel or en banc rehearing has been filed, 14 days after the time to file expires; or (2) 14 days after the court disposes of all timely petitions for rehearing or rehearing en banc.

(B) Contents. A motion requesting an award of attorneys' fees must set forth the legal basis for an award of appellate attorneys' fees. The motion need not contain an itemization of the tasks undertaken or the fees requested, unless requested by the court.

(C) Time to respond/reply. If a party chooses to respond to a motion for attorneys' fees, the response must be filed within 14 days after the motion is served. The time to file a reply is governed by Federal Rule of Appellate Procedure 27(a)(4).

(D) Mandate. The court will not delay issuance of its mandate pending determination of a motion for attorneys' fees. If the court grants a motion for attorneys' fees after it issues the mandate, the Clerk will supplement the mandate with the attorneys' fee award.

Fed. R. App. P. Rule 46. Attorneys

(a) Admission to the Bar.

(1) Eligibility. An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).

(2) Application. An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

> "I, _____ , do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."

(3) Admission Procedures. On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(b) Suspension or Disbarment.

(1) Standard. A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) Procedure. The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) Order. The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) Discipline. A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

10th Cir. R. 46

46.1 Entry of appearance.

(A) Attorneys. Within 14 days after an appeal or other proceeding is docketed in this court, counsel for the parties must file written appearances in a form approved by the court (*see* 10th Cir. Form 2). Other attorneys whose names subsequently appear on filed papers must also file written appearances.

While the court requires a separate, formal entry of appearance from all attorneys in the appeal or other proceeding, counsel should also note that attorneys who authorize their names to appear on filed papers have technically entered an appearance and are therefore responsible for the contents of such papers, and also for following all court rules and requirements. Attorneys who appear in a case in this court may not withdraw absent entry of a court order allowing them to do so.

(B) Pro se. A party appearing without counsel may notify the Clerk in writing of that status by filing an entry of appearance on a form approved by the court (*see* 10th Cir. Form 3).

(C) Change of address and obligation to keep account information current. Once an appearance has been entered, the Clerk must be notified of any subsequent change in address. This requirement applies to changes in both street addresses and changes made to email addresses. Registered attorneys are required to keep their email addresses current and may update ECF registration with the PACER Service Center. *See* www.pacer.psc.uscourts.gov.

(D) Certification of interested parties.

(1) Certificate. Each entry of appearance must be accompanied by a certificate listing the names of all interested parties not in the caption of the notice of appeal so that the judges may evaluate possible disqualification or recusal.

(2) List. The certificate must list all persons, associations, firms, partnerships, corporations, guarantors, insurers, affiliates, and other legal entities that are financially interested in the outcome of the litigation. For corporations, *see* Fed. R. App. P. 26.1.

(3) Generic description. An individual listing is not necessary if a large group of persons or firms can be identified by a generic description.

(4) Attorneys. Attorneys not entering an appearance in this court must be listed if they have appeared for any party in a proceeding sought to be reviewed, or in related proceedings that preceded the original action being pursued in this court.

(5) No additional parties. If there are no additional parties, entities, or attorneys in any of these categories not previously reported to the court, a report to that effect also is required.

(6) Obligation to amend. The certificate must be kept current.

46.2 Admission to Tenth Circuit bar.

(A) Prerequisite to practice. Upon filing a case or entering an appearance in this court, an attorney who is not admitted to the Tenth Circuit bar must apply for admission. Forms (as well as other information) are available on the court's website at www.ca10.uscourts.gov.

(B) Method of admission and fees. Federal Rule of Appellate Procedure 46 applies to admission to the Tenth Circuit bar. The amount of the admission fee will be set by the court and is payable to the Clerk as trustee. The admission fee is waived for any attorney representing the United States or a federal agency or for any attorney appointed by the court to represent a party on appeal. Per the court's Plan For Attorney Disciplinary

Enforcement, any lawyer disbarred from practice before the Circuit will be required to pay the fee prior to being readmitted.

(C) **Trust account.** The Clerk will hold all admission fees in a trust account known as the "Attorney Admission Fund." The Clerk will disburse money from this account as the chief judge or a delegated judicial committee directs to defray expenses of the annual judicial conference and support other activities and purchases that will benefit the bench and the bar. The Clerk must account to the court annually for the trust funds.

