

INTERNAL OPERATING PROCEDURES

**UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT**

Revised June 1, 2007

I. ORGANIZATION OF THE COURT

A. GEOGRAPHIC COMPOSITION AND FACILITIES

The Eighth Circuit includes the states of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. Ten federal district courts operate within the circuit. The court of appeals sits regularly in St. Louis, Missouri, and St. Paul, Minnesota, and occasionally in other locations in the circuit, including Omaha, Nebraska; Kansas City, Missouri; and Little Rock, Arkansas. *See* 28 U.S.C. § 48(a), (b). Although all judges have office space in St. Louis and St. Paul, each judge's primary chambers is located in the judge's city of residence. Congress has authorized eleven active judgeships for the court. *See* 28 U.S.C. § 44(a).

The clerk of court's main administrative offices are located on the 24th Floor of the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, Room 24.329, St. Louis, Missouri 63102. The clerk's office's main phone number is 314-244-2400. The clerk also has a divisional office in St. Paul, Minnesota. The court's facilities in St. Paul will be undergoing renovation through October, 2008. During that time, the clerk's office has moved to 180 E. Fifth Street, Suite 640, St. Paul, Minnesota 55101. The mailing address for the office is 316 N. Robert Street, St. Paul, Minnesota 55101. The St. Paul office's phone number is 651-848-1300.

B. CIRCUIT JUDICIAL ADMINISTRATION

1. *Judicial Council*

The Judicial Council of the Eighth Circuit "make[s] all necessary and appropriate orders for the effective and expeditious administration of justice within [the] circuit." 28 U.S.C. § 332(d)(1). The council consists of ten judges of the court of appeals and ten district court judges. Consistent with policies of the Judicial Conference of the United States and statutes, the council sets the circuit's judicial policy. The chief judge of the court of appeals presides over the council. *See* 28 U.S.C. § 332(a)(1)(A).

Several committees assist in the administration of the circuit. Practicing attorneys are appointed to some of the committees, including the Federal Practice Committees established for each district in the circuit and the Federal Advisory Committee.

2. *Circuit Executive*

The circuit executive performs administrative work for the Eighth Circuit Judicial Council and carries out administrative duties assigned by the chief judge or committees of the Eighth Circuit Judicial Council. The circuit executive's main office is located in the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, Room 26.325, St. Louis, Missouri 63102. The telephone number is 314-244-2600.

3. *Judicial Conference*

The chief judge of each circuit may summon biennially, and may summon annually, the active circuit, district, and bankruptcy judges of the circuit to a Judicial Conference at a designated time and place. *See* 28 U.S.C. § 333. The conference considers the business of the courts and means of improving the administration of justice. Lawyers who wish to attend the conference should advise the Federal Practice Committee in their district or the circuit executive.

4. *Discipline of Judicial Officers*

Complaints against circuit, district, bankruptcy, or magistrate judges are processed according to 28 U.S.C. § 372(c). Copies of the Rules for Processing Complaints Against Judges and Magistrates of the Eighth Circuit and complaint forms are available from the clerk's office and may also be obtained from the court's website at www.ca8.uscourts.gov. A judicial complaint must be verified and must allege misconduct not directly related to the merits of a decision or procedural ruling.

C. COURT ADMINISTRATION

The judges of the court of appeals implement internal policy and conduct the business of the court. The administrative head of the court is the chief judge, who assumes that position by seniority and in accordance with the requirements of 28 U.S.C. § 45.

1. *Clerk's Office*

a. General Information.

The clerk's office receives, processes, and disseminates to the judges and the parties case filings and official court actions. The office is divided into case processing units, including a docketing unit, a monitoring unit, a calendar and records management unit and a close-out or postsubmission unit.

The clerk's central office is open from 8:00 a.m. to 5:00 p.m. The address is Thomas F. Eagleton U.S. Courthouse, Room 24.329, 111 South Tenth Street, St. Louis, Missouri 63102. The telephone number is 314-244-2400. The clerk's office welcomes questions concerning court policies and procedures, case status, and the federal and local rules of appellate procedure, and will assist counsel or pro se litigants in resolving procedural problems that arise during the appellate process.

The clerk's divisional office is located at 180 E. Fifth Street, Suite 640, St. Paul, Minnesota 55101. The telephone number is 612-848-1300. The St. Paul office provides the following services: docketing new appeals; answering procedural and policy questions on court operations; staffing St. Paul court sessions; coordinating emergency filings when necessary; receiving transcripts, exhibits, and district court files from Minnesota, North Dakota, and South Dakota; and providing Eighth Circuit materials, including Circuit Rules, Internal Operating

Procedures, and Settlement Conference Forms.

b. CM/ECF Information and links.

The Eighth Circuit is a CM/ECF court, and electronic filing is mandatory for attorneys and voluntary for pro se filers. Attorneys who cannot participate may seek an exemption. The exemption form is available at the "Forms" link on the court's website. Extensive information about the court's CM/ECF procedures, including the Administrative Order Regarding Electronic Filing, is available on the website at www.ca8.uscourts.gov

In order to make a filing, attorneys and pro se filers must register to become authorized CM/ECF filers. This registration is handled by the PACER Service Center. PACER registration forms and information about PACER can be accessed from the court's website.

The court's Administrative Order Regarding Electronic Filing contains a list of documents which must be filed electronically. A separate list of documents which cannot be filed electronically is also provided. In general, most case-related pleadings (Appearance Forms, Motions, Corporate Disclosure Statements, Notices Concerning the Record, Petitions for Rehearing and Rehearing En Banc, etc.) are to be submitted electronically. A case cannot be opened by a filer, and petitions for review and other original actions must be filed in paper format. Briefs and records on appeal are also filed in paper format. Please refer to the Administrative Order Regarding Electronic Filing for additional details.

Paper filings should be made with the clerk's central office in St. Louis. In emergencies, the divisional office in St. Paul will accept paper filings requiring immediate attention, including applications for stays or extraordinary writs.

Participation in the CM/ECF process is treated as consent to electronic noticing and electronic service of all documents and orders. Participants in the system receive an electronic Notice of Docket Activity when a document is filed by a party and when the court takes a public action in the case. The Notice of Docket Activity contains a link to the document, order or opinion. Participants may click on the link for their one "free look" at the document.

2. Prehearing Conference Program

The Eighth Circuit Prehearing Conference Program is a voluntary program available to explore the possibility of settlement and to clarify particular issues. Alternative methods of settlement include settlement of related litigation, purchase of property related to the litigation, and lump-sum payments in lieu of reinstatement. Some cases are not eligible for the program. *See* 8th Cir. R. 33A.

Conferences are held in Little Rock, St. Louis, and St. Paul. In other areas of the circuit, the program is conducted primarily by telephone, although local conferences are arranged if justified by the number or complexity of cases.

Appeal Information Form: The district court clerks distribute the Appeal Information Form and information explaining the prehearing conference program. The form may also be downloaded from the "Forms" link on the court's website. Counsel must specify the nature of the case and the issues raised on appeal. *See* 8th Cir. R. 3B. The filing of the Appeal Information Form is not a jurisdictional requirement; the district court clerk may not refuse to file a notice of appeal merely because the Appeal Information Form does not accompany the notice. Participation in the settlement portion of the prehearing conference program is voluntary. The court requires the Appeal Information Form for three reasons: (1) the form enables the court to monitor the nature of the court's caseload more effectively; (2) the form provides the director of the prehearing conference program with information necessary to conduct prehearing proceedings, *see* 8th Cir. R. 33A; and (3) the form calls attention to the provision of Federal Rule of Appellate Procedure 4(a)(4) which provides that a notice of appeal filed while a pretrial motion specified in FRAP 4(a)(4) is pending is premature and does not terminate the district court's jurisdiction. (A new notice of appeal must be filed after disposition of the pending motion to challenge the order disposing of any such post-judgment motion.)

