

A PARTIAL CHECK LIST FOR TENTH CIRCUIT BRIEFS

Outlined below is a checklist for use in filing briefs in the 10th Circuit. The caveat is to always check the Federal Rules of Appellate Procedure and 10th Circuit Local Rules for annual updates and changes. In addition, watch our website at www.ca10.uscourts.gov or information regarding the court's transition to ECF in March 2009.

A. COMPLIANCE WITH COURT RULES

- Does the cover page of the brief include a statement as to whether or not oral argument is requested? (i.e., "Oral argument desired.")
10th Cir. R. 28.2(C)(4); see 10th Cir. R. 1.1.
- Does the brief contain a table of contents that is an immediately recognizable snapshot of the case?
Fed. R. App. P. 28(a)(2)
- Does the brief contain a table of authorities: cases (alphabetically arranged), statutes, and other authorities, and a statement of prior or related appeals?
Fed. R. App. P. 28(a)(3); 10th Cir. R. 28.2(C)(1)
- Does the brief contain a statement of the grounds for appellate jurisdiction and a statement of the subject matter jurisdiction of the district court or agency, including dates showing timely filing, and citations of legal authority? Fed. R. App. P. 28(a)(4); Fed. R. App. P. 28(b)
- Does the brief contain a statement of issues? Fed. R. App. P. 28(a)(5)
- Does the brief contain a statement of the case? Fed. R. App. P. 28(a)(6)
- Does the brief contain a statement of facts?
Fed. R. App. P. 28(a)(7)

- Does the brief contain a well-organized argument section, including: (A) a summary of the argument; and, for each issue raised, (B) a precise reference, with record citation, to the decision under review, and (C) a statement of the standard of review? Fed. R. App. P. 28(a)(8), (a)(9)
- Does the brief contain a conclusion? Fed. R. App. P. 28(a)(10)
- If oral argument has been requested, does the conclusion contain a statement of the reasons why oral argument is necessary? 10th Cir. R. 28.2(C)(4); see 10th Cir. R. 1.1.
- Is a copy of the decision being reviewed attached to the appellant's brief? *See* 10th Cir. R. 28.2(A)
- Are particularly relevant portions of the relevant statutes, rules, regulations, and contracts attached to the brief? Fed. R. App. P. 28(f); 10th Cir. R. 30.1(C)(3)
- Is the brief signed by counsel properly admitted to the Tenth Circuit bar? 10th Cir. R. 46.2(A)—admission to bar prerequisite to practice.
- Does the brief contain a certificate of compliance with type and volume limitations? Fed. R. App. P. 32(a)(7), 28(a)(11)
- Does the brief contain a certificate of service? Fed. R. App. P. 25(d); see also 10th Cir. R. 31.5
(Please note: counsel must file 8 hard copies of the brief. In addition, all parties should be aware of the court's August 10, 2007 general order regarding the electronic submission of documents. That order advises counsel regarding the court's esubmission requirements and can be found on the circuit's website at www.ca10.uscourts.gov. During the 1st quarter of 2009 the court will convert to formal ECF filing. Counsel should monitor the website for information and announcements regarding electronic filing. We are currently accepting registration for ECF. Information regarding PACER registration can also be found on the website).

B. RULE 28(j) CHECKLIST

- Have I checked for supplemental authority *two or three weeks before the argument*? Fed. R. App. P. 28(j); 10th Cir. R. 31.5
- Have I checked for supplemental authority the day before I leave for oral argument?
- Does the 28(j) letter refer to the page number(s) in the briefs that raise the argument that the new case addresses?
- Have I re-checked the body of the letter to make sure that it provides a terse summary—or better yet, a quotation—of the relevant holding of the case and does not exceed 350 words?

C. GENERAL CONCERNS

- Has the brief been proofread?
- Has the brief been cite-checked as well as reviewed for substance?
- Has the brief been reviewed by an experienced colleague with no particular expertise in the area of law it addresses-- for clarity?
- Does the brief avoid strident language that might insult the parties, opposing counsel, or the court?
- If you are presenting an environmental case, for example, loaded with acronyms, have you considered supplying a table of acronyms?
- If there is no reason to use an acronym, have you found a better term? (E.g., “the Act,” if there is only one at issue, might be better than some acronym.)

D. ORAL ARGUMENT CHECKLIST

- Have you anticipated the weakest parts of your argument and thought about how to best respond to the judges' questions about these weaknesses?
- Have you done a moot court?
- Have you researched the law for new developments that have occurred since you filed the brief?
- If you have found new developments, have you informed the court through a Rule 28(j) letter?
- Have you reviewed and tabbed the appendix/record ?

E. GENERAL INFORMATION

- Court rules, forms, and the Practitioner's Guide are available on the Tenth Circuit's Web Page: www.ca10.uscourts.gov. We have also posted a packet for appellants which includes all the forms required to perfect the appeal.
- Tenth Circuit rules are also available on Westlaw, but the above sources are "free" and more current.
- The general office line at the clerk's office is (303) 844-3157.
- If there are other questions, counsel should feel free to call the general number. The clerk's office will direct you to the right person.