(D) **Required Notification of Suspension or Disbarment.** An attorney admitted to practice in this court who is disbarred or suspended by the bar of a state or another court must file with the Clerk a copy of that disciplinary order within 30 days. For purposes of this rule, an attorney who resigns from the bar of a state or court while under investigation for alleged misconduct is deemed disbarred by that state or court, and the attorney's resignation, along with any acknowledgment or acceptance of that resignation by the state or court, is deemed an order of disbarment.

46.3 Responsibilities in criminal and postconviction cases.

(A) **Prosecution of appeal.** Trial counsel must continue to represent the defendant until either the time for appeal has elapsed and no appeal has been taken or this court has relieved counsel of that duty. An attorney who files a notice of appeal in a criminal case or a postconviction proceeding under 28 U.S.C. § 2241, § 2254 or § 2255, or who has not obtained an order from the district court granting permission to withdraw from further representation prior to the filing of a pro se notice of appeal, has entered an appearance in this court and may not withdraw without the court's permission. Before filing a proper motion to withdraw under Rule 46.4 counsel must file, at a minimum, an entry of appearance and docketing statement. Before moving to withdraw, counsel appointed under the Criminal Justice Act must also order the transcript(s) of any change of plea, sentencing, or trial that took place in the district court. *See* 10th Cir. R. 10.2.

(B) **Additional motion requirement for CJA counsel.** All counsel appearing in this court pursuant to a Criminal Justice Act appointment made originally in the district court must file a motion, within 14 days after the appeal or other proceeding is docketed in this court, seeking either a continued appointment for the appeal or permission to withdraw.

(1) All motions to withdraw must comply with Rule 46.4(A).

(2) All motions to continue the appointment on appeal must include:

(a) a statement regarding whether the attorney is currently, or was previously, a member of the Tenth Circuit Criminal Justice Act appellate panel; and

(b) a statement regarding why the continuation is sought and the benefit to the appeal by virtue of a continued appointment.

(3) In counsel's discretion, motions to continue may be filed ex parte and/or under seal.

(4) Consistent with the provisions of Rule 46.3(A), this requirement applies equally if the defendant files a pro se notice of appeal.

46.4 Withdrawal.

(A) **Motion requirements.** Every motion to withdraw in a criminal appeal or in an appeal in a postconviction proceeding must include:

(1) the reasons for withdrawal;

(2) one of the following:

(a) a showing that new counsel has been retained or the client already has other counsel of record in the appeal;

(b) a showing that: (i) the client has been granted leave to proceed on appeal without prepayment of fees or has been found eligible for benefits under 18 U.S.C. § 3006A; and (ii) the client desires the appointment of counsel;

(c) if the client has been found ineligible for benefits under 18 U.S.C. § 3006A, a statement that counsel has advised the client to obtain other counsel promptly;

(d) if the client intends to proceed pro se: (i) a signed statement from the client demonstrating knowledge of the right to retain new counsel or apply for

appointment of counsel and expressly electing to appear without counsel; and (ii) a statement from counsel that he or she has advised the client of the right to representation, if any, and of any pending obligations under the Federal Rules of Appellate Procedure or this court's local rules; or

(e) a showing that exceptional circumstances prevent counsel from meeting any of the other requirements of this subsection; and

(3) proof of service on the client.

(B) Frivolous appeals.

(1) Duty of counsel. In a direct criminal appeal, if counsel ~~who~~ believes the appeal is wholly frivolous ~~and moves to withdraw or whoo~~r believes opposition to a motion to dismiss would be wholly frivolous, counsel must file an *Anders* brief, request permission to withdraw, and advise the court of the defendant's current address. *See Anders v. California*, 386 U.S. 738 (1967). If the defendant is a non-English speaker, the motion to withdraw must state counsel has made "reasonable efforts to contact the defendant in person or by telephone, with the aid of an interpreter if necessary, to explain to the defendant the substance of counsel's *Anders* brief, the defendant's right to oppose it, and the likelihood that the brief could result in dismissal of the appeal." *United States v. Cervantes*, 795 F.3d 1189, 1190 (10th Cir. 2015) (internal quotation and ellipses omitted). Written notice in a language understood by the defendant will also satisfy this duty. *Id*. The motion required by Rule 46.3(B) is separate from any motion filed later, in connection with the filing of the *Anders* brief. That is, the requirement set forth in Rule 46.3(B) is distinct from any motion later filed under *Anders*.

(2) Notice to defendant. Except as provided in (3), the Clerk will send the defendant by certified mail, return receipt requested, a copy of the *Anders* brief, the motion to withdraw, and a letter in the form set out in 10th Cir. Form 4.

