

MEMO

To: All Interested Parties

Date: August 14, 2015

Re: *Invitation for Comment on 10th Circuit Local Rules Changes for 2016**

On January 1, 2016, changes to the 10th Circuit rules will take effect. From August 14, 2015 through October 22, 2015, the court invites comment and feedback from all interested parties on this year's proposed local rule changes. Comments may be emailed to clerk@ca10.uscourts.gov. A final version of the rules will be posted on the court's website on or about December 1, 2015. For comment purposes, we have posted on the website both a clean draft of the proposed rules and a redlined version.

All of the proposed changes are outlined below. In particular, counsel appointed under the Criminal Justice Act should review carefully the new requirements added to 10th Cir. R. 46.3(B) and 10th Cir. R. 46.4(B)(1).

10th Circuit Local Rules

10th Cir. R. 8.3(A)

(addressing applications for stay made to a single judge)

This proposed change removes the language at the end of the current rule which states applications for stay made to single judges are disfavored "except in an emergency." Given technical advancements, all emergency motions can be processed centrally.

10th Cir. R. 9.1(C)

(regarding application of the Rule 46.3(B) motion requirement to bail appeals)

This proposed change modifies the rule to make clear that the new motion practice announced in R. 46.3(B) does not apply to bail appeals.

* Please note there are no changes to the Fed. R. App. P. in 2016.

10th Cir. R. 17.3
(regarding filing an appendix in agency cases)

This proposed change modifies the rule to make clear that when an agency record is filed, the parties need not submit a separate appendix.

10th Cir. R. 25.6
(addressing CM technical failures)

This new rule addresses procedures in the event of a CM/ECF system failure.

10th Cir. R. 27.1
(location of the “confer and consent” provision of the local rule on motions)

The court’s “confer and consent” rule has been moved to the beginning of local rule 27 for greater visibility. In addition, the rule now makes clear that CJA counsel need not confer on motions filed to withdraw or for continued appointment.

10th Cir. R. 30.1(D)(6)
(addressing motions to seal documents)

This local rule addresses the submission of sealed materials. The proposed change to the rule requires parties submitting materials under seal (except for presentence reports, which are exempt) to file a motion to do so. The proposed change is made in accord with circuit case law emphasizing the presumption in favor of providing access to judicial records. *See Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey*, 663 F.3d 1124, 1135-1136 (10th Cir. 2011).

10th Cir. R. 31.5
(addressing the number of hard copies required for briefs)

This modification adds a specific clause regarding the court’s already existing requirement that 7 hard copies of briefs must be received in the clerk’s office within 2 business days of the electronic filing.

10th Cir. R. 33.2
(removal of the requirement to have a private settlement discussion)

This modification deletes this local rule.

10th Cir. R. 46.3(B) and R. 46.4(B)(1)
(incorporating the new motion requirement from the amended CJA Plan adopted effective July 8, 2015)

This proposal includes a section memorializing the new motion requirement created by virtue of the court's amendment of the circuit Criminal Justice Act Plan in July 2015. In addition, please note the language added to Rule 46.4(B)(1), which makes clear the new requirement is not a substitute for filing a motion to withdraw, as appropriate, in *Anders* cases. In addition, the court's decision in *United States v. Cervantes*, ___F.3d___, 2015 WL 4636640 (10th Cir. May 22, 2015) has been incorporated into the rule. Finally, Addendum I of the rules, which is a copy of the CJA Plan, has been updated.

Addendum IV
(removal of the Rules for Judicial Misconduct and Judicial Disability Proceedings)

Because they are now available on the court's website, the *Rules on Judicial Misconduct* have been deleted as an attachment to the Rules.