

SECOND CIRCUIT PLAN TO EXPEDITE THE PROCESSING OF CRIMINAL APPEALS

The United States Court of Appeals for the Second Circuit has adopted the following revision of its plan to expedite the processing of criminal appeals, said revision to supersede the plan promulgated December 7, 1971 and to have the force and effect of a local rule adopted pursuant to Rule 47 of the Federal Rules of Appellate Procedure.

1. At the time of the sentencing hearing of any defendant found guilty after trial, the courtroom deputy shall provide attorneys with appropriate forms and instruction sheets regarding the rules of the Court of Appeals for processing appeals. The district judge shall:
 - (a) advise the defendant of the defendant's right to appeal and other rights in that connection as set forth in and required by Rule 32(a)(2), F.R.Crim.P.;
 - (b) complete and transmit to the Clerk of the District Court a form (in the form attached hereto as Form A, with such changes as the Chief Judge of this Court may from time to time direct) listing information needed for the prompt disposition of an appeal;
 - (c) make a finding to be shown in the appropriate place on Form A:
 1. whether defendant is eligible for appointment of counsel on appeal pursuant to the Criminal Justice Act, and
 2. whether there is any reason trial counsel should not be continued on appeal;
 - (d) make a finding, to be shown in the appropriate place on Form A, whether the minutes of the trial and of any proceedings preliminary thereto or such portions thereof as may be needed for the proper disposition of the appeal should be transcribed at the expense of the United States pursuant to the Criminal Justice Act, and if so, enter an appropriate order to that effect. In any case where a full transcript is not already available, the district judge shall encourage counsel to agree to dispense with the transcription of material not necessary for proper disposition of an appeal.
2. The Clerk of the District Court shall transmit forthwith the notice of appeal, together with the required forms, to the Clerk of the Court of Appeals, who shall promptly enter the appeal upon the appropriate records of this Court.

The Clerk of the District Court shall appoint an appeals clerk to coordinate appeals matters in the district court and serve as the contact between the Clerks of the District Courts and the Court of Appeals.

3. At the time of filing the notice of appeal, counsel for appellant shall complete and transmit to the Clerk of the District Court a form (in the form attached hereto as Form B, with such changes as the Chief Judge of the Court may from time to time direct) certifying that, if trial minutes are necessary, they have been ordered and that satisfactory arrangements for payment of the cost of the transcript have been made with the court reporter.

If the district judge directs the Clerk to file the notice of appeal, the district judge shall order counsel for the appellant to file Form B with the Clerk of the Court of Appeals within 7 days after sentencing.

If retained counsel is to be substituted on appeal by other retained counsel, Form B shall be transmitted within seven days after filing the notice of appeal, together with the substitution of counsel notice.

4. Whenever transcription of the minutes (or a portion thereof) has been ordered in a criminal case, the court reporter shall immediately notify the Clerk of the Court of Appeals on the appropriate form of the estimated length of the transcript and the estimated completion date. The number of days shall not exceed thirty (30) days from the order date except under unusual circumstances which first must be approved by the Court of Appeals upon a showing of need.
5. As soon as practicable after the filing of a notice of appeal in a criminal case, a judge of this Court or a judge's delegate shall issue an order (scheduling order) setting forth as hereafter described, the dates on or before which the record on appeal shall be filed, the brief and appendix of the appellant shall be filed, and the brief of the United States shall be filed, designating the week during which argument of the appeal shall be heard, and making such other provisions as justice may require.
 - (a) **Docketing of the Record.** The scheduling order shall provide that the record on appeal be docketed within twenty days after filing of the notice of appeal. If, at that time, the transcript is still incomplete a partial record shall be docketed which shall be supplemented when the transcript is complete. This Court will not ordinarily grant motions to extend time to docket the record.

