

MEMO

To: All Interested Parties

Date: November 29, 2019

Re: *10th Circuit Local Rules Changes for 2020*

Effective **December 1, 2019** there will be changes/amendments to the Federal Rules of Appellate Procedure. In addition, effective **January 1, 2020** local rules changes will take effect. Please review this memo carefully for important changes, in particular regarding submission of hard copies of briefs and with respect to record citations.

Changes to the Federal Rules of Appellate Procedure

Fed. R. App. P. 3

(Changes to Use “Send” Instead of “Mail” When Referencing Service)

The change to Rule 3 removes the word “mailing” when referencing service requirements and changes it to “sending.” This is a clerical change intended to update the language of the rule to acknowledge electronic filing and electronic receipt of pleadings and orders.

Fed. R. App. P. 5 (Language Update/Petitions for Permission)

This change is also clerical in nature. The change is limited to Fed. R. App. P. 5(a)(1), and combines into one sentence two previously separate clauses.

Fed. R. App. P. 13 (Changes to Use “Send” Instead of “Mail”)

Like the change in Fed. R. App. P. 3, this change is a clerical update to replace a mailing requirement to a sending requirement.

Fed. R. App. P. 21 (Clerical Adjustments)

The change to Rule 21 (addressing extraordinary writs) is also minimal, and includes a language update. Previously petitioners were required to provide “proof of service” and the change now simply requires that they “serve” the petition.

Fed. R. App. P. 25 (Language Update Regarding Service)

Rule 25(d)(1), which addresses proof of service generally, has been updated to explain that a proof of service must include certain basic information unless service was via the ECF system.

Fed. R. App. P. 26 (Language Update Regarding Electronic Service)

Rule 26 addresses “computing and extending time.” This language update to Rule 26(c) further clarifies that only when a paper is not served electronically or on the exact date identified in the certificate of service will 3 days be added to a resulting deadline.

Fed. R. App. P. 26.1 (Disclosure Statements)

There are multiple changes to this Rule, which was formerly titled “Corporate Disclosure Statement” and is now simply titled “Disclosure Statement.” In addition to requiring corporate disclosure, the Rule now requires disclosure regarding organizational crime victims and bankruptcy debtors. Language was added requiring supplemental disclosure whenever the relevant information changes.

Fed. R. App. P. 28 (Language Update)

This change is clerical. The title of Rule 26.1 is referenced in this Rule, and the change here removes the word “corporate” from that title.

Fed. R. App. P. 32 (Language Update)

This change is also strictly clerical. Unnecessary language (mainly unnecessary pronouns) was removed from Rule 32(f).

Changes to the 10th Circuit Local Rules

10th Cir. R. 9 (Clarifying Language Regarding Hard Copies and Length)

This longstanding rule addresses the procedural requirements for seeking bail/release in criminal cases. The new rules (added as 10th Circuit Rules 9.4 and 9.5) provide clarification regarding the length of memorandum briefs and confirm parties do not need to submit hard copies.

10th Cir. R. 22.1(C)

This change adds a new local Rule 22.1(C), which states:

Consistent with the Rules Governing Proceedings Under 28 U.S.C. §2254 or §2255 the district court shall in every applicable case issue or deny a certificate of appealability when it enters a final order adverse to the applicant.

10th Cir. R. 28.1(A)(1) & (2) (Citing to the Record and Appendix)

This change requires parties to cite to both volume number and page number when citing to the record or appendix in the briefs. Previously the rule only required a citation to the page number. This change also relates to the change to Rule 30.1(D)(1)—which addresses pagination of the appendix.

10th Cir. R. 30.1(A)(2)(Filing the Hard Copy of the Appendix)

This change is required by an internal change in how the clerk’s office will review briefs and appendices for compliance with the FRAP and local rules. Previously, the clerk’s office waited until the required hard copies of the brief and appendix arrived to perform a full compliance review of both the electronic and hard copy versions (as filers know, under the prior rule the hard copies had to be received within 2 business days of the electronic filing). Going forward, however, and per the new rule, the clerk’s office will do a compliance review of the electronic version and only after that is done (and the brief is fully compliant) will the parties be advised via minute order that hard copies are due within 5 days. We encourage all filers to review the text of the new rule carefully.

10th Cir. R. 30.1(D)(1)(Paginating the Appendix)

This change alters pagination requirements to make consecutive pagination *within volumes* mandatory but makes consecutive pagination *across multi-volume* appendices optional (that is, each volume must be paginated consecutively but volumes may be paginated independently). This change ties in with the change requiring record/appendix citations to be to both volume and page number. In addition, this rule adds language clarifying and confirming that the index or table of contents must be included in each separate volume of the appendix.

10th Cir. R. 30.3(A)(Filing Hard Copies)

This change is similar to rule 30.1(A)(2) noted above. It now states that if an exemption to the electronic appendix requirement is allowed two hard copies must be received within 5 business days following receipt of notice that the electronic brief is compliant. In addition, language has been added confirming that any exempt materials must be served within 5 business days as well.

10th Cir. R. 31.5

Like the rules noted above, this change requires that hard copies of the brief be received in the clerk's office within 5 days after receipt of notice that the electronic version is compliant.

Finally, all interested persons should note that the court's CJA Plan was updated effective July 1, 2019. The updated Plan is included as an addendum to the Rules.