The director of the program may request additional material, including citations, district court briefs, and memoranda of law. In most instances, the director reviews the case before the briefs and record on appeal are filed. The director is an attorney with an extensive background in mediation and negotiation. Counsel and clients are encouraged to attend settlement conferences. The director is Mr. John H. Martin, Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, Suite 24.342, St. Louis, Missouri 63102. His telephone number is 314-244-2499.

If settlement appears possible after the initial conference, the director may continue settlement efforts. A short extension of the briefing schedule may be arranged through the clerk's office, but participation in the settlement program does not automatically delay the briefing schedule.

The director has no contact with the judges or the court's legal staff about matters discussed in conference, unless the parties submit stipulations to the court. The director welcomes contact from counsel about settlement possibilities.

3. *Chambers and Staff Attorneys*

Each active judge is assisted by three or four attorneys who work in the judge's resident chambers. Each senior judge generally employs two attorneys. Chambers attorneys usually attend court sessions with their judge.

The court also employs staff attorneys who work in St. Louis and assist the judges with motions, pro se cases, cases submitted without oral argument, and some argued cases. The staff attorneys undertake special assignments at the direction of the judges. The senior staff attorney supervises the staff attorneys' office.

Chambers and staff attorneys are not permitted to discuss pending cases with anyone outside the court, including lawyers and litigants.

4. *Court Libraries*

The main library is located at the Thomas F. Eagleton U. S. Courthouse in St. Louis, Missouri. The telephone number is 314-244-BOOK. The library is open from 8:00 a.m. to 5:00 p.m., Monday through Friday. The collection contains many federal materials, all West's regional reporters, basic state materials for states within the Eighth Circuit, and has access to the Internet. The library catalog is accessible at online terminals in each library. The library is also a selective depository for federal government documents. The main library's treatise and law review collections are more extensive than the branch libraries' collections. The St. Louis library receives slip opinions from all the federal circuits, and maintains all the published and unpublished slip opinions from the Eighth Circuit. Locations and telephone numbers of the branch libraries are as follows:

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| Des Moines, Iowa | 515-284-6228 |
| Fargo, North Dakota | 701-297-7280 |
| Kansas City, Missouri | 816-512-5790 |
| Lincoln, Nebraska | 402-437-5684 |
| Little Rock, Arkansas | 501-604-5215 |
| Minneapolis, Minnesota | 612-664-5830 |
| Omaha, Nebraska | 402-661-7590 |
| St. Paul, Minnesota | 651-848-1320 |

Library staff at each location have training and/or extensive library experience. Each branch library contains the basic federal materials, West's regional reporters and basic state materials for states within the Eighth Circuit, and a selection of treatises and law reviews. All court libraries are open to members of the Eighth Circuit bar and, with permission of the librarian, other public users. Counsel should inquire locally about the hours of branch libraries. Books may not be removed by counsel. *See* 8th Cir. R. 47F.

D. PANELS OF THE COURT

Panels of three judges decide most matters before the court. There are three types of panels: argument (hearing) panels, nonargument (screening) panels, and administrative panels.

1. *Argument (Hearing) Panels*

Three-judge panels, referred to as hearing panels, hear argued appeals. The members of these panels are assigned before court sessions. In addition to active circuit judges, senior

judges, district judges, and visiting judges also serve on the hearing panels. The active circuit judge from this circuit with the most seniority presides on the hearing panel. The chief judge always presides.

The clerk's office prepares and publishes an oral argument calendar approximately one month before the court session. The clerk's office uses software to form the hearing panels and randomly assign the cases. The judges do not participate in the panel-formation or the case-assignment processes. The judges receive the briefs before the session. After reading the briefs, the panel, by unanimous agreement, may direct that a case on the argument calendar be decided on the briefs and the record. *See* 8th Cir. R. 34A(c).

The composition of the argument panels change each month and often during each court session, making rescheduling of cases within a given court session difficult. The clerk's office should be notified of potential conflicts before the briefing cycle is completed. Conflicts with trial settings in state and federal courts ordinarily are not recognized. The court of appeals normally sits only the second full week of each month from September through June. However, this practice is subject to change. Counsel should check with the clerk's office.

2. Nonargument (Screening) Panels

All active judges regularly sit on nonargument panels, which are referred to as screening panels (the chief judge sits whenever necessary to fill the third panel). Senior judges occasionally serve on screening panels. At least three screening panels are in operation at all times. The composition of the panels changes periodically.

The major function of the screening panels is to decide pro se cases and attorney-handled cases submitted without oral argument. A case originally screened for submission without argument will be placed on the argument calendar if one judge on the screening panel wants oral argument. The clerk's office notifies the parties if the case is reclassified for argument.

3. Administrative Panels; Emergency Matters

Administrative panels decide presubmission motions and other preliminary issues the clerk is not authorized to handle. The administrative panels consider and decide: (1) motions for leave to appeal under 28 U.S.C. § 1292(b); (2) motions for leave to proceed in forma pauperis; (3) applications for certificates of appealability under 28 U.S.C. § 2253; (4) motions for appointment of counsel; (5) motions for production of the transcript at government expense; (6) motions for bond pending appeal; (7) applications for stay pending appeal and applications for peremptory writs of mandamus and prohibition; (8) motions to dismiss for lack of jurisdiction, *see* 8th Cir. R. 47A(b); (9) procedural issues; and (10) emergency and special matters. The administrative panels consist of three judges. One judge or the clerk, however, may take certain actions. *See* 8th Cir. R. 27B(a) and (b).

All stay and writ applications should be coordinated through the clerk's office in St. Louis. Emergencies are best handled by telephoning the clerk for instructions. Panels may be convened for emergency situations. At the court's initiative, conference telephone calls are used for the initial presentation of an emergency stay request or writ application. If necessary, application for temporary emergency relief may be made to a single circuit judge, but counsel should consult with the clerk's office whenever possible.

II. ATTORNEYS

A. ADMISSION TO PRACTICE

The requirements for admission to the Eighth Circuit bar are provided in FRAP 46(a) and 8th Cir. R. 46A. An attorney must be a member of the Eighth Circuit bar before appearing for oral argument unless appointed to represent a party proceeding in forma pauperis. An attorney who is not a member may file briefs, motions, and pleadings.

The form for admission is available from the clerk's office or may be downloaded from the court's website.

The fee for admission is \$190. Checks should be made payable to the "Attorney Admission Fee Fund." Admission to the Eighth Circuit bar may be granted in open court or by the clerk of court, but most admissions are processed by mail.

Attorneys may obtain Certificates of Good Standing by making a written request to the clerk's office and paying a \$15 service fee.

B. ENTRY OF APPEARANCE.

The clerk's office must be informed of the names, addresses, email addresses and telephone numbers of the attorneys participating in an appeal. Counsel who represent a party on appeal must enter an appearance with the court of appeals either on a form supplied by the clerk or by letter. Appearance forms are sent to all counsel identified from the district court docket entries when the clerk receives the notice of appeal. Attorneys who do not receive forms should notify the clerk they will be representing one of the parties on appeal. Appearance forms may be downloaded from the "Forms" link on the court's website.

