
Appeals Expediting Systems: An Evaluation of Second and Eighth Circuit Procedures



A Report to the
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APPEALS EXPEDITING SYSTEMS:
AN EVALUATION OF SECOND AND EIGHTH CIRCUIT PROCEDURES

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This publication is a product of a study undertaken in furtherance of the Federal Judicial Center's statutory mission to conduct and stimulate research and development on matters of judicial administration. The analyses, conclusions, and points of view are those of the author. This work has been subjected to staff review within the Center, and publication signifies that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

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I. INTRODUCTION

Disruption and delays in federal courts caused by case backlogs have been among the most persistent and frustrating problems facing those interested in efficient and effective judicial administration in both the trial and appellate courts. Backlogs, however, have not been the only hindrance to efficient case management in the federal circuit courts. Traditional pre-submission case practices are equally responsible for delays in the disposition of appellate cases. This report will explore, detail, and compare the efforts of two circuit courts to manage these problems in the appellate process.

There are at least two independent periods of time that can be identified in the typical appeal: (1) the preparation of cases by the parties through their attorneys for submission to the court and (2) the handling of cases by the court once they have been prepared for submission. Much experimentation and management energy have been devoted to the examination of procedures associated with the latter period. Comparatively small amounts of time and research effort have been spent evaluating court procedures associated with the management of the presubmission period.

The consequences of this last observation take on additional significance when one reviews the published data on disposition time. Table 1 presents median time information (in months) for

the disposition of appeals filed in the federal courts in fiscal 1978.

TABLE 1
SUMMARY MEDIAN TIME DATA
FOR DISPOSITION OF APPEALS

<u>Length of Time (in months)</u>	<u>Civil Cases</u>	<u>Criminal Cases</u>	<u>All Cases</u>
From filing of Notice of Appeal to final disposi- tion	11.5	9.1	10.5
From filing of last brief to hearing or submission	3.1	1.8	2.4
From hearing or submission to final disposi- tion	1.6	1.3	1.5

SOURCE: Administrative Office of the United States Courts, 1978 Annual Report of the Director, at tables B-4 & B-4A.

The average case takes 10.5 months to process. Out of that time, about 2.4 months are spent awaiting hearing or submission to the court, and about 1.5 months are spent by the court considering and disposing of each case. This amounts to about one-third of the total time on appeal; the other two-thirds of the time involved in processing an appeal is consumed by events unaffected by the relative efficiency of courts and circuit judges.

The Federal Rules of Appellate Procedure provide some controls for this portion of the appeals process. There are time

limits for the preparation of transcripts, the record on appeal, and briefs. Some commentators, however, such as Chief Judge Donald Lay of the Eighth Circuit,¹ hold the view that the rules are inappropriately generous and should be modified to eliminate unnecessary delay from the appellate process. Apparently, there is growing support for this position, as evidenced by recent amendments to the Federal Rules of Appellate Procedure that reduce certain of the time limits for case preparation.

Furthermore, as significant as the federal and some of the local rules are to the management of the appellate process, the techniques used to ensure adherence to the stated time limits must themselves be effective. The federal appellate courts have long relied on the adversary process not only to provide a thorough examination of the issues in each case but also to enforce the rules affecting the time limit associated with case movement; the courts have generally operated on the expectation that attorneys would monitor opposing counsel's compliance with time limitations. For many reasons related to the exigencies of practice, that expectation has not been realized. Attorneys for all parties to an appeal all too often, and sometimes contrary to the interest of their clients, do nothing to ensure the prompt perfection of a case. For example, it is a common observation that attorneys seldom resist motions by opposing counsel for extensions of time. Thus the "management by counsel" approach seems

1. See Lay, Reconciling Tradition with Reality: The Expedited Appeal, 23 U.C.L.A. L. Rev. 419 (1976).

to have resulted in excessive presubmission times and unnecessary delays.

In contrast to the "management by counsel" method of presubmission appellate case management, the United States Courts of Appeals for the Second and Eighth Circuits have established procedures designed specifically to control and reduce the time required to prepare cases for submission on appeal. Since the implementation of the expediting systems in these circuits, the courts have ranked first and second in median disposition time among all circuits in the United States. While their speed in handling cases cannot be fully explained by the procedures here, the apparent effectiveness of the programs merits review and evaluation.

This report, prepared under contract to the Federal Judicial Center, provides that review and evaluation. It grew out of a related project, the objectives of which were to document presubmission case management procedures in the Eighth Circuit, to develop manuals and other tools to assist with those procedures, and to recommend and evaluate techniques and concepts to improve the system. In the course of the Eighth Circuit study, a less systematic review was made of the presubmission expediting procedures employed in the Second Circuit. This report outlines the approaches used in the two circuits, summarizes the general procedures, discusses their potential application within a computerized management system, and finally, evaluates the procedures pursued by them. Selected documents and forms used by the two courts are contained in the appendixes.

It is hoped that this description and review of the efforts of these two courts will be helpful and instructive for other circuits considering the implementation of presubmission expediting and case management systems. The author's report to the Center documenting the Eighth Circuit procedures is also available for those wishing to examine that system in greater detail.²

2. L. Farmer & W. Buckner, Eighth Circuit Expediting Project: Final Report (on file at the Federal Judicial Center's Research Division).

II. PRESUBMISSION APPEALS EXPEDITING SYSTEMS

This chapter describes the basic features of the Second and Eighth Circuit plans and procedures. Two expediting programs are in operation in the Second Circuit, one designed to manage civil cases and the other, to manage criminal cases. The objective of these programs is to dispose of pending cases as rapidly as possible. Expedition of criminal cases is governed by the Revised Second Circuit Plan to Expedite the Processing of Criminal Appeals (see appendix A); expedition of civil cases is governed by the Civil Appeals Management Plan (see appendix B). The Eighth Circuit Court of Appeals has detailed its system in A Plan to Expedite Criminal Appeals (see appendix C) with the stated purpose of disposing of criminal appeals within five months from the filing of the Notice of Appeal. While the circuit expedites civil appeals as well, it has not developed a formal plan; civil appeals are managed by an informal system patterned after the concepts of criminal appeals.

Second Circuit: Criminal Appeals

General Comments

The Second Circuit criminal appeals expediting plan consists of two primary components: (1) procedures designed to decrease the time that elapses between each stage of an appeal, and (2) procedures to monitor the progress of the appeal and prevent delay at any point. The plan is well integrated into the day-to-

day functioning of the clerk's office. A number of people in the district court and in the circuit court coordinate efforts to manage criminal appeals.

Personnel

The actual management of an appeal in the circuit court clerk's office involves a number of people. Docketing clerks (case processing clerks) have primary responsibility for monitoring scheduled filing dates and for notifying the case processing supervisor when deadlines are not met. Separate docketing teams for criminal and civil cases have been organized. The case processing supervisor is primarily responsible for handling contacts with attorneys and court reporters for the purposes of setting filing dates and troubleshooting when a filing is overdue.

Required Forms and Instructional Packets

The Second Circuit requires district court personnel to prepare an information sheet on each case at the time of verdict, and requires appellant's counsel to submit a completed Notice of Appeal form when filing a Notice of Appeal. In addition, a special form has been prepared for submitting motions. The circuit provides instructional packets to defendants' attorneys at the time of verdict. These packets have been designed to provide potential appellants with appropriate forms and with helpful procedural instructions to assist them in the preparation of their cases if they choose to appeal. Appendix D contains a

description of the contents of these packets as well as samples of forms and other documents.

Scheduling Requirements

The criminal appeals expediting plan imposes the following time constraints for filing documents with the circuit court:

<u>Event</u>	<u>Time Limit</u>
Filing of Record	No later than twenty (20) days after filing of the Notice of Appeal. The record must be filed on time even if the transcript has not been completed.
Transcript	Not mentioned in the expediting plan. The Federal Rules of Appellate Procedure allow thirty (30) days for transcript preparation.
Appellant's Brief	No later than thirty (30) days after filing of the transcript. Appendix is to be filed with the brief.
Appellee's Brief	No later than thirty (30) days after filing of appellant's brief.

In addition to these constraints, the plan places a limit of seven days after filing of a Notice of Appeal in which to make a motion to be relieved as counsel. Trial counsel must certify at the time of filing the Notice of Appeal that trial minutes have been ordered, if necessary, and that satisfactory arrangements for payment have been made with the court reporter. The case processing supervisor establishes due dates for each case after reviewing the transcript status and after talking with attorneys for each of the parties. The case processing supervisor then prepares and sends to all parties a "scheduling order" containing

the transcript due date, the record due date, the appellant's brief due date, the appellee's attorney due date, and the week in which the argument will be before the court.

Monitoring Scheduled Events

All monitoring of scheduled filing dates is handled by the criminal docket clerks. The circuit has prepared a docket sheet that allows clerks to enter information on case status in appropriate places (see figure 1). Each criminal team docketing clerk inventories all cases in his docketing tub once a month and prepares a monthly inventory report. When problems are noted, docketing clerks contact attorneys to check on the status of scheduled filings. The case processing supervisor is notified of overdue transcripts, and notifies court reporters of these matters. From the monthly inventory, a list of all overdue events or problem cases is prepared for the case processing supervisor. The case processing supervisor then checks with appropriate individuals to see what problems exist, and appropriately adjusts schedules or disposes of cases.

