

EIGHTH CIRCUIT

PLAN TO EXPEDITE CRIMINAL APPEALS

I. AUTHORIZATION AND OBJECTIVE

The Court of Appeals for the Eighth Circuit adopts the following revised Plan to Expedite Criminal Appeals, applicable to appeals filed on and after January 1, 2013. Court reporters, attorneys, district court clerks, the clerk of this court, and judges should give priority to all criminal appeals. The plan's objective is to ensure that criminal appeals are decided within 6 months after the notice of appeal is filed.

II. DUTIES OF TRIAL COUNSEL ON APPEAL

District court counsel, whether retained or appointed, will ordinarily represent the defendant on appeal. *See* 8th Cir. R. 27B(a). A motion to withdraw will not be granted absent unusual circumstances. A motion to withdraw made after a defendant's sentence has been imposed must be filed with the clerk of the Court of Appeals and should not be filed until the appeal has been docketed in the Court of Appeals. The clerk of this court may grant retained counsel's motion to withdraw only if another attorney has entered an appearance for the defendant, or if the motion states another attorney has agreed to represent the defendant and the defendant has consented to the appearance of the new attorney. *See* 8th Cir. R. 27B(b).

III. PROCEDURES AND TIME LIMITATIONS

Counsel and court reporters must comply with the provisions of this plan, the Eighth Circuit Rules of Appellate Procedure (8th Cir. R.), and the Federal Rules of Appellate Procedure (FRAP).

A. PREPARING THE RECORD

1. *All Appeals*

a. *Transcript*

The district court clerk must order the transcript from the court reporter within 2 working days after the notice of appeal is filed, unless the transcript was ordered earlier or appellant's counsel informs the clerk when the notice of appeal is filed that the transcript, or sections of it, is not necessary for the appeal. When filing the notice of appeal, appellant's counsel must inform the district court clerk of transcripts of other proceedings necessary for the appeal, and the clerk will order those transcripts from the court reporter. The district court clerk will record the ordering of the transcripts on the district court docket. Transcripts of guilty plea and sentencing

proceedings must be prepared for every appeal. Unless the appeal is in forma pauperis, counsel must arrange with the court reporter for payment of the transcript cost. *See* FRAP 10(b).

b. Contents of Record

Counsel are not required to prepare and file a designation of the record. *See* 8th Cir. R. 30A(a)(2).

Neither an appendix nor a clerk's record is required in direct criminal appeals. The electronic record maintained by the district court will serve as the record on appeal, together with the transcripts, exhibits and other paper documents in the case. The format for record references in briefs and pleadings is set out in Section B "Briefs" below.

Within three days of the date the transcripts are filed, the district court clerk will forward the original paper copy of the transcripts to the court of appeals. Paper copies of the exhibits and three paper copies of the Presentence Investigation Report and Statement of Reasons must be transmitted to the court of appeals within fourteen days after the filing of the notice of appeal. Paper copies of any other sealed materials which are not available from the district court electronic docket must be transmitted to the Court of Appeals within 14 days after the filing of the notice of appeal.

c. Addendum

Appellant's counsel must file an addendum with the opening brief. *See* 8th Cir. R. 28A(g)(1). The addendum must contain the judgment and commitment order and all orders challenged on appeal. The addendum may contain up to 15 pages of additional record materials, such as transcript excerpts, instructions and pleadings to highlight relevant portions of the record. Appellee's counsel may file an addendum; appellee's addendum should not duplicate any materials included in appellant's addendum and is limited to 15 pages, exclusive of any district court orders. *See* 8th Cir. R. 28A(g)(3).

2. In Forma Pauperis Appeals

Counsel for appellant must file a completed CJA Form 24, which authorizes government payment of transcript costs, with the district court clerk within 7 days of the filing of the notice of appeal or within 7 days of the entry of an order granting the appellant permission to proceed in forma pauperis.

If counsel was privately retained in the district court and the appellant is unable to bear the costs of the appeal, counsel must file a motion for leave to proceed in forma pauperis with the district court clerk when the notice of appeal is filed.

B. BRIEFS

1. Briefing Schedules

The clerk will establish a briefing schedule for every criminal appeal. Generally, the schedule will require the appellant to file the opening brief 14 days after the district court clerk files the transcript with this court. The appellee's response brief is due 21 days after appellant's brief is filed. Appellant's reply brief is due 7 days after appellee's brief is filed. *See* 8th Cir. R. 28A(1).

2. Form of Record References

The court does not require a clerk's record or appendix in criminal appeals, and references to the district record made in pleadings and briefs filed in this court must be to the district court docket. For example, if the motion to suppress is district court docket number 11 and a party wishes to reference page 7 of the motion to suppress, the reference in the brief should be in the format: (DCD 11, at p.7). Transcript references should be to Volume and page number (TR., Vol. 1, p. 123). Exhibit references should be to the exhibit label attached in the district court proceedings: (Government Exh. 1, page 3; Defense Exh. C, page 4). References to the Presentence Investigation Report should be to page number: (PSR, p.17). Additional information should be provided whenever it is necessary to clearly identify a document and avoid confusion.

All briefs must comply with FRAP 28, 29, 31, and 32, and 8th Cir. R. 28A.

C. DUTIES OF THE DISTRICT COURT CLERK

Within 2 working days after the notice of appeal is filed, the district court clerk must serve a copy of the notice of appeal on the court reporter and must record the service and the name, address, and telephone number of the court reporter on the district court docket before transmitting the docket entries to this court.

The district court clerk must transmit the notice of appeal, the judgment from which the appeal is taken, and the docket entries to the clerk of this court within 2 working days after the notice of appeal is filed.

D. DUTIES OF THE COURT REPORTER

In appeals of cases not tried or tried in 3 days or less, the court reporter must complete the transcript within 21 days after the notice of appeal is filed. In all other cases, the transcript must be completed within the time the clerk of this court

establishes, which will generally be 40 days after the notice of appeal is filed.

The court reporter must retain assistance, including that of other reporters, readers, and transcribers, to enable the reporter to comply with the time limits set forth in this plan. Contract reporters and transcribing services will be subject to the provisions of this plan.

The clerk of this court will strictly enforce FRAP 11(b), which relates to extensions of time for preparing transcripts. Only in compelling circumstances will extensions of time be authorized for filing transcripts.

IV. ENFORCEMENT OF PLAN

A. DEADLINES AND CALENDARING

When the clerk of this court receives the notice of appeal and docket entries, the clerk will establish the dates by which the transcript, record materials, and briefs must be filed.

The clerk of this court will send a notice of the scheduled deadlines for filing documents to the court reporter, the district court clerk, and counsel for the parties. The clerk will grant extensions of time only in extraordinary circumstances. The clerk will monitor the progress of criminal appeals to assure that they proceed in accordance with this plan.

The clerk will immediately screen all cases when the appellant's brief is filed. If the case is screened for oral argument, the clerk will place the appeal on the calendar as soon as can reasonably be permitted under court policies.

B. FAILURE TO COMPLY

The clerk will notify the court if an attorney or court reporter fails to comply with the Federal Rules of Appellate Procedure, the Eighth Circuit Rules, this plan, or any other legal or professional obligation. The court may take action deemed appropriate in the circumstances. *See* FRAP 46; 8th Cir. R. 46A.