

A P P E L L A T E

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NEW AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE INCLUDE A CHANGE TO BRIEFING REQUIREMENTS

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On December 1, 2013, several amendments to the Federal Rules of Appellate Procedure are scheduled to go into effect. The most significant change for most appellate practitioners is that Rule 28 now consolidates the Statement of the Case and the Statement of Facts into a single section of a brief. The rest of the changes concern appeals in tax cases and requests to proceed *in forma pauperis*. While none of these amendments is groundbreaking, it is important for appellate lawyers to be aware of and comply with them in briefs filed after December 1. Here is a brief overview of the amendments:

- **Briefing Requirements.** Under current Rule 28, an appellant's brief must include both a statement of the case and a statement of facts, in two separate sections. The amendment to Rule 28 consolidates these two sections into one. Under the new Rule 28(a)(6), the brief must contain a single "statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record." As the Committee explains, this change "allows a lawyer to present the factual and procedural history of a case chronologically, but also provides flexibility to depart from chronological ordering." There are corresponding changes to Rule 28(b), which discusses the appellee's brief, and Rule 28.1, which addresses briefing on cross-appeals.
- **Interlocutory Appeals from the Tax Court.** Rule 13 has been revised to state that permissive interlocutory appeals from the U.S. Tax Court under 26 U.S.C. § 7482(a)(2) are governed by the same appellate rule that applies to other appeals by permission: Rule 5. A change to Rule 14 clarifies that references to a district court and district clerk include the Tax Court and its clerk.
- **Leave to Proceed In Forma Pauperis.** The amendments change Form 4 — the form of affidavit that must be filed when moving for permission to appeal *in forma*

pauperis — to replace Questions 10 and 11 with a single question about amounts spent for expenses or attorneys' fees. They also make a technical change to Rule 24(b) (the *in forma pauperis* rule) to remove language suggesting that the Tax Court is an administrative agency. As the Advisory Committee notes, that language had spawned confusion "by fostering the impression that the Tax Court is an executive branch agency rather than a court."

The complete text of the amendments, including notes and commentary by the Advisory Committee on Appellate Rules, can be found in the Communication from the Chief Justice officially transmitting them to Congress, <http://www.gpo.gov/fdsys/pkg/CDOC-113hdoc27/pdf/CDOC-113hdoc27.pdf> (May 15, 2013). Congress has a right to reject the amendments, but has shown no inclination to do so. ♦

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