Counsel should complete the appearance form and immediately file it through the CM/ECF system. Individual rather than firm names should be listed on the form. Step-by-step instructions on filing an appearance are available on the court's website at the "Training" link on the homepage. If the appearance form is submitted by CM/ECF, counsel should retain a signed copy. Notification of the court's actions cannot be assured without the entry of appearance by counsel. The early filing of the form by each attorney ensures prompt communication throughout the appellate process.

D. APPOINTMENT OF COUNSEL

1. *Criminal Justice Act*

The Criminal Justice Act of 1964, 18 U.S.C. §§ 3001-3013, authorizes the payment of some compensation to counsel appointed to represent indigents in criminal cases, habeas corpus cases, and other designated proceedings. *Id.* § 3006A(d). The Eighth Circuit Plan to Implement the Criminal Justice Act of 1964 regulates the appointment and compensation of attorneys. Counsel may find the Plan at the "Rules and Publications" link on the court's website. In direct criminal appeals and habeas corpus cases in which the district court or the circuit court has granted a certificate of appealability, trial counsel is reappointed automatically on appeal. In all other cases, counsel is appointed only by order of the court, and a party or a party's counsel must file a formal motion with the clerk seeking appointment on appeal. The clerk forwards motions for appointment of counsel to an administrative panel. If the motion is granted, the clerk enters the order of appointment and sends the necessary appearance and voucher forms to appointed counsel with appropriate instructions. When the case is placed on the oral argument calendar, a travel voucher will be sent through CM/ECF to counsel who must travel to oral argument, allowing counsel to use a designated travel agent and to charge the airfare directly to the court's designated CJA credit card account. Counsel are requested to notify the clerk's office and the travel agency, should counsel cancel any reservation or travel plans. The "Forms" link on court's website contains helpful information about how to complete the voucher and the various compensation rates. Generally, the voucher should not be completed and submitted to the clerk's office until after the mandate has issued in the case. Vouchers cannot be submitted through the CM/ECF filing system.

To be relieved of an appointment, an attorney must file a motion with the clerk specifying the reason for the request. Motions for leave to withdraw must be served on the client. The court discourages these requests and will authorize withdrawal only for good cause. Trial counsel requesting permission to withdraw must preserve the client's right to appeal. Unless the prospective appellant in a criminal case expresses a desire not to appeal in a written notice to the district court, trial counsel must enter an appearance, file a timely notice of appeal, and prosecute the appeal with diligence until the court grants leave to withdraw. Appointed counsel who believes an appeal is without merit must nonetheless file a brief in conformity with *Anders v. California*, 386 U.S. 738 (1967), *Penson v. Ohio*, 488 U.S. 75 (1988), and *Robinson v. Black*, 812 F.2d 1084 (8th Cir. 1987).

2. *Inherent Power of the Court to Appoint*

The court has inherent power to appoint counsel in certain civil cases. The court exercises its inherent power of appointment sparingly, primarily in civil rights actions. Proof of indigency is required, and the party seeking appointment of counsel must satisfy the court the appeal has merit and is not frivolous.

No fee is authorized for legal services of counsel appointed under the court's inherent power. The court does, however, authorize reimbursement from the Attorney Admission Fee Fund for reasonable out-of-pocket expenses incurred in connection with the appointment. *See* 8th Cir. R. 47H. Appointed counsel must keep an accurate record of all out-of-pocket expenses incurred and submit an itemized statement to the clerk after issuance of the mandate. Counsel should consult the "Forms" link on the court's website for instructions in preparing a claim for reimbursement.

E. DISCIPLINE OF COUNSEL

A member of the bar is subject to suspension or disbarment for improper conduct and may be disciplined for failure to comply with the Federal Rules of Appellate Procedure or Eighth Circuit Rules. *See* FRAP 46(c). Counsel should notify the clerk's office promptly of any problem in a pending appeal. The clerk works with counsel to resolve procedural or other problems that could result in disciplinary action. Failure to meet briefing deadlines or submit timely motions for extensions of time may result in the issuance of an order directing counsel to show cause why discipline should not be imposed.

III. PRESUBMISSION APPELLATE PROCESS

A. PRELIMINARY CONSIDERATION

Counsel must work with the clerk's office throughout the appellate process and must comply with the Federal Rules of Appellate Procedure and the Eighth Circuit Rules. Most procedures prescribed by the rules are not absolutely inflexible. In procedural matters the court's primary interest is efficient and expeditious case processing. To that end, the court is willing to accommodate reasonable alternatives to procedures set forth in the rules. *See* FRAP 2.

To invoke the court's appellate jurisdiction, a party must file with the district court a timely notice of appeal from a final decision or other appealable order. *See* FRAP 3, 4.

Before filing a notice of appeal, counsel should consider the following questions.

- (1) Is there subject matter jurisdiction in the case?
- (2) Has the district court fully resolved all issues in the case? If not, is the order appropriate for the interlocutory appeal process under 28 U.S.C. § 1292(b), or has the district court entered an order under Fed. R. Civ. P. 54(b)?
- (3) Is there a pending motion listed in FRAP 4(a)(4) that would render the filing of a notice of appeal premature?

(4) Is the appeal timely?

(5) Have the points of error been properly preserved?

(6) Does the proposed appeal have real merit, or is it frivolous?

(7) Is counsel appealing from an appropriate “final order”? *See* 28 U.S.C. § 1291; *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949).

Certain interlocutory or nonfinal orders are reviewable, some as a matter of right and some as a matter of judicial discretion. 28 U.S.C. § 1292. Interlocutory orders reviewable as a matter of right include orders granting, continuing, modifying, dissolving, or denying injunctions, and certain orders in receivership, bankruptcy, admiralty, and patent proceedings. *See* 28 U.S.C. § 1292(a). Interlocutory orders not otherwise appealable may be reviewed at the discretion of the court of appeals if the trial court certifies the order “involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b); FRAP 5. Petitions for appeals by permission and answer to the petitions are limited to 20 pages. *See* FRAP 5(c).

The court may also entertain original proceedings under the All Writs Act, 28 U.S.C. § 1651. *See* FRAP 21. These proceedings include petitions for writs of mandamus and prohibition.

Counsel should ensure any judgment or order is set forth on a separate document as Fed. R. Civ. R. 58 requires.

B. LEAVE TO PROCEED IN FORMA PAUPERIS

The district court and court of appeals may allow a person who makes an affidavit of indigency to file a civil or criminal appeal without prepaying fees and costs. *See* 28 U.S.C. § 1915(a); FRAP 24; FRAP Appendix of Forms, Form 4.

Any person who has been permitted to proceed in forma pauperis in the district court may similarly proceed in the court of appeals unless the district court finds and states, in writing, the appeal is not taken in good faith or the party is otherwise not entitled to pauper status. Parties claiming pauper status for the first time on appeal must initially apply to the district court, and if the court grants permission to proceed in forma pauperis, no further authorization from the court of appeals is necessary. If the district court denies permission, the party may apply to the court of appeals.

A person who wishes to proceed in forma pauperis on appeal or review of an administrative agency proceeding must file a motion with the court of appeals. *See* FRAP 24(b).

C. VOLUNTARY DISMISSALS

When a notice of appeal has been filed but the appeal has not been docketed, the district court may dismiss the appeal if a stipulation for dismissal signed by all the parties is filed or if the appellant moves for dismissal. *See* FRAP 42(a). Once the appeal has been docketed in the court of appeals, the district court loses jurisdiction to dismiss the appeal. Dismissal by the court of appeals is governed by FRAP 42(b).

