

# Principal Substantive Changes in the Federal and Tenth Circuit Rules

## I. Federal Rules of Appellate Procedure

The following changes to the Federal Rules of Appellate Procedure take effect on December 1, 2006:

### **Federal Rule of Appellate Procedure 25(a)(2)(D)**

Effective December 1, 2006, a revised version of Federal Rule 25(a)(2)(D), pertaining to electronic filing, will take effect. The revised rule now provides as follows:

**(D) Electronic Filing.** A court of appeals may by local rule permit or require papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A local rule may require filing by electronic means only if reasonable exceptions are allowed. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.

### **Federal Rule of Appellate Procedure 32.1**

Also effective December 1, 2006, a new Rule 32.1, allowing citation of unpublished decisions, will be added to the Federal Rules of Appellate Procedure. The new rule states:

#### **32.1. Citing Judicial Dispositions**

**(a) Citation Permitted.** A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

- (i) designated as unpublished, not for publication, non-precedential, not precedent, or the like; and
- (ii) issued on or after January 1, 2007.

**(b) Copies Required.** If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

## II. The Tenth Circuit Rules

Effective January 1, 2007, the Tenth Circuit issued revised local rules. Many of the changes are non-substantive and typographical. The substantive changes primarily were made to conform to the changes in Federal Rules of Appellate Procedure. The main substantive changes are noted below. Please consult the actual rule for the full text.

**Tenth Circuit Rule 25.5:** This rule was revised to incorporate the change in Federal Rule of Appellate Procedure 25(a)(2)(D), pertaining to electronic filing.

**Tenth Circuit Rule 32.1:** This rule was revised to incorporate the addition of new Federal Rule of Appellate Procedure 32.1, pertaining to citation of unpublished decisions. Clarifying language regarding retroactive effect was also added.

**Tenth Circuit Rule 36.3:** This rule, which previously addressed citation to unpublished opinions, was deleted to conform with new Federal Rule of Appellate Procedure 32.1.

**Tenth Circuit Rule 46.1:** This rule was revised to clarify that regardless of what other filings have been made, an attorney wishing to appear before the court must file a separate entry of appearance.

**Changes to 10th Circuit Rule 46.2 and to the Plan for Attorney Disciplinary Enforcement:** The court has changed local rule 46.2 to require any lawyer disbarred from practice before the Tenth Circuit to pay the admission fee upon reinstatement. The court added a new section 10.7 to the *Attorney Discipline Plan* to incorporate this change as well.

**Changes to the Plan for the Appointment of Counsel:** The court has made several changes to the *Plan For Appointment of Counsel In Special Civil Appeals*. In particular, please note the changes to the compensation section of the *Plan*.