Motions for Extension of Time

Motions for extension of time for filing transcripts are researched by the case processing supervisor and signed by the clerk of the circuit court. Motions for extension of time in filing briefs are screened by staff attorneys and ruled on by circuit judges. The expediting plan for the Second Circuit pointedly states that motions for extension of time will not be

SHORT TITLE		FIGURE 1				DOCKET NO. ▶			
<input type="checkbox"/> U.S. Civil <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Criminal		TYPE OF CASE <input type="checkbox"/> Original proc. <input type="checkbox"/> Administrative <input type="checkbox"/> Private Civil <input type="checkbox"/> Prisoner		DISTRICT COURT <input type="checkbox"/> Conn. <input type="checkbox"/> EDNY <input type="checkbox"/> WDNY <input type="checkbox"/> NDNY <input type="checkbox"/> SDNY <input type="checkbox"/> VT <input type="checkbox"/> Other (specify) _____		MR NUMBER ▶ ▶			
▶ Forms		DOCKET FEE		DISTRICT COURT DATA:		<input type="checkbox"/> CROSS APPEAL OR <input type="checkbox"/> CONSOLIDATED WITH DOCKET NOS:			
Date Filed		DATE		DISTRICT DOCKET NO.		▶			
A						▶			
B		ACCOUNT OF APPELLANT		DATE ACTION FILED IN DIST. COURT		▶			
C						▶			
D		RECEIVED		DATE OF DISTRICT COURT JUDGMENT		RECORD FILED (ORIGINAL DIST. COURT PAPERS):			
CJA20									
CJA23		DISBURSED		DATE N.A. FILED		(TRANSCRIPT(S)):			
Other (specify)									
DATE(S) PREARGUMENT CONFERENCE(S) HELD:		NO FEE REQUIRED: <input type="checkbox"/> FP <input type="checkbox"/> 24a <input type="checkbox"/> SC		DATE DOCKETED					
▶ SCHEDULING ORDERS					FILING OF BRIEF, APPENDIX, ETC.				
		SO 1	Adj SO 2	Adj SO 3	Adj SO 4	Adj SO 5	PAPER FILED	PARTY	DATE
		DATE ISSUED	DATE ISSUED	DATE ISSUED	DATE ISSUED	DATE ISSUED			
Record									
Transcript									
BRIEFS:									
Appellant									
No.									
Appellee									
No.									
Argument (Week of)									
<input type="checkbox"/> ADJ. SO. 6 ETC. OVER <input type="checkbox"/> APPELLEE'S APPENDIX									
▶ MOTIONS TO EXTEND TIME		▶ CALENDAR			▶ TERMINATION		▶ METHOD OF DISPOSITION		
Date Filed	Order Entered	Date Time Request Sent		Date Heard/Submitted	Tape No.		<input type="checkbox"/> WRITTEN OPINION (BY JUDGE) <input type="checkbox"/> WRITTEN OPINION (PER CURIAM) <input type="checkbox"/> DECISION FROM THE BENCH <input type="checkbox"/> SUMMARY ORDER <input type="checkbox"/> COURT ORDER W/O OPINION <input type="checkbox"/> DEFAULT DISMISSAL (CAMP, CAEP, OTHER) <input type="checkbox"/> CONSENT DISMISSAL (RULE 33, CRIMINAL, OTHER) <input type="checkbox"/> O-18(7) DISMISSAL <input type="checkbox"/> OTHER (SPECIFY) _____		
1		Date Disqualification Sent	Date Judgment Filed/Order of Disposition	Date Mandata Issued					
2		Date Certain Notices Sent (No. sent _____)		Date Bill of Costs Filed					
3		1 2 3 4 5 6							
4		Receipt of Day Certain Notices	Date Statement of Costs Filed						
5		1 2 3 4 5 6	Petition for Rehearing Filed	Granted <input type="checkbox"/>	Denied <input type="checkbox"/>				
6		Date Set for Argument	Date	Date	Date				
7		Committed <input type="checkbox"/>	Additional Petitions for Rehearing-See Docket Entries	Record Returned					
8		Not Committed <input type="checkbox"/>	Petition for Cartiorari Filed	Granted <input type="checkbox"/>	Denied <input type="checkbox"/>				
9		ROR <input type="checkbox"/>	Date	Date	Date				
10		Ball <input type="checkbox"/>	Additional Petitions for Cartiorari-See Docket Entries	Date Reopened					
Proceedings Held in Abeyance <input type="checkbox"/>	Reactivated <input type="checkbox"/>								
Issuance of Mandate Stayed <input type="checkbox"/>	Stay Vacated <input type="checkbox"/>								

looked upon with favor. Significant latitude is exercised in scheduling the dates in the original order. It is the policy of the case processing supervisor to make reasonable adjustments to the established time constraints when preparing the initial scheduling order. This practice is based on the assumption that initial accommodations will avoid later motions and adjustments.

Enforcement and Sanctions

The primary sanction in the system is the dismissal of cases for default when scheduled dates for filing the record or briefs are not met. Docketing clerks, at the time of the monthly inventory, attempt to contact attorneys responsible for overdue filings by phone. If the attorneys intend to submit motions for extensions of time, docketing clerks allow a few days for motions to arrive. If attorneys cannot be contacted, or do not intend to submit motions for extension of time, or if promised motions or documents do not arrive promptly, docketing clerks dismiss appeals for default. This sanction is routinely and automatically applied to all criminal cases. Attorneys who wish to continue appeals after dismissal must file a motion for reinstatement of the appeal, which is ruled on by circuit judges.

Description of Procedures

The Second Circuit operations manual describes the procedures followed in the criminal expediting plan as follows:

1. The courtroom deputy and the district judge complete and transmit the criminal case information form (form A) to the appeals clerk.

2. Counsel for the appellant must order the transcript from the court reporter, and when filing the Notice of Appeal, must complete the transcript information form (form B), which is used to order the transcript, and must give a copy to the court reporter.
3. The appeals clerk transmits the Notice of Appeal and form A to the court of appeals, and the court reporter transmits a copy of form B.
4. The criminal docket team receives the Notice of Appeal and forms and gives a copy of the forms to the scheduling clerk. The scheduling clerk contacts the attorneys and/or the court reporter, if necessary, to check on the progress of the preparation of the transcript, and on the basis of the information he receives, prepares an order establishing a schedule for the filing of the record and briefs (scheduling order).
5. As the appeal progresses, the docket teams monitor the appeals for compliance with scheduling orders and for signs of inactivity. Failure to meet a deadline is brought to the attention of the case processing supervisor or scheduling clerk, who may dismiss the appeal.

Second Circuit: Civil Appeals

General Comments

The Second Circuit operations manual describes the Civil Appeals Management Plan (CAMP) in the following manner:

All civil, administrative, and prisoner appeals (other than those involving a pro se party) are included in the CAMP program. The program, administered by the Staff Counsel, has two main objectives, the expedition of appeals, and the reduction of the judicial workload. Currently, these objectives are furthered through (1) the issuance of scheduling orders and monitoring procedures, and (2) attempts to settle cases or clarify issues through the use of pre-argument conferences with attorneys.

This report will be concerned only with the description and evaluation of the procedures associated with the expedition of appeals.³ The CAMP program has many procedures in common with the criminal appeals expediting plan described above. Therefore, only the unique aspects of CAMP will be discussed in this section.

Personnel

The Second Circuit uses staff counsel to assist in the management of civil appeals. The case processing supervisor is much less involved in the management of civil appeals than in the management of criminal appeals. For example, staff counsel, rather than the case processing supervisor handles the preparation of scheduling orders. The role of the case processing supervisor is limited to reviewing and signing dismissal orders prepared by civil case docketing clerks. Civil case docketing teams are used much like the criminal case processing teams to monitor and manage civil appeals.

3. For an in-depth review of the impact of CAMP on the appellate process, see J. Goldman, An Evaluation of the Civil Appeals Management Plan: An Experiment in Judicial Administration (Federal Judicial Center 1977).

Required Forms and Instructional Packets

At the time of filing Notices of Appeal, appellants obtain a Civil Appeal Pre-Argument Statement (form C) and a transcript information form (form D). These forms must be filed within ten days of filing the Notice of Appeal. Filing of these forms causes the case to be docketed. These forms are used to ensure the proper ordering of transcripts and to provide circuit personnel with information necessary to put CAMP procedures into effect. The Second Circuit does not provide an instructional packet for the use of attorneys in civil appeals, but does provide some instructions on the back of form C. Appendix E contains samples of these forms.

Scheduling Requirements

The scheduling requirements of the Federal Rules of Appellate Procedure are used in the Civil Appeals Management Plan. CAMP does not additionally specify time limits for filing of the record, transcript preparation, or filing of briefs. Exact due dates in each case are established by staff counsel either before or after a preargument conference. A scheduling order may be sent out before the preargument conference, or may be prepared at the preargument conference, depending on the circumstances of each case. If a scheduling order is sent out before a preargument conference, it may be modified at the conference. Scheduling orders, which are sent to all parties by staff counsel, contain the record due date, the appellant's brief due date, the

appellee's attorney due date, and the week in which the argument will be before the court. Orders are prepared by civil case processing clerks at the time each case is docketed. Staff counsel simply write in the selected dates in appropriate spaces to complete a scheduling order.

Monitoring Scheduled Events

Monitoring of scheduled events is handled by the monthly inventory method described previously in the section on expediting criminal cases. When civil case processing clerks discover through the inventory that a record is overdue, they send a copy of the docket sheet to staff counsel, notifying them that the case is in default, and request information that would prevent the dismissal of the case. Unless otherwise instructed by staff counsel, the case processing clerk dismisses the case for default. When civil case processing clerks discover an overdue brief, they contact staff counsel to see if there are reasons the case should not be dismissed. If no reasons are forthcoming, the case processing clerk prepares a dismissal order, which is reviewed and signed by the case processing supervisor. The calendaring clerk assists in monitoring briefs due at the time of calendaring.

Motions for Extension of Time

Motions associated with the filing of briefs are due two weeks before the brief is due. They are handled much like motions in the criminal system.

Enforcement and Sanctions

Dismissal of cases for default is the primary sanction of the civil expediting plan. After review by staff attorneys, cases found to be in default are routinely dismissed.

Preargument Conferences

Preargument conferences are described in the CAMP plan as follows:

- a) In cases where he may deem this desirable, the staff counsel may direct the attorneys to attend a pre-argument conference to be held as soon as practicable before him or a judge designated by the Chief Judge to consider the possibility of settlement, the simplification of the issues, and any other matters which the staff counsel determines may aid in the handling or the disposition of the proceeding.
- b) At the conclusion of the conference the staff counsel shall enter a pre-argument conference order which shall control the subsequent course of the proceeding.

As mentioned previously, these conferences are important to the operation of the Second Circuit Civil Appeals Management Plan, but they are discussed here only to the extent that they affect the development of filing time constraints and the monitoring of filing dates.

Description of Procedures

The Second Circuit clerk's office has outlined normal procedures in the CAMP program as follows:

1. The appellant files his Notice of Appeal, and at that time obtains form C (Civil Appeal Pre-Argument Statement) and form D (transcript information form).