- (b) **Appellant's Brief and Appendix.** The scheduling order shall provide that the brief and appendix of appellant be filed not later than thirty days after the date on which the transcription of the trial minutes is scheduled to be completed unless for good cause shown it appears a longer or shorter period should be set. This provision does not affect appellant's right to file a deferred appendix as provided by FRAP 30(c) and § 30(1) of the Rules of this Court.
- (c) **Appellee's Brief.** The scheduling order shall provide that the appellee's brief shall be filed not later than 30 days after the date on which appellant's brief and appendix is to be filed, unless for good cause shown it appears a longer or shorter period should be set.
6. At the time a scheduling order is entered, or at any other time the judge or the judge's delegate who signed such order or, if the judge or the judge's delegate is unavailable, any other judge of this Court may enter any other orders desirable to assure the prompt disposition of the appeal. Such orders may include, but are not limited to, orders appointing counsel on appeal pursuant to the Criminal Justice Act, setting deadlines for filing the transcription of the trial minutes, requiring attorneys for co-appellants to share a copy of the transcript, and instructing the Clerk to permit counsel to remove and examine the official copy of the record for such periods as are necessary.
7. Under Rule 4(b)(a) of this Court, when a defendant convicted following trial wishes to appeal, trial counsel, whether retained or appointed by the district court or during the course of the appeal, is responsible for representing the defendant until relieved by the Court of Appeals. Furthermore, it is the policy of this Circuit that, in the absence of good cause shown, counsel appointed under the Criminal Justice Act for the trial shall be continued on appeal.
8. When new counsel is retained on appeal, whether trial counsel was retained or appointed in the district court or during the course of the appeal, new counsel must promptly file a substitution of counsel form endorsed by the defendant and the previous counsel of record. The substitution form must include a statement affirming that the trial minutes have been ordered.

In all cases when trial counsel, whether retained or appointed, wishes to be relieved as counsel on appeal, trial counsel must move pursuant to Rule 4(b) to be relieved. A motion to be relieved as counsel must be made within seven days after filing of a notice of appeal unless exceptional circumstances excusing a delay are shown.

In the event that it is impossible or impractical to obtain the signature of previous counsel of record, counsel on appeal may file the substitution of counsel form signed by the defendant, accompanied by counsel's signed affidavit detailing efforts made to obtain the previous counsel's signature.

9. Motions for leave to file oversized briefs, to postpone the date on which briefs are required to be filed, or to alter the date on which argument is to be heard, shall be accompanied by an affidavit or other statement and shall be made not less than seven days before the brief is due, or the argument is scheduled, unless exceptional circumstances exist. Motions not conforming to this requirement will be denied. Motions to postpone the dates set for filing briefs or for argument are not viewed with favor and will be granted only under extraordinary circumstances.
10. In the event the district court grants an extension for filing a notice of appeal pursuant to FRAP 4(a)(b) the Clerk of the District Court shall promptly transmit a copy of the order to the Clerk of the Court of Appeals.
11. The Clerk shall, without further notice, dismiss an appeal for failure by the appellant to docket the record or file an appellant's brief within the time limited by a scheduling order or, if the time has been extended as provided by paragraph 9, within the time so extended; or in the event of default in any action required by these rules or any order resulting from these rules.
12. In cases where the Chief Judge may deem this desirable the Chief Judge or a person designated by the Chief Judge may direct attorneys to attend a pre-argument conference to be held as soon as practicable before the Chief Judge or a person designated by the Chief Judge, to establish a schedule for the filing of briefs and to consider such other matters as may aid in the prompt disposition of the appeal. At the conclusion of the conference an order shall issue which shall control the subsequent course of the proceeding.
13. When an appeal from a criminal conviction is affirmed in open court, the mandate shall issue forthwith unless the Court shall otherwise direct. In all other criminal appeals, the panel shall consider the desirability of providing for issuance of the mandate at a date earlier than provided by FRAP 41(a).
14. The foregoing Revised Plan to Expedite the Processing of Criminal Appeals shall be applicable to all criminal appeals in which notice of appeal is filed on or after November 18, 1974.