

# MEMO

To: All Interested Parties

Date: August 15, 2013

Re: *Invitation for Comment on 10<sup>th</sup> Circuit Local Rule Changes for 2014 and Posting of Fed. R. App. Changes for 2014*

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On December 1, 2013, changes to the Federal Rules of Appellate Procedure will take effect. Those changes are outlined below. On January 1, 2014 changes to the 10<sup>th</sup> Circuit local rules will take effect. From August 15 through October 11, 2013, the court invites comment and feedback from all interested parties on this year's proposed changes to the local rules. Comments may be emailed to [10<sup>th</sup> Circuit Clerk@ca10.uscourts.gov](mailto:10<sup>th</sup>_Circuit_Clerk@ca10.uscourts.gov). In addition, interested parties are invited to call the office of the Clerk with any questions they may have. That number is 303-844-3157. A final version of the rules will be posted on the court's website on or around November 25, 2013. For comment purposes, we have posted on the website both a clean draft of the proposed rules and a redlined version. All of the changes are outlined below.

## ***Federal Rules of Appellate Procedure***

The changes to the Federal Rules fall into two primary categories. Rules 13, 14, and 24 have been updated to clarify procedures in cases coming from the Tax Court. Specifically, changes were made to recognize the status of the Tax Court, and to confirm procedures addressing permissive interlocutory appeals taken per 26 U.S.C. § 7482(a)(2).

In addition, practitioners should note the second category of changes, which are to Federal Rules 28 and 28.1. Both rules address briefing requirements (noting Rule 28.1 applies to cross appeals). The changes allow parties to combine a statement of the case and the factual recitation for the appeal into a single section. The current rule(s) require separate sections.

Finally, practitioners should note minor changes have been made to Form 4, which is the national *in forma pauperis* application form.

## ***Tenth Circuit Proposed Local Rules Changes for 2014***

Every year the court reviews the rules to identify places where language can be updated for clarity and to reflect technical advances and requirements. This year several changes are proposed in this regard. In addition, proposed changes in more substantive areas include the following:

### **10<sup>th</sup> Cir. R. 3.2(A)**

Eliminating the words “via hard copy” from the rule requiring the district court to send a preliminary record. All preliminary records are now received electronically.

### **10<sup>th</sup> Cir. R. 10.2(A)**

This change edits the language of the rule to require that designations of record be “filed with” rather than “submitted to” the circuit court. This change codifies current practices. All designations are now received electronically.

### **10<sup>th</sup> Cir. R. 10.3(D)(5)**

This rule previously required parties to include trial exhibits in a separate “addendum” if they were returned to the parties following the district court proceedings. The rule now allows those exhibits to be included in either the appendix or as a supplement to the record on appeal, as applicable to the proceeding.

### **10<sup>th</sup> Cir. R. 21.1**

Language was added to this rule to make clear that fees due for mandamus petitions are payable to the circuit court rather than the district court.

### **10<sup>th</sup> Cir. R. 24.1 and 24.2**

These local rules address the application of the Prison Litigation Reform Act. The changes are in the nature of language updates.

### **10<sup>th</sup> Cir. R. 27.1(A)(2)**

In this rule, which addresses certified questions of state law generally, the word “stay” was changed to “abate” when referencing the status of the case during the period when the appellate court is awaiting the ruling of the state court.

Finally, please note updates are proposed for the court’s Criminal Justice Act Plan, which is Addendum I to the rules. Those changes are found in section II(C).