2. Within ten days, the appellant must pay the docket fee; complete form C, serve it on all parties, and file the original with the clerk's office; and order the transcript from the court reporter (if necessary) and file and serve form D at the same time. At this point, the appeal is docketed (although it may be docketed without the forms).
3. When the appeal is docketed, the docket clerk draws up a proposed scheduling order and a proposed preargument conference order. The staff counsel will then examine the file and determine if the case is appropriate for a preargument conference, and if so, he will schedule one. He may also issue a scheduling order or consolidate cases at that time.
4. If a preargument conference is held and the case is settled, the attorneys will submit a stipulation to dismiss (to be endorsed by the clerk) or withdraw the appeal for a settlement agreement (to be endorsed by a judge). If the case is not settled, the staff counsel may issue a preargument conference order modifying a scheduling order or otherwise setting out instructions for the continuation of the appeal.
5. If any of the parties fails to meet any of the provisions in the scheduling order, the staff counsel may dismiss the appeal or impose other

sanctions. If any of the parties applies for an extension of time, the motion is referred to the staff counsel, who may issue an appropriate order.

Eighth Circuit

General Comments

The Eighth Circuit Court of Appeals has developed and implemented a system to expedite appeals from the filing of Notices of Appeal with the trial courts to the perfection of the appeals in preparation for submission or hearing in the circuit court. To implement this system, the court has published A Plan to Expedite Criminal Appeals (see appendix A) as part of the circuit's local rules. The primary objective of the expediting system is to develop a time schedule that will ensure timeliness in the perfection of an appeal. Other important objectives in instituting the appeals expediting system are:

1. to simplify the appeals process,
2. to make the process orderly and predictable,
3. to reduce the costs for lawyers,
4. to reduce the amount of time required to complete an appeal, and
5. to streamline the process to eliminate wasted motion time for attorneys and for judges.

The following section describes the basic features of the Eighth Circuit expediting system. Because procedures used in the civil and criminal systems are quite similar, both systems will

be described together. Important differences between the civil and criminal systems will be noted.

Personnel

As a central feature of its expediting approach, the Eighth Circuit court employs a full-time appeals expediter who is responsible for closely monitoring and managing all appeals. The nature of the expediting approach requires the appeals expediter to maintain telephone contact with all parties, with court reporters, and with district court clerks. These contacts are sufficiently frequent that it is necessary for the expediter to maintain extensive address and telephone number lists and to use modern communications and word processing equipment. For example, the expediter's office uses two automatic telephone dialers that can be programmed with prerecorded telephone numbers to access the federal telephone service (FTS) WATS lines for the many calls that must be placed each day.

Required Forms and Instructional Packets

Eighth Circuit procedures call for district courtroom deputies to distribute instructional packets of preappeal materials to counsel at the time of verdict or judgment in criminal cases (see appendix D). This packet is designed to assist counsel in efforts to comply with the circuit's appeals expediting plan. The packet contains step-by-step provisions governing preparation of Notice of Appeal forms, designations of the record, statements of issues, and time limitations for filing

of transcripts and briefs. Under the plan, filing requirements vary depending on whether the trial evidence was presented in three days or less, or four days or more. Details are given in the preappeal packets relative to the procedures to be followed with in forma pauperis cases. In addition to detailed instructions, the packet contains a Notice of Appeal form and a sample designation of record and statement of issues.

A similar packet has been proposed for use in civil cases (see appendix G). The Eighth Circuit does not distribute civil appeal instructional packets. It has been proposed that such packets be distributed at the time of verdict if there is a high probability of appeal.

Scheduling Requirements

The system involves the setting of stringent schedules for the filing of transcripts and briefs. A briefing schedule order, outlining all scheduled filing dates, is sent to all parties by the appeals expediter once a new appeal has been docketed in the circuit court. In order to ensure strict conformance to these schedules, repeated written notices are sent, and phone calls are made to appeal participants. The scheduling system is flexible enough to allow for the readjustment of schedules to accommodate either early or late filing. For example, if appellant's briefs are filed late, the scheduled dates for subsequent briefs and for submission to the court are delayed by corresponding amounts of time. See figure 2 for a summary of the filing requirements.

FIGURE 2

EIGHTH CIRCUIT FILING REQUIREMENTS

<u>Event</u>	<u>Civil Time Limits</u>	<u>Criminal Time Limits</u>
Notice of Appeal (N/A)	Within thirty (30) days after judgment	Within ten (10) days after sentencing
Ordering transcript	Within ten (10) days after filing N/A	Automatic at filing or within ten (10) days after filing N/A
Designation of record	N/A	Automatic at filing or within ten (10) days after filing N/A
Transcript	Within thirty (30) days after ordering	Within twenty (20) or thirty (30) days after filing N/A
Filing of complete record	Within twenty-four (24) hours after filing of transcript	Within twenty-one (21) or thirty-one (31) days after filing N/A
Appellant's brief due	Within thirty (30) days after transcript ordered	Within twenty-eight (28) days after filing N/A
Appellee's brief due	Within thirty (30) after filing of Notice of Appeal	Within twenty-one (21) days after filing of appellant's brief

Monitoring Scheduled Events

The Eighth Circuit monitors very closely all scheduled events in each appeal before the circuit. It is the objective of the appeals expediter to eliminate all unnecessary time from the processing of appeals. To accomplish this, the expediter has developed systems for the daily monitoring of all scheduled events. A number of tickler systems and diaries have been developed for use in the appeals expediter's office. The expediter also en-

lists the assistance of district court appeals deputies to track scheduled events for the filing of documents in the district court. In addition, deputy clerks in the circuit clerk's office provide the appeals expediter with periodic reports of briefs received. Procedures have been worked out to notify the expediter promptly of events affecting the timely disposition of cases. Unique to the Eighth Circuit approach is a system of techniques to remind court reporters and attorneys when a document is due to be filed. One of the primary reminder techniques is the "ten-day letter," which alerts court reporters and appropriate counsel that transcripts or briefs are due in ten days. Separate systems have been established to monitor due dates and to trigger the preparation of reminder letters.

Motions for Extension of Time

The circuit's criminal appeals expediting plan envisions a coordinated effort among the district court clerk's office, court reporters, counsel, and the circuit court clerk's office to expeditiously accomplish the perfection of each appeal. In order to sustain a smooth flow of activities, the appeals expediter has been delegated the responsibility for ruling on procedural motions for extensions of time. Extensions are strongly discouraged and, where honored, are rarely approved for more than two weeks. Each motion for extension is reviewed carefully. When an extension is granted, it is usually for less than the time requested. Motions may be and are typically tendered in the form

of a letter, with justification, rather than as a formal pleading. The circuit follows similar procedures in civil cases.

Enforcement and Sanctions

As a matter of practice, the court relies upon the persuasiveness of the appeals expediter to enforce rules associated with the circuit's expediting approach. Reflecting this attitude is the fact that no specific sanctions are mentioned in the published criminal appeals expediting plan. In the event of noncompliance, action may be taken in accordance with rule 46 of the Federal Rules of Appellate Procedure. As a practical matter, however, all problems are disposed of without sanctions by the appeals expediter.

Description of Procedures

The operation of the criminal appeals expediting plan may be described as follows:

1. Courtroom deputies distribute instructional packets to appellant's counsel at the time of verdict. When a Notice of Appeal has been filed in the district court, copies are mailed by the district court to all lawyers, probation officers, marshals, and court reporters. The court of appeals receives a certified copy of the Notice of Appeal and two certified copies of the district court clerk's docket entries. An information sheet is also filled out by the appeals deputy clerk and is attached to the certified copy for delivery to the court of appeals.

2. Once all designations have been filed, the designated

record on appeal can be prepared. All designated documents requested in the designated record are paginated and indexed, and two copies of them are made. The record on appeal always includes the indictment, the judgment and commitment, and the Notice of Appeal docket entries. If any transcripts or exhibits are designated, they too are delivered in original form along with the designated record on appeal to the circuit court. The clerk certifies an original or copy of the pleadings.

3. Upon docketing a criminal appeal, the docketing clerk forwards several items to the appeals expediting section: a notification of docketing letter, a case information sheet, and an appointment letter. Upon receipt of this packet of material, the appeals expediting section begins to monitor the case. A series of telephone contacts typically follows.

4. The appeals expediter calls the district deputy clerk to see if a transcript has been filed. If a transcript has been filed, a call is placed to counsel and a briefing schedule agreed upon. If the transcript has not been filed, the court reporter is called, and a firm filing date is negotiated.

5. Local rules distinguish between procedures to be followed in the preparation of transcripts and the designation of the record in cases with "three days or less" and "more than three days" of trial testimony. In order to avoid delays in transcript ordering, transcripts are automatically ordered by appeals deputies at the time the Notice of Appeal is filed in in forma pauperis cases in which the trial testimony took three days

or less. (In "three days or less" cases, the maximum time to prepare a transcript is reduced from the usual thirty days to twenty days or less.) Designations of record are also automatically handled, unless supplemented, in "three days or less" cases.

6. Once all dates have been established, a briefing schedule order form is prepared and sent to counsel and to the court reporter, if necessary.

7. Each morning, the expediter's desk-calendar diary is reviewed to identify cases that require "ten-day letters." If a brief is not received on time (same day for attorneys living in local area, or within three days by mail), a call is placed to the counsel to discover the reason for the delay and to establish an anticipated filing date. If delinquent attorneys need more than a few additional days to complete their briefs, they are required to file a motion for an extension of time. All motions for extension of time are disposed of by the appeals expediter.

III. COMPARATIVE MEDIAN DISPOSITION TIME

To determine what impact these appeals expediting programs may have had on the time factors involved in the appeals process, published statistical data on the performance of these two circuits were compared with the general disposition data for other federal circuit courts. Since fiscal 1975, the Second and Eighth Circuits have ranked first and second, respectively, among all federal appeals courts in median times, according to data published by the Administrative Office of the United States Courts.

Median time data reported from 1975 to 1978 for the Second and Eighth Circuits have remained relatively constant. Thus, the data reported by the Administrative Office in its annual report for fiscal 1978 are representative of the statistical pattern for these two circuits. The median time data for 1978 are reported here to illustrate hypotheses about the impact of expediting approaches on disposition rates in federal circuit courts. Table 2 contains a condensation of data relative to Second and Eighth Circuit median time performance during fiscal 1978.