In a criminal case, the defendant must personally sign a written consent to the dismissal. *See* 8th Cir. R. 42A.

D. PROCESSING SCHEDULE

The court prepares schedules for every case. On its own motion or upon the motion of a party to expedite the appeal, the court may request shorter briefs on an accelerated schedule. Time allowed for argument remains in the court's sole discretion.

E. EXPEDITED CRIMINAL APPEALS

A major concern of the Judicial Conference of the United States and of this court is the prompt disposition of criminal cases, both before the district courts and on appeal. *See* Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174. The court of appeals and each district court in the Eighth Circuit now operate under a plan to expedite criminal cases. *See* Eighth Circuit Plan to Expedite Criminal Appeals. A copy of the Plan can be obtained from the "Rules and Publications" link on the court's website. The clerk's office carefully monitors criminal case schedules and the court requires strict compliance with all deadlines. The court strives to decide all criminal appeals within eight to ten months after the notice of appeal is filed.

F. CROSS-APPEALS AND JOINT APPEALS

1. *Cross-Appeals*

Without filing a cross-appeal, an appellee may defend a judgment on any ground the record supports, even if rejected in the lower court. Appellees must file cross-appeals to attack the judgment, either to enlarge their own rights or to lessen the rights of their adversaries.

2. *Joint Appeals*

Joinder of appeals is governed by FRAP 3(b). If parties file separate notices of appeal, the clerk docketed the appeals separately and the parties must pay separate filing fees.

Counsel who have joined on appeal must cooperate in arranging for the preparation and transmittal of the record. Joint briefs are governed by FRAP 28(i). Appeals involving the same question are usually argued together.

G. RECORD ON APPEAL

The record on appeal is governed by FRAP 10, 11, and 30; and 8th Cir. R. 10A, 11A and 30A. There is a good deal of confusion among counsel as to the meaning of the phrase, “record on appeal.” FRAP 10(a) defines the record on appeal, also called the original record, as “(1) the original papers and exhibits filed in the district court; (2) the transcript of proceedings, if any; and (3) a certified copy of the docket entries prepared by the district clerk.” This definition of the term “record on appeal” establishes the scope of materials the court may consider in reaching a decision. FRAP 30, however, requires that the parties file a concise designated record, including only those portions of the record necessary to consider the issues on appeal. A description of how the designated record may be prepared is provided in FRAP 30 and 8th Cir. R. 30A. If the designated record is insufficient, the court may rely on the original record. In conformity with FRAP 11(e), 8th Cir. R. 11A provides that a certified copy of the docket entries shall be transmitted in place of the entire record. This permits the original record to remain in the district court while the parties are preparing their briefs and designated records.

1. *Criminal cases*

Criminal cases proceed on a clerk’s record, prepared by the clerk of the district court. For further information on the process, see Eighth Circuit Plan to Expedite Criminal Appeals § III(A). Designating the record includes ordering all or relevant portions of the transcript, selecting pertinent exhibits, and identifying relevant record material. *See* FRAP 10(b), 11(b), 30(b). Counsel should not designate unnecessary material.

2. *Civil Cases*

a. Pro Se Appeals

The court will review pro se appeals on the original file of the district court. The clerk of the district court will forward the original file at the time the notice of appeal is transmitted for docketing in the clerk’s office of the court of appeals. Counsel participating in a pro se appeal do not need to prepare an appendix; counsel may include an addendum with the brief. Either side may order a transcript if the transcript is required for disposition of the issues raised on appeal. If a pro se appellant is proceeding in forma pauperis in this court, and wishes to have a transcript prepared, he or she must file a motion for preparation of a transcript at government expense. An administrative panel will then determine whether a transcript should be prepared. *See* III, H.3., *supra*.

b. Civil Appeals Where Both Sides Are Represented by Counsel

The following guidelines should be observed in preparing the record in civil cases:

(1) Order the transcript or necessary portions therefrom and make the necessary financial arrangements with the court reporter immediately after filing the notice of appeal.

(2) Notify the district court clerk’s office of all trial and any other necessary exhibits to

be forwarded to the court of appeals. Exhibits are not automatically transferred to the court of appeals. *See* 8th Cir. R. 10A.

(3) Decide whether a joint appendix or separate appendices will be prepared. *See* 8th Cir. R. 30A(b).

(4) Include only material relevant to the issues raised on appeal. *See* FRAP 30.

(5) The entire district court file or administrative agency file is available to the court and will be obtained by the clerk if the panel needs additional material.

Counsel are urged to follow these guidelines and to call the clerk's office if questions regarding record composition arise. The record should be concise.

Appellants represented by counsel must file both an appendix and an addendum. The appendix provides each member of the panel with a copy of record material needed for full consideration of the issues. The addendum duplicates carefully selected portions of the appendix in order to provide the court with a readily accessible condensation of the relevant record. For example, if the appendix includes jury instructions, only the instruction involved in the appeal should be set forth in the addendum. If the appendix contains a long contract, only the paragraph directly related to the issue on appeal should be included in the addendum. The addendum may not exceed fifteen pages, excluding the district court or agency opinion and the magistrate judge's report and recommendation.

In addition, pursuant to 8th Cir. R. 10A, the court requires appellant to ensure that all trial exhibits are forwarded to the clerk's office. If the exhibits are retained by the district court, appellant should request that the district court submit them to the clerk of the court of appeals. If appellant has retained the exhibits, appellant should submit one copy of a separate appendix with all trial exhibits. Exceptions to this rule in the case of unusually bulky or large exhibits should be discussed with the clerk. In criminal cases, evidence such as firearms and drugs should be filed only with leave of the court of appeals.

H. COURT REPORTERS

1. *Ordering the Transcript*

Appellant's counsel must order a transcript from the court reporter within ten days after filing the notice of appeal. The transcript should include the parts of the proceedings not already on file that appellant deems necessary. If the district court used electronic recording, the transcript should be ordered from the district court clerk. Failure to fulfill these responsibilities may result in dismissal of the case. *See* FRAP 3(a); 8th Cir. R. 3C. Within ten days after appellant serves the transcript order, the appellee must file and serve a designation of additional parts to be transcribed.

2. Duties of Court Reporters; Extensions of Time

Court reporters are directly responsible to the court of appeals for timely production of transcripts and must request an extension of time for filing the transcript if they cannot prepare the transcript within thirty days from receipt of the appellant's order. The clerk's office will notify counsel if an extension of time is granted. Counsel should monitor the court reporter's progress and notify the clerk's office if problems or delays arise in transcript production.

3. Proceeding In Forma Pauperis

A party proceeding in forma pauperis must obtain authorization from the court before ordering the necessary parts of the transcript. In direct criminal appeals and state habeas corpus cases in which a certificate of appealability has been granted, the district court or the court of appeals will authorize only the requested parts of the transcript that are necessary to the issues raised on appeal. A request for a transcript in a case governed by the Criminal Justice Act is made by filing a CJA Form 24, available from the district court. For the specific provisions applicable to ordering the transcript in direct criminal appeals, see the Plan to Expedite Criminal Appeals. Authorization for a transcript in federal habeas corpus and other postconviction appeals is not automatic. A motion for a transcript at government expense must be presented to and granted by the court of appeals. The court of appeals has the power to order a transcript prepared at public expense in any civil case if the proper findings are made. *See* 28 U.S.C. § 753(f). A copy of the Motion and Affidavit for Permission to Appeal In Forma Pauperis may be obtained from the "Forms" link on the court's website.