(3) Incompetent defendant. If the defendant has been found incompetent or there is reason to believe that the defendant is incompetent, the motion to withdraw must so

state, and the matter will be referred to the court for appropriate action.

(C) Attorney withdrawal in civil cases. Where counsel of record for any party files a motion to withdraw after the mandate has issued, the court will treat the motion as a notice of withdrawal. This rule applies in civil cases only and does not apply in postconviction proceedings filed under 28 U.S.C. § 2254 or § 2255.

46.5 Signing briefs, motions, and other papers; representations to court; sanctions.

(A) Signature. Every brief, motion, or other paper must be signed by at least one attorney of record—or, in a pro se case, by the party personally. The paper must state the signer's mailing address, email address, and telephone number. Unless a rule or statute provides otherwise, a paper need not be verified or accompanied by an affidavit.

(B) Representations to court. By presenting to the court—whether by signing (electronically or through an original signature), filing, submitting, or later advocating—a brief, motion, or other paper, an attorney or unrepresented party certifies that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or expense in the litigation;

(2) the issues presented are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or establishing new law; and

(3) the factual contentions or denials are supported in the record.

(C) Sanctions. If a brief, motion, or other paper is signed in violation of this rule, the court—on its own or on a party's motion—may impose upon the person who signed it, a represented party, or both, an appropriate sanction, including:

(1) dismissal or affirmance of the appeal;

(2) monetary sanctions;

(3) initiation of disciplinary proceedings under the Plan for Attorney Disciplinary Enforcement; and

(4) an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the paper, including reasonable attorney's fees.

46.6 Discipline of counsel or parties.

(A) Sanctions for increasing cost of litigation. After giving notice and an opportunity to respond, this court may impose sanctions against parties and attorneys who unreasonably increase the cost of litigation. Examples of unreasonable cost increases include, but are not limited to, putting unnecessary material in records, briefs, appendices, addenda, and other papers.

(B) Court-appointed counsel. If court-appointed counsel for an appellant fails to comply with the Federal Rules of Appellate Procedure or with these rules, the Clerk may issue an order requiring counsel to show cause why disciplinary action should not be taken. Action by the court may include monetary sanctions.

(C) Inadequate representation. After giving notice, the court may take disciplinary action against attorneys for inadequate representation on appeal, which includes but is not limited to failing to follow the rules and directives of the court.

46.7 Student practice.

(A) Appearance by law students.

(1) Consent of party. An eligible law student may enter an appearance in the court on behalf of a party if the party has filed a statement of consent.

(2) Agreement of supervising attorney. A member of the Tenth Circuit bar must file an agreement to supervise the student. The agreement must contain:

(a) a certification by the supervising attorney that the student has satisfied the requirements of Rule 46.7(C); and

(b) a copy of the law school certification required by Rule 46.7(C)(3).

(B) Student participation.

(1) Briefs. A law student who has entered an appearance in a case under Rule 46.7(A) may appear on a brief if the supervising attorney also appears on the brief.

(2) Oral argument. An eligible student may participate in oral argument if the supervising attorney is present in court.

(3) Other. The student may take part in other activities in connection with the case, subject to the direction of the supervising attorney.

(C) Student eligibility. To be eligible to make an appearance under this rule, the law student must provide a letter as described in Rule 46.7(D) or otherwise document that he or she:

(1) is enrolled and in good standing in a law school accredited by the American Bar Association; or is a recent law school graduate awaiting the first bar examination after the student's graduation or the result of that examination;

(2) has completed the equivalent of 4 semesters of legal studies;

(3) is certified to be of good character and competent legal ability, and is qualified to provide the legal representation permitted by this rule, by either the law school's dean or a faculty member designated by the dean; and

(4) is familiar with the Federal Rules of Civil, Criminal, and Appellate Procedure, the Federal Rules of Evidence, the American Bar Association Code of Professional Responsibility, and the rules of this court.

(D) Dean's letter. A letter from the law school's dean or the designated faculty member describing the student's qualifications under Rule 46.7(C) may demonstrate eligibility.

(E) Supervising attorney. An attorney who supervises an eligible law student under this rule must:

(1) be a member in good standing of the Tenth Circuit bar;

(2) assume personal professional responsibility for the quality of the student's work;

(3) guide and assist the student as necessary or appropriate under the circumstances;

(4) sign all documents filed with the court (the student may also sign documents, but the attorney's signature is required);

(5) appear with the student in any oral presentations before the court;

(6) file a written agreement to supervise the student; and

(7) supplement any written or oral statement made by the student to this court or opposing counsel if the court so requests.