As table 2 shows, the Second and Eighth Circuits have comparatively rapid disposition rates when compared with the middle- and last-ranking circuits. Since these two circuits have the most carefully crafted and active expediting programs among the federal circuit courts, it is tempting to conclude that expediting programs can reduce dramatically the length of presubmission

TABLE 2

SUMMARY MEDIAN DATA: COMPARISON OF SECOND AND EIGHTH CIRCUITS

Process	All Appeals				Civil Appeals				Criminal Appeals			
	Second	Eighth	Middle	Last	Second	Eighth	Middle	Last	Second	Eighth	Middle	Last
Notice of Appeal to filing of complete record	0.9 (1)	2.2 (1)	1.8 (11)	2.3 (11)	1.0 (1)	2.4 (11)	1.4 (6)	2.4 (11)	0.8 (1)	1.6 (3)	2.1 (6)	3.4 (11)
Filing of complete record	2.7 (4.5)	1.2 (1)	2.8 (11)	4.4 (11)	2.6 (4)	1.3 (1)	2.8 (6)	4.2 (11)	2.7 (8)	1.1 (1)	2.6 (6)	3.5 (11)
Last brief to hearing submission	0.4 (1)	1.7 (3)	3.1 (6)	6.4 (11)	0.6 (2)	1.9 (3)	2.9 (6)	9.2 (11)	0.3 (1)	1.3 (5)	2.0 (6)	5.0 (11)
Hearing submission to final disposition	0.3 (1.5)	1.4 (4.5)	1.6 (6)	2.4 (11)	0.5 (2)	115.0 (4)	119.0 (6)	2.5 (11)	0.1 (1)	0.1 (5)	1.4 (6)	2.4 (11)
Filing of complete record to final disposition	4.3 (1)	5.0 (2)	8.1 (6)	13.8 (11)	4.5 (1)	5.4 (2)	8.5 (6)	16.4 (11)	3.9 (1)	3.9 (2)	6.3 (6)	1.0 (11)
Notice of Appeal to final disposition	5.6 (1)	7.6 (2)	10.8 (6)	16.7 (11)	5.9 (1)	8.3 (2)	11.6 (6)	19.7 (11)	5.1 (1)	5.8 (2)	9.1 (6)	14.6 (11)

SOURCE: Administrative Office of the United States Courts, 1978 Annual Report of the Director, at tables B-4, B-4A, and B-5.

NOTE: Numbers in parentheses are the ranks of the medians. Middle and Last categories represent the median times for the circuits ranking sixth and eleventh for each of the above processes. These data indicate the comparative performances of the Second and Eighth Circuits relative to the rest of the circuits. Since either the Second or Eighth Circuit was usually ranked first in each process, no median time comparison is provided for the first-ranked circuit.

processes. Confidence in this conclusion is somewhat attenuated by factors that might otherwise have resulted in favorable disposition rates: the absence of backlog, comparatively light case-loads, and favorable judgeship ratios. Unfortunately, existing data are insufficient to provide a test of the hypothesis that expediting programs can reduce presubmission median times. Adequate evaluation of the impact of expediting programs on disposition time performance would require a controlled study in a circuit that is implementing a new program.

The Eighth Circuit expediting program is designed to monitor and manage transcript preparation, designations of record, and brief preparation. Statistically, it has by far the fastest median time data for brief filings. These data probably are distorted somewhat by the fact that the Eighth Circuit typically has reported longer times than other circuits for the period between the filing of the Notice of Appeal and the filing of the complete record (see table 2). A comparison between Administrative Office data and median time data independently calculated by the Eighth Circuit appeals expediter supports this observation. The median times reported by the expediter for the time from filing of the Notice of Appeal to filing of the complete record are lower in both 1977 and 1976 than the corresponding Administrative Office median time data. Conversely, the median time from filing of the record to filing of the last brief is higher in the data reported by the expediter. This difference serves to point out possible problems in the circuit's interpretation of guidelines for re-

porting statistical data and, at the same time, it gives support to the possible effectiveness of the Eighth Circuit expediting approach for managing time factors related to the preparation of briefs. Even when the higher figures reported by the Eighth Circuit expediter are used, this circuit still would be ranked first among all circuits in the management of the briefing process.

The Second Circuit reports clearly remarkable median time data for the time required for the filing of the complete record. These data are somewhat offset by the longer period required in that circuit for brief preparation and filing. When the two median times (filing the record, and filing the last brief) are compared for the Second and Eighth Circuits, it appears that they are about equally efficient in managing the process of preparing appeals for submission or hearing. Yet, they use quite different approaches to accomplish these results.

The Second Circuit approach to appeals expediting appears to be clearly more efficient than that used in the Eighth Circuit from the time that cases are ready for submission or hearing to the time of final disposition. The Eighth Circuit uses a monthly calendaring approach that quite clearly requires more time than the weekly calendaring approach used in the Second Circuit. The Second Circuit has also developed a number of procedures for the rapid disposition of cases after hearing, while Eighth Circuit procedures for disposing of cases place it about midway between the fastest (Second Circuit) and slowest circuits in this category. It thus appears that the differences between the two

circuits in the overall time from filing to disposition may be a result of the procedures used for submission, calendaring, and disposition.

Since the Eighth Circuit's expediting plan essentially ends with the filing of the last brief, the fact that it is second in overall disposition time appears to demonstrate the comparatively large amounts of time that can be eliminated from the appeals process by simply expediting the presubmission process.

IV. POTENTIAL COMPUTERIZED APPLICATIONS FOR APPEALS EXPEDITING SYSTEMS

At present, the appeals expediting management systems in both the Second and Eighth Circuits are maintained manually. They track and respond to a continuous flow of status changes and deadlines. To operate efficiently, the appeals expeditors, staff attorneys, and case processing clerks must have immediate and accurate information concerning cases being monitored. The amount of time and the number of personnel required to control the necessary information increase as the number of cases being monitored increases. A computer-based management information system serving the expediting and management functions could reduce the complexity of the monitoring system and the amount of time required for system maintenance.

Rather than discuss the potential development of a system designed specifically for the expedition process, it may be more helpful to examine some current computer systems and their applicability to the presubmission process. In this regard, the Federal Judicial Center's efforts with the Appellate Information Management Systems (AIMS) were reviewed.

The PreAIMS and AIMS Systems

PreAIMS and AIMS are acronyms for the appellate information management systems being developed under the Center's Courtran computer projects umbrella. PreAIMS is the first-release pilot

case management system. It is being used by the federal appellate courts while the full AIMS system is being developed. PreAIMS is significantly more limited than the target AIMS system and is designed to introduce automation into the appellate courts while providing some limited benefits. Consistent with the implementation approach being pursued by the Center, this report considers potential PreAIMS support for the expediting task rather than potential applications for the more comprehensive AIMS system.

Of the capabilities PreAIMS provides, the following could be used to assist in the operation of the Second and Eighth Circuits' case management systems:

1. tickler reports
2. inventory of "special handling" cases
3. on-line inquiry for active cases
4. mailing label preparation
5. motion reports
6. party index reports

The potential application of each of these capabilities is discussed below.

Tickler Reports

The PreAIMS system should be able to replace entirely the various calendars and tickler files currently used by the Second and Eighth Circuits. The PreAIMS tickler report contains the following information: docket number, case type, case title, scheduled date, and scheduled action. Given current procedures,

all scheduled dates can be entered into the automated system as soon as they are established. PreAIMS contains convenient methods for modifying dates if they are later changed. The remarks (scheduled action) section of the report provides a useful prompt for anyone using tickler reports. All actions and the relationship between the scheduled date and the action to be taken can be described in a narrative fashion in this section of the report.

Inventory of "Special Handling" Cases

This report lists all cases identified for "special handling," and contains the following information: docket number, special handling code, number of consolidated cases, case type, case title, date docketed, date record on appeal filed, date appellant's brief filed, date appellee's brief filed, and date argued or submitted. This report can be used to replace or supplement the desk diary currently used by the appeals expediter to monitor the status of cases being followed. It can serve as a hard copy reference for status information. It lacks the detail of the desk diary, but it has the advantage of being able to list cases in docket number order, and can be automatically updated as cases are entered into or deleted from the computer system. This report, used in conjunction with the on-line inquiry system described below, can completely eliminate the need for the manual desk diary monitoring system.

On-Line Inquiry for Active Cases

An appeals expediter for the circuit court must have immediate and accurate access to case status information in order

to respond to the numerous and varied aspects of his task. Scheduled dates, filing information, and party information are frequently needed to respond to telephone inquiries and to serve as a basis for decisions affecting motions for extensions of time. In the current manual system, this information is either provided by accessing the case docket sheets and clerk's correspondence files or, when possible, taken from the desk diary. The current system entails substantial amounts of secretarial time to assemble docket sheets and correspondence files, and affects other functions in the clerk's office. Special control procedures have been established to indicate to other personnel in the clerk's office which docket sheets and correspondence files are in the expediter's possession. The on-line inquiry capability of the PreAIMS system could eliminate the need to invest secretarial time in the task of assembling and filing docket sheets and correspondence files. It also could be used in responding to telephone and other immediate kinds of inquiries. The secretarial time thus saved could be devoted to tasks such as the maintenance of the PreAIMS information base.

Mailing Label Preparation

The Eighth Circuit expediting system uses a number of personalized form letters that are sent to keep various parties advised of status changes and deadlines. The preparation of these letters and corresponding envelopes requires significant amounts of secretarial time. The mailing label facility of the PreAIMS system can be used to reduce this time. Once case infor-

mation has been entered into the system, the requisite number of labels for anticipated correspondence could be prepared and filed for future use, largely eliminating the need to prepare individual envelopes for the mailing of scheduling orders, ten-day letters, and similar correspondence.

Motion Report

This report provides a list of all pending motions which, if used for the expediting purposes only, would allow the circuit expediter to monitor the status of motions. Because appeals expediters already routinely monitor and dispose of cases quickly, this report may have limited utility.

Party Index Report

This report contains a list of all active cases, alphabetical by case name. It would complement the other reports as an information source for the appeals expediter in the day-to-day performance of his duties.

While PreAIMS provides some significant support for the management process, there are limitations to the system in its present form. First, there is a lack of any scheduling facility for transcript information. Monitoring and expediting the production of transcripts are important aspects of the management of the presubmission process. The system, however, is sufficiently flexible to substitute other scheduled events. (It should be noted that AIMS will have transcript scheduling and reporting capabilities.) PreAIMS reports do not provide the sorted and

summary information that the expediter needs to deal most efficiently with the complex data relationships necessary to his function. This limitation will also be solved when the full AIMS program is implemented.

In conclusion, the PreAIMS system can serve a most useful function in integrating the automated capabilities into the currently manual tasks. It can possibly replace many of the manual systems now required to support expediting efforts. The automated system should result in simpler procedures in expeditors' sections and in more readily accessible information.