I. BRIEFS

1. Time for Filing and Form

When an appeal is docketed, the clerk's office issues a briefing schedule to all counsel establishing the time for filing briefs. If a cross-appeal is filed later, a revised briefing schedule will be issued, but normally the time for filing the appellant's opening brief will not be enlarged. The requirements for briefs are delineated in FRAP 28, 28.1 and 32, and 8th Cir. R. 28A. The clerk has been directed to reject briefs which do not comply with the provisions governing the elements of the brief and its length and form, as well as briefs that do not contain the addendum material required by 8th Cir. R. 28A(b). The color of brief covers is governed by FRAP 32(a)(2), except in cross-appeals, where the colors are governed by FRAP 28.1(d).

The court encourages inexpensive forms of reproduction to minimize costs, but counsel should check each copy of the brief for legibility, completeness, and proper binding. Type and page size requirements are covered by FRAP 32(a) and FRAP 28.1(e). If staples are used for binding, tape should be placed over the edges. The certificates of service required by FRAP 25(d) must be included in briefs or supplied in a separate document. The court's website contains additional instructions, pointers, and checklists to assist counsel in preparing briefs. The court has been placing many attorney-filed briefs on its website since January 1, 2000, and these

briefs can be accessed through the PACER system. Please note, the PACER \$.08 per page charge applies to briefs (subject to a \$2.40 cap per brief). The briefs are provided as a courtesy and not as models of compliance with the rules.

The court's goal is to process all appeals promptly. Requests for extension of time are not favored and are not granted routinely even when all parties agree to an extension. Limited extensions may be granted to court reporters, attorneys, or pro se litigants for good cause. Extensions for more than 14 days rarely will be granted.

2. Reply and Supplemental Briefs; Supplemental Citations

A reply brief need contain only items 2, 3, 9, 10, and 11 of FRAP 28(a), and a certificate of service. Supplemental briefs may not be filed without leave of court. The court may request supplemental briefs on specific issues after a case is argued or submitted without argument.

Counsel are permitted to call the court's attention to intervening decisions or new developments by directing a letter providing supplemental citations to the clerk. *See* FRAP 28(j). Supplemental citations not in compliance with FRAP 28(j) will be rejected.

3. Contents

The content and organization of briefs are detailed in FRAP 28 and 32, and 8th Cir. R. 28A. Counsel should also consult the "Forms" link on the court's website for pointers and checklists for preparing briefs. The table of contents should contain brief argument headings. The requirements for the jurisdictional statement are contained in FRAP 28(a)(4).

Briefs should be carefully proofread. Spelling and grammatical mistakes make a brief less effective. Briefs should be brief. Footnotes should be used sparingly and must be printed or typed in the same size type as the text of the brief. The footnotes are counted toward the type-volume limitations contained in FRAP 32(a)(7).

Eighth Circuit Local Rule 28A requires counsel to certify the name and version of the word processing software used to prepare the brief, 8th Cir. R. 28A(c), and to supply a disk or CD containing the full text of the brief. The procedures for creating the brief in PDF format are detailed in 8th Cir. 28A(d).

4. Function

The brief serves two main purposes. It prepares the panel for oral argument and decision by outlining the case and presenting the arguments. The brief is also an important source of record information for the court.

The writer should identify the key issues and concentrate on them. Except in unusually complicated cases, a brief addressing more than four or five issues is often diffuse and gives the

reader the impression that no single issue is very important. The statement of facts should be complete, concise, and nonargumentative. It should be in narrative form with references to the transcript or other parts of the record. The argument should be divided into the main issues with appropriate headings and should include an analysis of the evidence and a discussion of the authorities. If no decision is controlling, the emphasis should be on reason as well as precedent. The court prefers a few good cases on point, with sufficient discussion of their facts to show their relevance, rather than an overabundance of citations. Cases worth citing usually can be summarized tersely or quoted briefly to show their precedential value. A long factual discussion is unnecessary unless a precedent is so closely on point that it must be distinguished. The writer should ensure that all cases support the principle for which they are cited and that the citations are accurate.

J. CALENDARING

Upon the filing of the briefs, every attorney-handled case is screened for argument or nonargument submission. If the court determines that argument is not necessary in an attorney-handled case, the clerk notifies counsel and gives them five days to object to the no-argument classification. Any objection to the classification is sent to a panel of three judges for review. If one of the judges on the panel determines that argument is required, the objection is granted, and the case is placed in the pool of cases ready for oral argument.

The court's policy is to initially screen all pro se appeals for submission without oral argument. Since this screening for no-argument submission is automatic upon the completion of briefing, no notice of the decision is sent to the case participants. The panel to which the pro se case is assigned for disposition on the merits may determine that oral argument is necessary. If such a determination is made, the panel will instruct the clerk as to what further action, such as appointment of counsel for the pro se party, is required.

Cases screened by the clerk for argument are placed on the earliest available calendar and each side is assigned ten, fifteen, twenty, or occasionally thirty minutes for oral argument. Preliminary calendars are prepared seven to eight weeks in advance of a scheduled court session. The judges review the draft calendar and notify the clerk's office of any conflict before the calendar is printed and published. Printed calendars are sent to counsel through CM/ECF Notices of Docket Activity approximately one month before each court session. An Acknowledgment Form is also sent, and counsel should return that form immediately.

Counsel should notify the clerk of potential conflicts well in advance of scheduling. Requests to change the schedule after the calendar has been prepared will be referred to the panel of judges assigned the case and will be granted only for good cause. Counsel's obligation in other courts ordinarily will not be considered good cause. The clerk, in consultation with the presiding judge, may change the order of argument for a particular day.

The court reserves the right to designate the location for oral arguments to expedite its docket. Counsel must examine the calendar carefully and note the city in which they are

scheduled to argue to avoid appearing at the wrong site. After the calendar has been printed, requests for changes normally are not granted. The court's monthly calendar is posted on the court's website.

K. ORAL ARGUMENT

1. *Judges' Preargument Preparation*

Approximately four-to-six weeks before scheduled court sessions, the clerk sends copies of the briefs and the designated record to each judge on the upcoming argument panel. All judges on the panel read the briefs before argument. Some judges draft preargument memoranda. Counsel should be prepared to answer questions because all members of the panel are familiar with each case by the time of argument.

A hearing panel may agree that a case should be decided without oral argument and notify the clerk to remove the case from the calendar. The court acknowledges this method may occasionally inconvenience counsel. No method of screening is perfect. The court urges counsel to assess the need for oral argument realistically when preparing the briefs. *See* 8th Cir. R. 28A(f)(1).

2. *Identity of Panel*

The printed argument calendar lists the judges on each panel. Panel changes may occur after publication of the argument calendar, and the courtroom deputy will confirm the composition of the panel on the day of argument at preargument check-in.

3. *Preargument Check-In*

On the day of argument counsel must report to the clerk's office at least thirty minutes before court convenes regardless of the order in which the cases are scheduled that day. Counsel must be available for argument any time during the argument schedule. The court may accelerate or change the argument schedule without notice. Counsel must advise the courtroom deputy of the name of the attorney or attorneys who will argue for each party and the apportionment of the time between opening argument and rebuttal. Prompt check-in is necessary so the courtroom deputy can prepare the daily docket for the panel when court opens, give last-minute instructions, and answer questions. Attorneys who are arguing must have entered an appearance in the case.

