

United States Court of Appeals for the Tenth Circuit

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Patrick J. Fisher, Jr.
Clerk of Court

Jane B. Howell
Chief Deputy Clerk

MEMORANDUM

TO: Interested Persons
FROM: Patrick Fisher (303) 844-5074
DATE: January 8, 2003
RE: Guide to Rule Changes

Set out below are the rule changes:

10th Cir. R. 8

8.1 Required showing. No application for a stay or an injunction pending appeal will be considered unless the applicant addresses all of the following:

- (A) the basis for the district court's or agency's subject matter jurisdiction and the basis for the court of appeals' jurisdiction, including citation to statutes and a statement of facts establishing jurisdiction;
- ~~(A)~~(B) the likelihood of success on appeal;
- ~~(B)~~(C) the threat of irreparable harm if the stay or injunction is not granted;
- ~~(C)~~(D) the absence of harm to opposing parties if the stay or injunction is granted; and
- ~~(D)~~(E) any risk of harm to the public interest.

10th Cir. R. 10

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10.2 Designation of record.

- (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**. No Rule 30.1 appendix is required.

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10.3 Content of record.

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(C)(6) all jury instructions when an instruction is an 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;**

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(D) (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.

10th Cir. R. 11

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11.2 Record transmitted to court of appeals.

(A) **Record**. In a pro se appeal and in an appeal in which an **appellant** party is represented by appointed counsel, the district clerk must send the record to the circuit clerk as required by Fed. R. App. P. 11(b). The record must include any transcript that has been filed for the appeal.

10th Cir. R. 28

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28.4. Incorporating by reference disapproved. Incorporating by reference portions of lower court or agency briefs or pleadings is disapproved and does not satisfy the requirements of Fed. R. App. P. 28(a) and (b).

10th Cir. R. 31

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31.5 Number of copies. A party **(or an amicus)** must file an original and 7 copies of briefs and supplemental authorities. Counsel may be required to furnish additional copies if needed.

10th Cir. R. 33

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33.1 Mediation conference.

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- (D) **Confidentiality.** Statements made during the conference and in related discussions, **and any records of those statements,** are confidential and must not be disclosed **by anyone (including the circuit mediation office, counsel, or the parties; and their agents or employees), to anyone not participating in the mediation process.** Proceedings under this rule may not be recorded by counsel or the parties.

10th Cir. R. 46

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46.3 Responsibilities in criminal and postconviction cases.

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- (B) **Voluntary dismissal.** A voluntary motion to dismiss a criminal appeal or an appeal in a postconviction proceeding must contain a statement, signed by the appellant, demonstrating knowledge of the right to appeal and expressly electing to withdraw the appeal. If the statement is not included, counsel must show that exceptional circumstances prevented its inclusion. Proof of service must include **personal** service on the appellant **him or herself.**

10th Cir. R. 47

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47.3 Judicial conference.

(A) **Authorization.** As required by 28 U.S.C. § 333, a judicial conference **will be convened** ~~is held at least every other year, at a time and place designated by the chief judge, or at such another court-determined intervals—as that the law permits and the court determines.~~ **In alternate years, the circuit may hold a conference for judges only.**

(B) **Purpose.** The conference will consider the business of the circuit's federal courts and devise ways of improving the administration of justice within the circuit.

~~(C) Membership. The judicial conference is composed of:~~

- ~~(1) the circuit, district, bankruptcy, and magistrate judges of the Tenth Circuit; and~~
- ~~(2) members of the Tenth Circuit bar who are in good standing and who declare in writing to the circuit executive their intention to become a conference member.~~

~~(D) Lapse of membership. A member of the bar who has become a conference member~~

~~and fails to attend 2 successive sessions of the conference without the chief judge's permission will be dismissed from the conference. A lapsed member will not receive notice of the meetings until the member files a renewed declaration in writing.~~

~~(E) Membership form. The circuit executive provides a form to declare membership in the conference. The form is available from the clerk or the circuit executive to all active members of the Tenth Circuit bar residing within the circuit. The circuit executive maintains a list of conference members.~~

~~(F)~~ **(C) Duties of circuit executive.** The circuit executive, who serves as secretary of the conference, is responsible for all records and accounts of the conference, and may ~~assume~~ perform any other conference duties as the chief judge or ~~the~~ circuit judicial council may require.

~~(G)~~ **(D) Agenda.** During ~~the~~ judicial conferences, all judges of the Tenth Circuit will meet to discuss the dockets and the administration of justice in the circuit's judicial districts. The chief judge of each district will report on the condition of judicial business in that district and make recommendations about judicial business. In those years in which an open conference is held, all general meetings ~~of the conference~~ are open to ~~conference members~~ attorney attendees and are devoted to improving the administration of justice in the Tenth Circuit. ~~All members of the conference may participate in the discussions and deliberations. The conference may take appropriate action on any matter presented.~~

~~(H)~~ **(E) Registration fee.** A registration fee, set by the judicial council, will be collected from each ~~member attending any session~~ attorney attendee of the conference. The money collected must be used as directed by the chief judge to defray the expense of the conference. The circuit executive must maintain a judicial conference bank account and keep a record of all receipts and disbursements. During the year after each conference, the circuit executive must make a fiscal report to the judicial council.