V. DISCUSSION AND CONCLUSION

The Second and Eighth Circuits have developed management systems in an attempt to control and reduce the time required for the preparation of cases for submission. The different management approaches used to implement their expediting programs provide models for other circuits to consider in developing similar programs. While there are many similarities in the two systems, the differences are significant and merit evaluative comparison.

The most obvious difference between the two is the fact that the Eighth Circuit has established the expediter's office as a separate operation in the clerk's office, while the Second Circuit has distributed much of the expediting function among traditional personnel by assigning case monitoring duties to docket clerks. There are advantages and disadvantages to each approach.

The centralized system as employed in the Eighth Circuit promotes consistency in the application of expediting policies and procedures; allows close management of expediting efforts; and provides a central resource for court reporters, appeal deputies, and attorneys. It has the disadvantage of adding a new layer of management in the clerk's office that is operated by a fairly complex set of procedures.

The Second Circuit's method of distributing responsibility among various clerical and staff personnel has the advantages of

reducing the impact of the system on the normal functions of the clerk's office and of freeing the case processing supervisor and staff attorneys from case monitoring duties. These personnel can thus concentrate their expediting efforts on the establishment of scheduling orders and the disposition of the difficult problems referred to them by case processing clerks. In the Second Circuit, however, close case monitoring appears to be more difficult; monitoring cases more closely would require that each case processing clerk maintain an elaborate tickler system.

As noted, the Eighth Circuit's plan is the more complex of the systems in use. In an attempt to limit presubmission preparation time in criminal cases, the plan requires district court personnel, court reporters, and appellants' attorneys to follow different procedures for different cases. Some of the distinctions appear difficult to make in practice; determining in advance the length of trial testimony, for example, is not always possible. The purposes behind each of the procedures are admirable: automatic ordering of transcripts in selected cases to reduce the amount of time required for transcript preparation; automatic designation of the record on appeal in selected cases; and shorter time limits for transcript preparation in "three days or less" cases. In combination with other requirements of the appellate process, these distinctions introduce complexity that may reduce the benefits derived from the procedures triggered by the application of these distinctions. Each additional distinction has the potential to increase the complexity of the case

monitoring system, the amount of time devoted to training district and circuit court personnel, and the number of communications among circuit personnel and those associated with the presubmission process.

The potential problems caused by complexity can be seen when one considers the fact that the Eighth Circuit does not have a published civil appeals management plan and monitors those cases according to the requirements of the Federal Rules of Appellate Procedure. Filing dates are negotiated with the appeals expediter on the basis of the limits imposed by the Federal Rules. In contrast to the determinations associated with the criminal appeals expediting plan, the civil case management approach subjects all cases to the same filing requirements, and is thus comparatively simple. As a result, it appears that the training and management task is not as complex or time-consuming for civil procedures as it is for criminal procedures. The Second Circuit's criminal and civil expediting plans also are comparatively simple; training there has not proven to be a burdensome activity.

It is difficult to determine how much complexity is possible in a process before the burden of procedures begins to interfere with the objective those procedures were established to accomplish. As a general rule, circuits implementing expediting plans should measure the benefits of new procedures against communications, training, and monitoring problems associated with them. Even with the simplest of procedures, coordination of case man-

agement between the circuit court and district courts can be a problem. Thus, it is advisable to make every effort to keep district court procedures straightforward and simple. When possible, decisions to apply different procedures to cases should be made by circuit court personnel rather than by district court personnel. Consolidating these functions in the circuit court can significantly reduce system maintenance requirements associated with an expediting program.

The Second and Eighth Circuit approaches also differ in their case monitoring methods. The Eighth Circuit uses a system of tickler files, calendars, and desk diaries to track filing due dates. This approach provides for the daily monitoring of case status information and, consequently, for the prompt response to missed deadlines. The Second Circuit employs a monthly inventory of cases as the primary monitoring device. An advantage of the monthly system is that it integrates case monitoring activities with the traditional docketing operation. As implemented in the Second Circuit, this procedure has the disadvantage of being less prompt in identifying delinquent filings. While selection between these two methods necessarily depends on a court's expediting priorities, it should be noted that the PreAIMS system allows filing due dates to be monitored and reported automatically.

Another comparison may be made in the ways the two courts communicate and interact with the attorneys involved in the appeals. The "ten-day letters" are unique to the Eighth Cir-

cuit's expediting program. They provide attorneys and court reporters with a helpful notice of filing due dates, and at the same time, remind them that these dates are being monitored by the circuit. Attorneys interviewed generally appreciated these letters and found them to be quite useful. A considerable amount of secretarial time, and some expediter time, however, is required for the preparation of these reminders. The Second Circuit does not use any similar letters, but relies on attorneys and court reporters to monitor their own filing due dates. In certain applications, such letters help to establish the perception of close monitoring of cases, and may encourage more timely filings.

The preargument conference in the Second Circuit can also serve an important communications function in addition to the primary objectives of encouraging settlement and narrowing issues. The Second Circuit may use the occasion of a preargument conference to prepare an original scheduling order, or to modify an existing order. A great deal of coordination can be accomplished very quickly at such a conference. From a case scheduling perspective, however, many of the items handled in person could be accomplished with a conference telephone call with resulting savings of time and expense to all involved.

In the communications area, two items similar in performance are sufficiently noteworthy to merit comment here. The scheduling order concept appears to be one of the most effective aspects of each of the plans. Both circuits use scheduling orders in ap-

proximately the same way. Such orders are convenient tools for providing participants (clerks, court reporters, and attorneys) with a time perspective, and serve as the governing document for filing dates. They also serve to establish the circuits' early management control of each case. Second, both courts provide appellant's attorney with packets containing forms and procedural information in criminal cases. This procedure has much to recommend it. Many attorneys are involved infrequently in the appellate process and are very much in need of assistance with each appeal. Attorneys interviewed in the Eighth Circuit generally found the appeals packets helpful, particularly if they were relatively inexperienced in appellate practice. Neither circuit currently provides instructional packets to attorneys involved in civil cases, but civil packets have been proposed for use in the Eighth Circuit (see appendix G).

The ways the two courts respond to failure to meet the scheduled filing due dates established by scheduling orders can also be compared. The Second Circuit imposes immediate and relatively severe sanctions on tardy appellants. Attorneys are held responsible for ensuring that the record on appeal is filed on time and for their individual brief due dates. The circuit has established automatic procedures for dismissing appeals when scheduled dates have not been met. This approach apparently works well, as Second Circuit personnel report a consistent pattern of prompt filings. This procedure affects the statistical performance of the circuit, since all overdue cases are dismissed

rather than allowed to age on the circuit court's docket. The Second Circuit allows dismissed cases to be reinstated upon approval of a motion for reinstatement.

The Eighth Circuit does not rely on the threat of dismissal, but rather upon the personal persuasion and the reminders provided by the appeals expediter. It is interesting to note that the attorneys interviewed in the Eighth Circuit were unanimously opposed to automatic case dismissal for overdue filing. Despite these differences, both systems seem to be effective in moving the cases promptly. The Second Circuit's procedures for handling appear to require less time than the Eighth Circuit's, but they may cost some good will among those subject to the threat of automatic dismissal.

The final comparative evaluation is in the area of the integration of expediting plans with the circuits' calendaring procedures. Published expediting plans in both circuits do not include a description of calendaring procedures. The Eighth Circuit prepares its calendar on a monthly basis. Thus, cases may wait as much as four weeks to be put on a calendar and several more weeks to be heard. In contrast, the Second Circuit calendars one week in advance, with panels sitting weekly. Cases are often calendared on anticipated filing dates for appellees' briefs. The Second Circuit procedure is designed to avoid further delays once a case is ready and appears to be more compatible with the circuit's expediting objectives.

The Second and Eighth Circuits have attempted to develop

management systems for the purpose of reducing the time required for the preparation of cases for submission on appeal. As part of this effort, these circuits have implemented control measures for the presubmission process, facilitated the efforts of attorneys practicing in their courts, and reduced judicial involvement in the administration of cases prior to submission. It appears that both circuits generally have been successful in their efforts to take early management control of the presubmission case preparation process. It is less clear what impact their case management procedures have had on time factors. The median disposition rates for these two circuits certainly suggest that they have been able to reduce case preparation time. The Second and Eighth Circuits have the first and second fastest disposition rates among all of the federal circuit courts, but available data are not sufficient to attribute this result to the case management systems employed in these circuits. Controlled studies would be necessary to evaluate the ultimate impact of these systems.

APPENDIX A: REVISED SECOND CIRCUIT PLAN
TO EXPEDITE THE PROCESSING OF CRIMINAL APPEALS

Rules of the United States Court of Appeals
for the Second Circuit - July 1, 1978

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 his 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 this 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 reporters.

If the district judge directs the Clerk to file the notice of appeal, he 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 7 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 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 his 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 20 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 30 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 F.R.A.P. 30(c) and Sec. 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 his delegate who signed such order or, if he 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, is responsible for representing him 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, he 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, he must move pursuant to Rule 4(b) to be relieved. A motion to be relieved as counsel must be made within 7 days after filing of a notice of appeal unless exceptional circumstances excusing a delay are shown.

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 7 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 F.R.A.P. 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 his 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 he may deem this desirable the Chief Judge or a person designated by him may direct attorneys to attend a pre-argument conference to be held as soon as practicable before him 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 F.R.A.P. 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.

APPENDIX B: CIVIL APPEALS MANAGEMENT PLAN
FOR THE SECOND CIRCUIT

The United States Court of Appeals for the Second Circuit has adopted the following plan to expedite the processing of civil appeals, said plan to have the force and effect of a local rule adopted pursuant to Rule 47 of the Federal Rules of Appellate Procedure.

1. Notice of Appeal, Transmission of Copy and Entry by Court of Appeals.

Upon the filing of a notice of appeal in a civil case, the clerk of the district court shall forthwith transmit a copy of the notice of appeal to the Clerk of the Court of Appeals, who shall promptly enter the appeal upon the appropriate records of the Court of Appeals.

2. Appointment of Counsel for Indigent, Advice by District Court Judge.

If the appeal is in an action in which the appellant may be entitled to the discretionary appointment of counsel under 18 U.S.C., Section 3006(A)(g) but has not had such counsel in the district court and there has been any indication that he may be indigent, the judge who heard the case shall advise the Clerk of the Court of Appeals whether in his judgment such appointment would be in the interests of justice.