4. *Number of Cases Argued*

Each panel normally hears arguments in five or six cases each day, although the number may vary according to the state of the docket. Cases are nearly always heard in succession without a break for lunch, and panels may hear arguments in the afternoons. The printed calendar specifies the time allotted to each side.

5. *Oral Argument.*

After completing check-in, counsel should proceed to the designated courtroom and await the call of the docket. All counsel should be in the courtroom at the docket call. Counsel whose case is listed as the first case for argument should take seats at counsel table before court convenes so that they can begin their argument without delay once the docket has been called.

It is customary to address the court with “May it please the court” and await the presiding judge’s acknowledgment before beginning argument. Counsel should begin the argument by stating his or her name and the name of the party he or she is representing. Appellant’s counsel may wish to indicate how time has been divided between opening and rebuttal argument. Whenever time will be divided between counsel, the first attorney to speak for that side should apprise the panel of the division of time.

Counsel should minimize multiple attorney presentations. The court discourages two or more attorneys for the same party dividing argument time. Divided argument ordinarily is not helpful to the court and must be approved by the court in advance. Reading from briefs, decisions, or the record is not permitted except in unusual circumstances.

Counsel should speak clearly and directly into the podium microphone as the arguments are recorded. The height of the lectern in the courtrooms in St. Louis is electrically adjustable and counsel should feel free to adjust the height as necessary.

Digital versions of the arguments are placed on the court’s website, and are generally available for listening or downloading the same day as the argument. Counsel may also order a cassette tape of the argument from the clerk’s office; the charge for a cassette is \$26.00.

During oral argument, counsel should refrain from speaking whenever one of the judges is asking a question. Oral argument is an interactive process, and while counsel should have remarks prepared, he or she should not expect to give a set speech. For suggestions relating to oral argument and two experienced appellate judges’ views of the process, see Judge Donald P. Lay, *Oral Argument on Appeal – “Where the Action Really Is”*, 63 F.R.D. 453, 508 (1974), and Judge Myron Bright, *The Ten Commandments of Oral Argument*, 67 A.B.A. J. 1136 (1981).

6. *Warning Lights*

The courtroom deputy explains the court’s warning-light system at the preargument check-in. Counsel will receive a green light at the podium when they begin their arguments. Unless otherwise requested, counsel will be given a yellow warning light when five minutes of argument time remains. If appellant’s counsel has reserved time for rebuttal, the yellow light comes on when the time reserved remains. If counsel continues to argue, the time used will be subtracted from the time reserved for rebuttal. The red light will come on when all time has expired. Counsel must stop arguing immediately unless responding to a judge’s question.

IV. DECIDING THE APPEAL

A. CASE CONFERENCE AND PREPARATION OF OPINIONS AND ORDERS

The court rarely rules from the bench. The hearing panel ordinarily takes the cases argued under advisement and holds a conference at the conclusion of the day's oral arguments, reaching a tentative decision in each case. The presiding judge on the panel assigns each case for preparation of a signed opinion, per curiam opinion, or a dispositive order. The judge to whom the case is assigned circulates a proposed opinion or order to the members of the panel who may approve, offer suggestions, or circulate a concurring or dissenting opinion. When at least two members of the hearing panel approve the proposed opinion or order and the third judge either joins or prepares a separate opinion, the decision is released and the judgment is entered. The court strives to issue all opinions within ninety days after argument.

B. PUBLICATIONS OF OPINIONS

The panel determines whether the opinion in the case is to be published or unpublished. Unpublished opinions may be cited only in accordance with FRAP 32.1 and 8th Cir. R. 32.1A. Counsel may request, by motion or letter to the clerk, that an unpublished opinion be published.

C. ACCESS TO SLIP OPINIONS

The court mails a copy of the slip opinion or order to attorneys who have filed an appearance and to parties proceeding pro se on the day it is entered on the docket. CM/ECF participants will also receive the opinion electronically. All published and unpublished opinions will appear on the court's website at 10:00 a.m. on the day they are issued. The opinions are also transmitted electronically to the district court clerk's office where the case originated. Each of the court's libraries maintains a current edition of the court's slip opinions. Opinions are transmitted to the various legal publishers. Subscriptions to the court's slip opinions are not available, but the court does provide a daily summary of all of its published and unpublished opinions. The summaries are available at the "Today's Opinions" link on the court's website.

D. PETITIONS FOR REHEARING BY PANEL; PETITIONS FOR REHEARING EN BANC

Petitions for rehearing are not favored by the court and are granted infrequently. Petitions for rehearing en banc require a substantial expenditure of time by judges who have not participated in the case, as well as by the hearing panel, and should be reserved for cases necessary to maintain and secure the uniformity of decisions or that raise questions of exceptional importance. *See* FRAP 35.

The issue of whether a case should be reheard en banc is separate and distinct from the issue of whether the case should be reheard by the panel. A panel may rehear a case if it questions whether its decision was correct. The court may rehear a case en banc if the case "is of such significance to the full court that it deserves the attention of the full court." *Western Pac.*

Ry. Corp. v. Western Pac. Ry. Co., 345 U.S. 247, 262-63 (1953). Requirements and procedures for seeking rehearing by a panel and rehearing en banc are contained in FRAP 35 and 40; and 8th Cir. R. 35A and 40A.

When a petition for rehearing en banc is filed, a copy is distributed to each judge on the panel and to every active judge on the court who is not disqualified in that particular case. On a rehearing en banc, a judge who has taken senior status may elect to participate in an en banc panel if the rehearing is to review the decision of a panel of which that judge was a member. The judge who has taken senior status does not participate in the vote to determine whether to grant a rehearing petition. A petition for rehearing en banc does not remove the case from the plenary control of the panel deciding the case. The panel may grant rehearing without action by the full court.

The court strictly enforces the fourteen-day deadline FRAP 40(a) establishes. There is no mailing grace period. Extensions of time to file a petition must be filed before the deadline. By local rule, the clerk may grant a motion for an extension of time not to exceed fourteen days. 8th Cir. R. 27B(15). Requests for extensions of time to file a petition for rehearing in excess of fourteen days will be referred to the court. The judges have two weeks to review the petition and request a poll or a response. Unless a judge requests a poll or otherwise indicates the petition for rehearing en banc deserves more consideration, the clerk automatically enters an order denying petitions for rehearing 21 days after circulation to the court. If a poll is requested on a petition for rehearing en banc, each active judge casts a vote. When a poll is requested, the clerk's office will request the opposing party file a response to the petition for rehearing. No response is permitted absent the court's request. *See* FRAP 35(e). A rehearing en banc is granted if a majority of judges in regular active service and who are not disqualified vote affirmatively.

On their own motion, active judges or any senior judge who sat on the three-judge panel may also request a poll for rehearing en banc within the same time limit fixed for the filing of petitions for rehearing by the parties.

The court may assess costs against counsel who files a frivolous petition for rehearing en banc deemed to have multiplied the proceedings in the case and to have increased the costs unreasonably and vexatiously. *See* 8th Cir. R. 35A(2).

E. COSTS

Costs taxable in the court of appeals are limited to the expense of reproduction of the briefs and designated record, and the docket fee, if the appellant prevails. *See* FRAP 39(c). The prevailing party normally is entitled to recover these costs after complying with FRAP 39(d).

The verified bill of costs required by FRAP 39(d) may be that of a party or counsel, or a printer's verified bill of costs evidencing payment of the bill for a specified brief. When an objection is filed the court must determine whether the costs are reasonable for the area where

the clerk's office is located. *See* FRAP 39(c). The court will rule on a timely bill of costs only if the opposing party objects; absent an objection, the clerk will approve a timely-filed and properly-supported bill of costs. If costs have not been settled before issuance of the mandate, the clerk proceeds as specified in FRAP 39(d).