3. Docketing the Appeal; Filing Pre-Argument Statement; Ordering Transcript.

Within ten days after filing the notice of appeal, the appellant shall cause the appeal to be docketed by taking the following actions:

- a) filing with the Clerk of the Court of Appeals and serving on other parties a pre-argument statement (in the form attached hereto as Form C with such changes as the Chief Judge of this Court may from time to time direct) detailing information needed for the prompt disposition of an appeal;
- b) ordering from the court reporter on a form to be provided by the Clerk of the Court of Appeals (Form D) a transcript of the proceedings pursuant

to F.R.A.P. 10(b). If desirable the transcript production schedule and the portions of the proceedings to be transcribed shall be subject to determination at the pre-argument conference, if one shall be held, unless the appellant directs the court reporter to begin transcribing the proceedings immediately;

- c) certifying that satisfactory arrangements have been or will be made with the court reporter for payment of the cost of the transcript;
- d) paying the docket fee fixed by the Judicial Conference of the United States pursuant to 28 U.S.C. 1913 (except when the appellant is authorized to prosecute the appeal without payment of fees).

4. Scheduling Order; Contents.

- a) In all civil appeals the staff counsel of the Court of Appeals shall issue a scheduling order as soon as practicable after the pre-argument statement has been filed unless a pre-argument conference has been directed in which event the scheduling order may be deferred until the time of the conference in which case the scheduling order may be entered as part of the pre-argument conference order.
- b) The scheduling order shall set forth the dates on or before which the record on appeal, the brief and appendix of the appellant, and the brief of the appellee shall be filed and also shall designate the week during which argument of the appeal shall be ready to be heard.

5. Pre-Argument Conference; Pre-Argument Conference Order.

- a) In cases where he may deem this desirable, the staff counsel may direct the attorneys to attend a pre-argument conference to be held as soon as practicable before him or a judge designated by the Chief Judge to consider the possibility of settlement, the simplification of the issues and any other matters which the staff counsel determines may aid in the handling or the disposition of the proceeding.
- b) At the conclusion of the conference the staff counsel shall enter a pre-argument conference order which shall control the subsequent course of the proceeding.

6. District Court Extension of Time; Notification by Clerk.

In the event the district court grants an extension of time for transmitting the record pursuant to F.R.A.P. 11(d), the Clerk of the District Court shall promptly notify the Clerk of the Court of Appeals to that effect.

7. Noncompliance Sanctions.

- a) If the appellant has not taken each of the actions set forth in paragraph 3 of this Plan within the time therein specified, the appeal may be dismissed by the Clerk without further notice.
- b) With respect to docketed appeals in which a scheduling order has been entered, the Clerk shall dismiss the appeal upon default of the appellant regarding any provision of the schedule calling for action on his part, unless extended by the Court. An appellee who fails to file his brief within the time limited by a scheduling order or, if the time has been extended as provided by paragraphs 6 or 8, within the time as so extended, will be subjected to such sanctions as the Court may deem appropriate, including those provided in F.R.A.P. 31(c) or F.R.A.P. 39(a) or Rule 38 of the Local Rules of this Court supplementing F.R.A.P. or the imposition of a fine.
- c) In the event of default in any action required by a pre-argument conference order not the subject of the scheduling order, the Clerk shall issue a notice to the appellant that the appeal will be dismissed unless, within ten days thereafter, the appellant shall file an affidavit showing good cause for the default and indicating when the required action will be taken. The staff counsel shall thereupon prepare a recommendation on the basis of which the Chief Judge or any other judge of this Court designated by him shall take appropriate action.

8. Motions.

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 later than two weeks 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 alter the

date of arguments placed on the calendar are not viewed with favor and will be granted only under extraordinary circumstances.

9. Submission on Briefs; Assignment to Panel.

When the parties agree to submit the appeal on briefs, they shall promptly notify the Clerk, who will cause the appeal to be assigned to the first panel available after the time fixed for the filing of all briefs.

10. Other Proceedings.

- a) Review of administrative agency orders; applications for enforcement.

In a review of an order of an administrative agency, board, commission or officer, or an application for enforcement of an order of an agency,

(i) The Staff Counsel of the Court of Appeals shall issue a scheduling order as soon as practicable setting forth the dates on or before which the record or authorized substitute, the petitioner's brief and the appendix and the brief of the respondent shall be filed and also shall designate the week during which argument of the proceeding shall be ready to be heard;

(ii) Paragraph 5 of this Plan, pertaining to pre-argument conferences and pre-argument conference orders, and Paragraphs 7(b) and 7(c) of this Plan, pertaining to noncompliance sanctions, shall be applicable to this subparagraph.

- b) Appeals from the United States Tax Court.

In a review of a decision of the tax court,

(i) Paragraphs 3(a) and 3(d) of this Plan, pertaining to filing pre-argument statements and payment of the docket fee, shall be applicable to this subparagraph. If the appellant has not taken each of the actions set forth in those paragraphs within the time specified in Paragraph 3, the appeal from the tax court may be dismissed by the Clerk of the Court without further notice;

(ii) Paragraph 4 of this Plan, pertaining to scheduling orders, shall also be applicable hereto;

(iii) Paragraphs 5 of this Plan, pertaining to pre-argument conferences and pre-argument confer-

ence orders, and Paragraphs 7(b) and 7(c) of this Plan, pertaining to noncompliance sanctions, shall be applicable to this subparagraph.

11. The foregoing Civil Appeals Management Plan shall, except for Paragraph 10, be applicable to all civil appeals in the Court of Appeals from the district courts in the Section Circuit in which the notice of appeal is filed on or after April 15, 1974.

12. Paragraph 10 shall be applicable to all petitions and appeals specified in Paragraph 10(a) and (b) filed in the Court of Appeals on or after January 1, 1976.

APPENDIX C: A PLAN TO EXPEDITE
CRIMINAL APPEALS IN THE EIGHTH CIRCUIT

Pursuant to a resolution of the Judicial Conference of the United States and to supplement Rule 50(b) of the Federal Rules of Criminal Procedure relating to the prompt disposition of cases, the Eighth Circuit, acting as the Court and as the Judicial Council for the Eighth Circuit, adopts the following plan to expedite criminal appeals in the Eighth Circuit.

I. OBJECTIVE

The objective of this plan is the disposition of criminal cases in this Court within a maximum of five months from the filing of the notice of appeal to the rendition of the decision of this Court.

II. PRIORITIES

A. Priority is to be given to criminal appeals in this Court by court reporters in the preparation of transcripts of testimony, attorneys in the preparation of briefs and records and in scheduling professional and personal obligations, the Clerk of this Court in calendaring cases for argument or submission without argument, and the judges of this Court in the rendition of decisions and the preparation of opinions.

B. The criminal appeals of persons in custody or whose liberty is reasonably believed to present a danger to society are to be given preference over other criminal cases.

III. DUTIES OF TRIAL COUNSEL WITH
REGARD TO APPEAL

Defendant's trial counsel, whether retained or appointed, shall represent the defendant desiring to appeal and take all steps required to prosecute the appeal unless a motion to withdraw is granted by this Court. If counsel intends to withdraw, the motion to withdraw should be filed simultaneously with the notice of appeal. A motion to withdraw by retained counsel may be routinely granted by the Clerk of this Court if another attorney has entered his or her appearance as attorney for the defendant or if the motion states the name of another attorney who has agreed to represent the defendant and the defendant's acceptance of the new attorney. Counsel appointed in the district court will, absent unusual circumstances, be expected to represent the defendant on appeal.

IV. PROCEDURES AND TIME LIMITATIONS
FOR CRIMINAL APPEALS

A. Provisions applicable to appeals in which the evidence was presented in three days or less.

1. In forma pauperis appeals:

a) Counsel for appellant shall, if the appeal is in forma pauperis, present a completed C.J.A. Form 21, which authorizes payment for transcript costs by the government, to the Clerk of the District Court simultaneously with the filing of the notice of appeal.

b) Upon receipt of a completed C.J.A. Form 21, the Clerk of the District Court shall, in all cases in which the appellant proceeds in forma pauperis, within 24 hours of the filing of the notice of appeal, order from the court reporter the transcript of the trial, unless the transcript has been ordered at an earlier date, or unless appellant's counsel informs the Clerk at the time the notice of appeal is filed that such transcript (or sections thereof) is not necessary for the appeal. If transcripts of other proceedings are necessary for the appeal, counsel for appellant shall, in all cases in which the appellant proceeded in forma pauperis, inform the Clerk of the District Court simultaneously with the filing of the notice of appeal of that fact, and the Clerk shall order such transcripts from the court reporter. The Clerk shall record the ordering of the transcript on the docket of the District Court.

2. In all cases in this category designation of the record pursuant to Local Rule 11 shall not be required. The original record shall consist of:

a) the transcripts ordered by the Clerk of the District Court or by counsel

b) the notice of appeal

c) the docket entries

d) the indictment or information

e) any District Court memorandum opinions

f) the judgment and sentence

Appellant's counsel may supplement the original record as defined above by requesting the Clerk of the

District Court to include such additional materials as counsel finds necessary. Such a request shall be made simultaneously with the filing of the notice of appeal. Appellee's counsel may supplement the original record by making a request within 10 days of the filing of the notice of appeal.

3. The court reporter shall file the transcripts ordered by counsel or by the Clerk of the District Court with the District Court within 20 days of the filing of the notice of appeal.

4. The Clerk of the District Court shall transmit that part of the original record not previously transmitted to this Court pursuant to IV(C)(3)(b) of this Plan, including the necessary transcripts, within 21 days of the filing of the notice of appeal.

B. Provisions applicable to appeals in which the evidence was presented in more than three days.

1. Counsel for both appellant and appellee shall, prior to ordering the transcript, confer and agree, if possible, to prosecute the appeal with an abbreviated record and without a full transcript of testimony as provided in Local Rule 10(d) and Rules 10(c), (d) and (e) of the Federal Rules of Appellate Procedure.

2. Pursuant to Local Rule 11 counsel for appellant shall file with the Clerk of the District Court a designation of the record and statement of the issues on appeal within 10 days of the filing of the notice of appeal. Counsel for appellee shall file a designation of record within 10 days of the filing of appellant's designation in each case, or, if appellee designates no additional material, a statement of agreement with appellant's designation.

C. Provisions applicable to all criminal appeals.

1. Counsel for appellant shall

a) Complete the entire Notice of Appeal/Transcript Order Form prior to filing it in the District Court, unless appellant is proceeding in forma pauperis and the evidence was presented in 3 days or less. (See IV(A)(1) of this Plan.) Completion of this form shall entail

- 1) completing the Notice of Appeal
- 2) ordering the transcript

3) making provision satisfactory to the court reporter for payment of the transcript costs

4) obtaining the written agreement of counsel for appellee regarding the portions of the transcript ordered

5) obtaining the information from and signature of the court reporter as required by the form

6) providing all other information required by the form

b) If retained at trial, and if appellant is financially unable to process an appeal, file, prior to the filing of the notice of appeal, a motion with the District Court seeking leave to proceed in forma pauperis. If such leave is granted, the District Court shall proceed immediately on granting of such leave as if the case had been tried in forma pauperis.

c) File appellant's brief and reply brief on the dates established by the Clerk of this Court pursuant to V(A)(1) of this Plan. Appellant's brief shall be due no later than 28 days after the filing of the record with this Court. Appellant's reply brief shall be due no later than 7 days after appellee's brief is filed.

d) Complete all forms required by the Clerk of this Court within the designated period of time. Failure of counsel to comply with any of the provisions of this Plan, this Court's rules or the Federal Rules of Appellate Procedure may result in discipline of counsel, or dismissal of the appeal with prejudice upon 3 days notice to the appellant and appellant's counsel by the Clerk of this Court. Counsel's compliance shall be strictly monitored at all times by the Clerk of this Court.

2. Counsel for appellee shall

a) Cooperate with counsel for appellant in completing the Notice of Appeal/Transcript Order Form prior to the filing of the notice of appeal.

b) Cooperate with counsel for appellant in any manner possible to expedite the processing of the appeal.

c) File appellee's brief on the date established by the Clerk of this Court pursuant to V(A)(1) of this

Plan. Appellee's brief shall be due no later than 21 days after appellant's brief is filed.

3. The Clerk of the District Court shall

a) Within 24 hours of the filing of the notice of appeal serve a copy of the notice of appeal on the court reporter in the same manner as on other persons pursuant to Rule 3(d) of the Federal Rules of Appellate Procedure and record the service on the District Court docket prior to transmission of the docket entries pursuant to IV(C)(3)(b) of this Plan. The Clerk shall also record on the docket of the District Court the name, address, and telephone number of the court reporter.

b) Transmit a copy of the notice of appeal and the docket entries to the Clerk of this Court within 24 hours of the filing of the notice of appeal.

c) Transmit the remainder of the original record to this Court no later than the date established by the Clerk of this Court pursuant to V(A)(1) and IV(A)(4) of this Plan.

4. The court reporter shall

a) Complete the transcript in 20 days in all cases where the evidence is presented in 3 days or less, and in all other cases within the time established by the Clerk of this Court, but in no event in more than 40 days from the filing of the notice of appeal.

b) Retain such assistance including other reporters, readers and transcribers as will enable him or her to meet the time limits as set forth in this Plan.

5. Local Rules 2(d) and 10 relating to extensions of time are to be strictly enforced. Only in the most compelling circumstances will extensions of the time limitations imposed by the Federal Rules of Appellate Procedure, the Rules of this Court and this Plan be authorized.

6. In all criminal appeals, counsel may file typewritten or reproduced copies of typewritten briefs, pursuant to this Court's Local Rule 11.

7. A stay of mandate pending the filing of a writ of certiorari in the Supreme Court of the United States may be granted only upon a showing of extraordinary need or

a demonstration that a substantial question is to be presented to the Supreme Court.

V. ENFORCEMENT OF PLAN

A. The Clerk of this Court shall

1. In all cases except those in which the evidence was presented in 3 days or less, immediately upon receipt of the notice of appeal and docket entries from the Clerk of the District Court and after consultation with the Clerk of the District Court, the court reporter and counsel for the appellant and appellee, establish the dates by which the transcript must be filed and the original record filed with the Clerk of this Court. In all cases, the Clerk of this Court shall immediately establish the dates by which the docket fee must be paid and the briefs and reply briefs of the appellant and the appellee filed. Such dates shall not extend beyond the time periods established by this Plan. In those cases where the evidence was presented in more than 3 days the time allowed for the preparation of the transcript shall be the shortest possible time in which it can be completed.

2. Send to appellant's counsel a form which will include a statement that counsel has complied with certain provisions of this Plan and with this Court's Local Rule 11 where applicable. Appellant's counsel shall sign and file this form with the Clerk of this Court within 10 days of the filing of the notice of appeal.

3. Send a reminder notice 10 days prior to each due date for the filing of the record and main briefs to the person responsible for the filing.

B. The Clerk shall establish a Criminal Appeals section of his office to implement this Plan. This section, under the supervision of the Clerk, shall monitor each criminal appeal to insure that it is processed in accordance with this Plan.

C. The Clerk shall notify the Court of a failure by an attorney or court reporter to comply with the Federal Rules of Appellate Procedure, the Rules of this Court, this Plan, or any other legal or professional obligation. The Court may take such action as set forth in this Plan or as it deems appropriate in the circumstances in accordance with Rule 46 of the Federal Rules of Appellate Procedure and Local Rule 15.

Revised Plan adopted April 12, 1976; effective July 1, 1976.

APPENDIX D: SECOND CIRCUIT
CRIMINAL APPEALS INSTRUCTIONAL PACKET

This appendix contains examples of instructional materials for the management of appeals given to appellants' attorneys at the time of sentencing hearings in the Second Circuit. The Second Circuit has two basic Criminal Appeals Instructional Packets that differ only slightly, one does not contain instructions for ordering transcripts. If daily copy of the trial minutes was ordered during trial, then appellants' attorneys are given "Daily Copy Ordered" packets which do not contain instructions for ordering transcripts. If daily copy was not ordered, appellants' attorneys are given "Daily Copy Not Ordered" packets additionally containing transcript ordering instructions. The material in each packet is otherwise identical. The additional instructions for ordering transcripts in the Daily Copy Ordered packet are also included in this appendix. Paragraphs that differ between packets are clearly labelled by packet type.

Each appeals packet contains the following:

- a) Criminal Case Information Sheet (Form A) to be completed by the District Court Judge at the sentencing hearing
- b) Notice of Appeal Form
- c) Transcript Order Form (Form B) contained on the Notice of Appeal Form
- d) Court Reporter Acknowledgement Form contained on the Notice of Appeal Form
- e) Instructions for using the enclosed Notice of Appeal Form
- f) Post Verdict Instructions to Attorneys in Criminal Cases

Each of these items follows in the order listed above in this appendix.

**CRIMINAL CASE INFORMATION
(FORM A)
FOR USE BY DISTRICT COURT,
COURT OF APPEALS, PROBATION OFFICE**

This section to be completed by courtroom deputy prior to sentencing

DISTRICT		DOCKET NUMBER	JUDGE
CASE TITLE		DEFENDANT: NAME AND ADDRESS	
ASSISTANT U.S. ATTORNEY: NAME AND TELEPHONE		DEFENDANT'S ATTORNEY NAME AND ADDRESS	TELEPHONE <input type="checkbox"/> APPOINTED <input type="checkbox"/> RETAINED

SENTENCING INFORMATION To be completed at sentencing by courtroom deputy

DATE OF DECISION	DATE OF SENTENCE	BAIL/JAIL DISPOSITION NOT <input type="checkbox"/> COMMITTED <input type="checkbox"/> COMMITTED <input type="checkbox"/> ROR <input type="checkbox"/> BAIL \$ _____
DEFENDANT FOUND GUILTY BY <input type="checkbox"/> PLEA <input type="checkbox"/> JURY <input type="checkbox"/> COURT		SENTENCE
CONVICTED ON CHARGES OF		
NUMBER OF OTHER DEFENDANTS FOUND GUILTY AFTER TRIAL		

TRANSCRIPT INFORMATION To be completed at sentencing by courtroom deputy

COURT REPORTER IN CHARGE: NAME, TELEPHONE	Was daily copy prepared?	YES	NO
	Did Assistant U.S. Attorney order trial minutes?	YES	NO
	Did attorney for defendant order trial minutes?	YES	NO

INFORMATION AS TO COUNSEL ON APPEAL To be completed at sentencing by judge

Was an affidavit of financial status (CJA 23) filed?	YES	NO	Has notice of appeal been filed pursuant to defendant's request? FRCrP 32(a) (2)	YES	NO
Does defendant's financial status warrant appointment of counsel on appeal?	YES	NO	Do you grant defendant leave to proceed on appeal in forma pauperis?	YES	NO
Is there sufficient reason why trial counsel should not be appointed on appeal?	YES	NO	Should the trial minutes be transcribed at the expense of the United States pursuant to the Criminal Justice Act?	YES	NO

SIGNATURE OF JUDGE	DATE
NAME OF COURTROOM DEPUTY	DATE NOTICE OF APPEAL FILED

1. APPEAL'S CLERK

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT

Docket Number _____

(District Court Judge)

Notice is hereby given that _____ appeals to
the United States Court of Appeals for the Second Circuit from the Judgment order other
(specify) _____ entered in this action on _____
(Date)

Address _____

(Counsel for Appellant)

Date _____
To:

Phone Number _____

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)	TRANSCRIPT INFORMATION – FORM B	
▶ QUESTIONNAIRE	▶ TRANSCRIPT ORDER	▶ DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE).
<input type="checkbox"/> I am ordering a transcript <input type="checkbox"/> I am not ordering a transcript Reason: <input type="checkbox"/> Daily copy is available <input type="checkbox"/> U.S. Attorney has placed order <input type="checkbox"/> Other. Attach explanation	Prepare transcript of <input type="checkbox"/> Pre-trial proceedings _____ <input type="checkbox"/> Trial _____ <input type="checkbox"/> Sentence _____ <input type="checkbox"/> Post-trial proceedings _____	Dates _____ _____
The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment <input type="checkbox"/> Funds <input type="checkbox"/> CJA Form 21		
ATTORNEY'S signature _____		DATE _____

▶ COURT REPORTER ACKNOWLEDGEMENT		To be completed by Court Reporter and forwarded to Court of Appeals.
Date order received	Estimated completion date	Estimated number of pages.
_____	_____	_____

Date _____

Signature _____
(Court Reporter)

ORIGINAL

INSTRUCTIONS FOR USING THE ENCLOSED NOTICE OF APPEAL FORM

This is a multiple form, i.e., each copy acts as a carbon for the copy beneath it. Anything typed on the original will appear on the other four copies.