Some costs of an appeal must be taxed in the district court. *See* FRAP 39(e). After the district court receives the court of appeals mandate, a party must apply to the district court for recovery of these costs within the time the district court rules prescribe.

F. ISSUANCE OF THE MANDATE

The mandate of the court of appeals formally reconfers jurisdiction on the district court and ordinarily issues twenty-one days after entry of judgment or seven days after denial of a petition for rehearing. *See* FRAP 41(a) and 8th Cir. R. 41A. If the trial court record has been sent to the court of appeals, it is usually returned with issuance of the mandate.

A party may move to stay the issuance of a mandate for ninety days pending the filing of a petition for writ of certiorari in the Supreme Court, but the court usually denies a stay unless the panel concludes there is a reasonable chance certiorari will be granted. Issuance of the mandate does not affect the right of any party to apply for review, nor does it affect the power of the Supreme Court to grant review.

Once issued, a mandate will be recalled only to prevent injustice. *See* 8th Cir. R. 41A.

G. PETITIONS FOR WRITS OF CERTIORARI TO THE SUPREME COURT

After exhausting opportunities for hearing and rehearing, a party may seek review from the Supreme Court on a petition for writ of certiorari. *See* 28 U.S.C. § 1254(1). A petition for rehearing is not a prerequisite to filing a petition for a writ of certiorari with the Supreme Court. Certiorari is granted or denied at the discretion of the Supreme Court. The record on appeal will be transferred only at the request of the Supreme Court.

Applications for writs of certiorari must be timely. *See* 28 U.S.C. § 2101. The technical methods of seeking review are contained in the Supreme Court Rules.

APPENDIX A

**CHRONOLOGY OF EVENTS
FOR A TYPICAL CIVIL APPEAL
IN THE EIGHTH CIRCUIT**

| EVENT | COMMENTS | REFERENCES |
|--------------------------------|---|------------------------------------|
| 1. Filing the Notice of Appeal | <p>Appellant files the notice of appeal with the clerk of the district court. The notice of appeal must be filed within:</p> <ul style="list-style-type: none"> <li data-bbox="646 548 1457 613">• 30 days after the district court enters judgment in private civil cases; <li data-bbox="646 662 1457 727">• 60 days after the district court enters judgment in civil cases in which the U.S. is a party; <li data-bbox="646 776 1457 873">• 30 days (60 if the U. S. is a party) after the district court enters judgment when parties in bankruptcy cases appeal by agreement; <li data-bbox="646 922 1457 1019">• 10 days after the district court enters an interlocutory order containing the statement prescribed by 28 U.S.C. § 1292(b); <li data-bbox="646 1068 1457 1143">• 14 days after the first notice of appeal in cross-appeals or appeals by other parties. | FRAP 4(a)(1) |
| | | FRAP 4(a)(1)(A) |
| | | FRAP 4(a)(1)(B) |
| | | FRAP 4(a)(1), 6(a) |
| | | FRAP 5(a); 28 U.S.C. § 1292(b)-(d) |
| | | FRAP 4(a)(3) |

| EVENT | COMMENTS | REFERENCES |
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| 2. Payment of Filing Fee (\$5) and Docketing Fee (\$450) | Appellant pays the fees to the district court clerk when the notice of appeal is filed. For a discussion of proceeding in forma pauperis, see Eighth Circuit Internal Operating Procedures (IOP) § III(B). | FRAP 3(e) |
| 3. Filing of Appeal Information Form | Appellant files an Appeal Information Form with the district court clerk when the notice of appeal is filed, and serves a copy on the appellee. | 8 th Cir. R. 3B |
| 4. Transmission of Notice of Appeal and Docket Entries; Docketing of Appeal | The district court clerk transmits the notice of appeal and docket entries to the court of appeals clerk when the notice of appeal is filed. The court of appeals clerk docket the appeal and establishes a briefing schedule when the clerk receives these documents. | FRAP 11(e), 12 8 th Cir. R. 11A |
| 5. Prehearing Conference Program | The clerk refers appropriate cases to the prehearing conference director to explore the possibility of settlement. | 8 th Cir. R. 33A IOP § I(C)(2) |

| EVENT | COMMENTS | REFERENCES |
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| 6. Designation of Record – Appellant | <p>Within 10 days after filing the notice of appeal, appellant must elect a method of producing the record from three alternatives:</p> <ul style="list-style-type: none"> – joint appendix; – separate appendices; or – agreed statement. <p>At the same time, appellant must also file with the appropriate clerks of court and serve on opposing parties;</p> <ul style="list-style-type: none"> – election of method; – designation of record, if required; and – statement of issues. | <p>FRAP 10, 30 8th Cir. R. 30A(b)</p> <p>FRAP 30 8th Cir. R. 30A(b)(2)</p> <p>8th Cir. R. 30A(b)(3)</p> <p>FRAP 10(d) 8th Cir. R. 30A(b)(1)</p> <p>FRAP 30(b)</p> |

| EVENT | COMMENTS | REFERENCES |
|--|---|-------------------------------|
| 7. Ordering of Transcript – Appellant | Within 10 days after filing the notice of appeal, appellant must order those portions of the transcript necessary for the appeal and arrange for payment of costs, or appellant must file a certificate if no transcript is required. | FRAP 10(b) |
| 8. Filing of Corporate Disclosure Statement | Each nongovernmental party must file a corporate disclosure statement within 10 days of receiving the notice that the appeal has been docketed. | 8 th Cir. R. 26.1A |
| 9. Designation of Record – Appellee | Appellee must file a supplemental designation of the record within 10 days after receiving appellant’s designation of the record if appellant’s designation is insufficient. | FRAP 30(b)(1) |
| 10. Ordering of Transcript – Appellee | Appellee must order additional portions of the transcript if necessary and arrange for payment of costs within 10 days after appellant orders the transcript. | FRAP 10(b)(3)(B) |
| 11. Filing of Transcript | The court reporter must file the transcript within 30 days after receiving appellant’s order (and appellee’s order, when applicable). | FRAP 11(b) |

| EVENT | COMMENTS | REFERENCES |
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| 12. Submission of Appellant's Brief | Appellant must file its brief within 40 days after the appeal is docketed. For a discussion on writing the brief, see IOP § III(I). | FRAP 31(a)(1) |
| 13. Submission of Intervenor or Amicus Brief in Support of Appellant | Intervenor or amicus appellant must file its brief no later than 7 days after appellant's brief is due, unless the court grants leave for later filing. | FRAP 29(e) |
| 14. Transmission of Appendix or Agreed Statement of Record | The district court clerk transmits the agreed statement when appellant's brief is due. Appellant transmits the appendix with its brief. Appellant must ensure that trial exhibits are forwarded to court of appeals or must submit separate appendix with trial exhibits. | FRAP 10(d), 30(a) 8 th Cir. R. 30A(b) 8 th Cir. R. 10A |
| 15. Submission of Appellee's Brief | Appellee must file its brief within 30 days after service of appellant's brief. For a discussion on writing the brief, see IOP § III(I). | FRAP 31(a)(1) |
| 16. Submission of Intervenor or Amicus Brief in Support of Appellee | Intervenor or amicus appellee must file its brief within 7 days of the date appellee's brief is due, unless the court grants leave for later filing. | FRAP 29 |

| EVENT | COMMENTS | REFERENCES |
|---|--|--|
| 17. Screening | All cases are screened for argument or nonargument submission after receipt of appellee's brief. Counsel may file an objection to the classification. Cases screened for submission without oral argument are assigned to a nonargument panel. | FRAP 34 8 th Cir. R. 34A |
| 18. Calendaring | The clerk places the appeal on the court's calendar. Criminal cases, habeas corpus cases, court-expedited cases, and cases given priority by statute take precedence over other cases. | 8 th Cir. R. 34B |
| 19. Submission of Appellant's Reply Brief | Appellant must file its reply brief within 14 days after service of appellee's brief. | FRAP 31(a)(1) |
| 20. Argument | For a discussion of oral argument, see IOP § III(K). | FRAP 34 |
| 21. Opinion/Judgment | The court strives to issue the opinion within 90 days after oral argument or submission to a nonargument panel. | FRAP 36 |

| EVENT | COMMENTS | REFERENCES |
|-----------------------------------|---|---|
| 22. Filing of Posthearing Motions | <p>The aggrieved party or prevailing party must file posthearing motions within 14 days after the court issues the opinion. These include:</p> <ul style="list-style-type: none"> – petition for panel rehearing; petition for rehearing en banc; – motion for correction, modification, or clarification; – bill of costs; and – motion for attorneys fees. <p>If the United States is a party in civil case, the petition for panel rehearing and rehearing en banc must be filed within 45 days of the date of the court's judgment.</p> | <p>FRAP 35, 40 8th Cir. R. 35A, 40A</p> <p>FRAP 27(a)</p> <p>FRAP 39(d) 8th Cir. R. 30A(c), 39A</p> <p>8th Cir. R. 47C(a)</p> <p>FRAP 40(a)(1)</p> |

| EVENT | COMMENTS | REFERENCES |
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| 23. Responses to Motions | Unless the court requests, the opposing party is not permitted to file a response to a petition for rehearing | FRAP 40(a) |
| | Objection to a bill of costs must be filed within 10 days after service of the bill of costs. | FRAP 39(d) |
| | A response to a motion for correction, modification, or clarification, or to a motion for attorneys fees, must be filed within 10 days. | FRAP 27(a) 8 th Cir. R. 47C |
| 24. Issuance of Mandate | The court of appeals clerk issues the mandate 21 days after entry of judgment, unless the court orders otherwise or unless a timely petition for rehearing is filed. If a timely petition for rehearing is filed, the mandate issues 7 days after denial of the petition. | FRAP 41 |

APPENDIX B

**CHRONOLOGY OF EVENTS
FOR A TYPICAL CRIMINAL APPEAL
IN THE EIGHTH CIRCUIT**

| EVENT | COMMENTS | REFERENCES |
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| 1. Filing the Notice of Appeal | <p>After the district court enters judgment, appellant must file the notice of appeal with the district court clerk within:</p> <ul style="list-style-type: none"> – 10 days when defendant appeals; or – 30 days when the United States appeals based on statutory authorization. | FRAP 4(b) |
| 2. Payment of Filing Fee (\$5) and Docketing Fee (\$450) | <p>Appellant pays the fees to the district court clerk when the notice of appeal is filed. For a discussion of proceeding in forma pauperis, see Eighth Circuit Plan to Expedite Criminal Appeals (Plan) § III(A)(2).</p> | FRAP 3(e), 24 |
| 3. Transmission of Notice of Appeal, Docket Entries, and Order of Judgment; Docketing of Appeal | <p>Within two working days after the notice of appeal is filed, the district court clerk transmits to the court of appeals clerk the district court docket entries, court order or judgment, and notice of appeal. The court of appeals clerk docket the appeal and establishes a briefing schedule when the clerk receives these documents.</p> | FRAP 11(e), 12 8 th Cir. R. 11A Plan §§ III(C), IV(A) |

| EVENT | COMMENTS | REFERENCES |
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| 4. Ordering the Transcript | <p>The district court clerk orders the transcript from the court reporter within 2 working days after the notice of appeal is filed.</p> <p>Appellant must arrange for payment for the transcript when the notice of appeal is filed.</p> <p>Appellants proceeding in forma pauperis must file with the notice of appeal a completed CJA Form 24, authorizing government payment for the transcript.</p> | <p>Plan § III(A)(1)(a)</p> <p>Plan § III(A)(1)(a)</p> <p>Plan § III(A)(2)</p> |
| 5. Supplementing the Record | <p>Because the Plan establishes the contents of the record, no designation of the record is required. Appellant may supplement the record by filing a request within 7 days after the notice of appeal is filed.</p> <p>Appellee may file a supplemental designation of the record within 14 days after the notice of appeal is filed.</p> | <p>Plan § III(A)(1)(b)</p> |
| 6. Filing of Transcript | <p>In cases not tried or tried in 3 days or less, the court reporter must complete and file the transcript with the district court clerk within 20 days after the notice of appeal is filed. In all other cases, the court reporter must complete and file the transcript within 40 days.</p> | <p>Plan § III(D)</p> |

| EVENT | COMMENTS | REFERENCES |
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| 7. Transmission of Record | The district court clerk shall transmit 3 copies of the designated record to the court of appeals clerk within 2 days after the transcript is filed. | Plan § III(C) |
| 8. Submission of Appellant's Brief | Appellant must file its brief within 14 days after the district court clerk transmits the designated record to the court of appeals clerk. For a discussion on writing the brief, see Eighth Circuit Internal Operating Procedures (IOP) § III(I). | Plan § III(B) |
| 9. Screening and Calendaring | The case is screened for argument or nonargument submission when appellant files its brief. Appellant may object to a nonargument classification. Cases screened for submission without oral argument are assigned to a panel. Criminal cases are given priority on the argument calendar. | 8 th Cir. R. 34A Plan § IV(A) |
| 10. Submission of Appellee's Brief | Appellee must file its brief within 21 days after appellant filed its brief. For a discussion on writing the brief, see IOP § III(I). | Plan § III(B) |
| 11. Submission of Appellant's Reply Brief | Appellant must file its reply brief within 7 days after appellee files its brief. | Plan § III(B) |

| EVENT | COMMENTS | REFERENCES |
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| 12. Argument | For a discussion on oral argument, see IOP § III(K). | 8 th Cir. R. 34A, 34B IOP § I(D)(2) Plan § IV(A) |
| 13. Opinion/Judgment | The court strives to issue an opinion within 90 days after oral argument or submission to a nonargument panel. | Plan § I |
| 14. Filing of Posthearing Motions | The aggrieved party or prevailing party must file posthearing motions within 14 days after the court issues the opinion and judgment. These include: | |
| | – petition for panel rehearing; petition for rehearing en banc; | FRAP 35, 40 8 th Cir. R. 35A, 40A |
| | – motion for correction, modification, or clarification. | FRAP 27(a) |
| 15. Responses to Motions | Unless the court requests, the opposing party is not permitted to file a response to a petition for rehearing. | FRAP 40(a) |
| | A response to a motion for correction, modification, or clarification must be filed within 10 days. | FRAP 27(a) |

| EVENT | COMMENTS | REFERENCES |
|------------------------|--|---|
| 16. Motion to Withdraw | Counsel appointed to represent defendants are obligated to file, at the request of the defendant, a posthearing motion and a petition for writ of certiorari in the United States Supreme Court, or must file a motion to withdraw from the appointment. | Amendment to Part V of the Plan to Implement the Criminal Justice Act of 1964 |