1. Fill out the notice of appeal as you would any standard notice of appeal.
2. Fill out the Transcript Information - Form B - whether or not you plan on ordering the transcripts of the district court proceedings. If you are ordering transcripts be sure to include the exact dates of the required transcripts.
3. Do not complete any portion of the Form B below the red line.
4. Mail or present all five copies to the Clerk of the District Court.

Also included in this package of forms and instructions is this Court's notice of motion form and Rule Section 27 of the rules supplementing the Federal Rules of Appellate Procedure recently amended. The form will be available shortly from legal stationers. Clear xeroxed copies of the form may be used in the interim.

POST VERDICT INSTRUCTIONS TO ATTORNEYS IN CRIMINAL CASES

It is the policy of the United States Court of Appeals for the Second Circuit to expedite the processing of criminal appeals. To avoid any delay or confusion which might impede the steady and smooth progress of these appeals the Clerk's office believes you should be aware of the following policies of this Court. The references made to rules herein will be found in the Rules of the United States Court of Appeals for the Second Circuit supplementing the Federal Rules of Appellate Procedure. The references made to paragraphs of the plan herein will be found in this Circuit's revised Plan To Expedite the Processing of Criminal Appeals.

[Next Paragraph Appears
only in the
Daily Copy Ordered Packet]

Due to the fact that the trial transcripts have already been transcribed or will be completed by the time of sentencing counsel should be prepared to comply with this Court's policy of expediting criminal appeals should the decision be made to file a notice of appeal in the District Court. If this is the case counsel will find the information provided below of real importance and assistance in conducting an appeal.

[Next Two Paragraphs Appear
only in the
Daily Copy NOT Ordered Packet]

In order for an appeal to progress as expeditiously as possible, it is recommended that, when required, the transcript of the trial minutes (or a portion thereof) be ordered at the earliest possible moment. This can be done after the date of verdict simply by completing the Transcript Information Form (Form B) which may be obtained from either the Courtroom Deputy or the District Court, Appeals Clerk (see below page 3). Attorneys appointed under the Criminal Justice Act must complete C.J.A. 23 (financial affidavit) and have it signed by the trial judge. Both of these forms should be presented to the court reporter who took the trial minutes. Retained attorneys at this stage must make arrangements with the court reporter for payment of transcript costs. It shall be assumed that all necessary minutes have been placed on order once the Form B is filed, supplying the court reporter with the exact dates of the required transcripts. Subsequent delays for failing to order all necessary transcripts will not be tolerated by this Court.

Prompt and early ordering of transcripts is essential to this Court's policy of expediting criminal appeals. Failure to complete and file Form B will result in dismissal of the appeal.

[All of the Following Material is Contained in All Packets]

Shortly after the filing of the notice of appeal counsel will receive a scheduling order from the Clerk of the Court of Appeals which will indicate the exact dates on or before which the following actions are to take place. Failure to comply with this order may result in the dismissal of the appeal.

1. Record [Plan paragraph 5a]

A scheduling order will be issued by the Court which will govern the key dates in the progress of the appeal. Pursuant to the Second Circuit's Plan the scheduling order shall provide that the record on appeal be filed no later than 20 days after the filing of the notice of appeal. In cases where it has been determined that less than 20 days to file the record will suffice the scheduling order will reduce that time accordingly. This would be the case for example where daily copy has been ordered or the transcript otherwise has already been completed or is not necessary for the appeal.

If, at the time of the filing of the record, the transcript is still incomplete a partial record shall be filed which shall be supplemented when the transcript is complete. This Court will not ordinarily grant motions to extend time to file the record. Retained counsel must pay the docketing fee on or before the date when the record is required to be filed.

2. Briefs [Plan paragraph 5b]

The scheduling order shall provide that the brief and appendix of appellant be filed not later than 30 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. Motions for extensions of time to file the appellant's brief will not be viewed with favor by this Court and will be granted only under extraordinary circumstances.

3. Continuity of Representation [Rule Section 4(b)(a) and Plan paragraph 7]

When a defendant convicted following trial wishes to appeal, trial counsel--whether retained or appointed by the district court--is responsible for representing him until relieved by the Court of Appeals. Furthermore, in the absence of good cause shown, counsel appointed under the Criminal Justice Act for the trial shall be continued on appeal.

4. Substitution of Counsel [Rule Section 4(b)(d) and Plan paragraph 8]

In all cases when trial counsel, whether retained or

appointed, wishes to be relieved as counsel on appeal, he must move pursuant to Rule 4(b) to be relieved. A motion to be relieved as counsel must be made within 7 days after the filing of a notice of appeal.

When new counsel is retained on appeal, whether trial counsel was retained or appointed in the district court, he must promptly file a substitution of counsel stipulation endorsed by the defendant and the previous counsel of record. The stipulation must include a statement affirming that the trial minutes have been ordered.

5. Motions [Rule Section 27(f)(1) and Plan paragraph 9]

Motions for leave to file oversized briefs (accompanied by page proofs), to postpone the date on which briefs are required to be filed, or to alter the date on which the argument is to be heard, shall be made not less than 7 days before the brief is due or the argument is scheduled. 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.

6. Proof of Service [Rule Section 25(d) F.R.A.P.]

Papers presented for filing shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and manner of service and of the name(s) of the person(s) served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed.

Appeals Clerks have been appointed in each of the District Court Clerk Offices to assist counsel who may have questions in connection with the paperwork involved in perfecting their appeal. These Clerks are as follows:

Connecticut -----	Kathleen Mitchell	(203) 432-2141
Northern District, N.Y. -----	Allen Doggett	(315) 797-1104
Eastern District, N.Y. -----	Rose Smith	(212) 330-7261
Southern District, N.Y. -----	Edward Aponte	(212) 791-0113
Western District, N.Y. -----	Richard Walsh	(716) 842-3440
Vermont -----	Ramona Roberts	(802) 862-6302

The Clerk's office in the Court of Appeals desires to assist counsel in the processing of appeals. In the event that you have any questions regarding appellant procedure in the Second Circuit, please do not hesitate to contact either this office or the Appeals Clerks in the District Courts.

APPENDIX E: SECOND CIRCUIT FORMS
REQUIRED IN CIVIL APPEALS

This appendix contains examples of forms used in the management of civil appeals in the Second Circuit. These forms are given to the appellant's attorney within 10 days of filing a civil appeal.

The two forms required in each civil appeal are:

- a) Form C - Civil Appeal Pre-Argument Statement. This form provides basic information on all civil appeals.
- b) Form D - Transcript Information: Civil Appeal

Each of these items follows in the order listed above in this appendix.

Form C - Civil Appeal Pre-Argument Statement

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007

A. DANIEL FUSARO
CLERK

NOTICE TO COUNSEL AND PRO SE LITIGANTS

Once you have filed your notice of appeal with the District Court or the Tax Court, you have only ten (10) days in which to docket your appeal. You must take the following steps within those ten (10) days:

1. Complete the Civil Appeal Pre-Argument Statement (Form C) which appears on the reverse side of this notice, serve it upon all other parties, and file it with the Clerk of the Court of Appeals.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Court of Appeals.
3. Pay the \$50 docketing fee to the Clerk of the Court of Appeals unless you are authorized to prosecute the appeal without payment.

IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN TEN (10) DAYS YOUR APPEAL WILL BE DISMISSED.

A. Daniel Fusaro,
Clerk

Form C - Civil Appeal Pre-Argument Statement Continued

United States Court of Appeals

SECOND CIRCUIT

CIVIL APPEAL PRE-ARGUMENT STATEMENT

SEE NOTICE ON REVERSE. PLEASE TYPE OR PRINT. ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL: 		DISTRICT		JUDGE		
		DATE FILED IN DISTRICT COURT / /		DISTRICT COURT DOCKET NUMBER		
		APPROX. NUMBER OF PAGES IN TRANSCRIPT	NUMBER OF EXHIBITS	HAS TRANSCRIPT BEEN MADE? <input type="checkbox"/> YES <input type="checkbox"/> NO		
		DATE NOTICE OF APPEAL FILED / /	IS THIS A CROSS APPEAL? <input type="checkbox"/> YES <input type="checkbox"/> NO			
		HAS THIS MATTER BEEN BEFORE THIS COURT PREVIOUSLY? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, STATE:				
CASE NAME:		DOCKET NUMBER:				
CITATION:						
ATTORNEY(S) FOR: APPELLANT: <input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT <input type="checkbox"/> OTHER (SPECIFY): APPELLEE: <input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT <input type="checkbox"/> OTHER (SPECIFY):		NAME		ADDRESS		
		TELEPHONE				
A. JURISDICTION		B. DISTRICT COURT DISPOSITION <i>Check as many as apply.</i>				
1. FEDERAL <input type="checkbox"/> U.S. A PARTY <input type="checkbox"/> FEDERAL QUESTION (U.S. NOT A PARTY) <input type="checkbox"/> DIVERSITY <input type="checkbox"/> OTHER (SPECIFY):		2. APPELLATE <input type="checkbox"/> FINAL DECISION OF DISTRICT COURT <input type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT <input type="checkbox"/> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY): <input type="checkbox"/> OTHER (SPECIFY):		1. STAGE OF PROCEEDINGS: <input type="checkbox"/> PRE-TRIAL <input type="checkbox"/> DURING TRIAL <input type="checkbox"/> AFTER TRIAL		
		2. TYPE OF JUDGMENT/ORDER APPEALED: <input type="checkbox"/> DEFAULT JUDGMENT <input type="checkbox"/> DISMISSAL/JURISDICTION <input type="checkbox"/> DISMISSAL/MERITS <input type="checkbox"/> SUMMARY JUDGMENT <input type="checkbox"/> DECLARATORY JUDGMENT <input type="checkbox"/> OTHER (SPECIFY):		3. RELIEF: <input type="checkbox"/> DAMAGES AMOUNT SOUGHT: \$ _____ AMOUNT () GRANTED: \$ _____ () DENIED: \$ _____ <input type="checkbox"/> INJUNCTIONS: <input type="checkbox"/> PRELIMINARY OR () PERMANENT <input type="checkbox"/> GRANTED OR () DENIED		
C. NATURE OF SUIT <i>Check as many as apply.</i>						
1. FEDERAL STATUTES <input type="checkbox"/> ANTITRUST <input type="checkbox"/> BANKRUPTCY <input type="checkbox"/> BANKS AND BANKING <input type="checkbox"/> CIVIL RIGHTS <input type="checkbox"/> COMMERCE, ROUTES, AND TRADES <input type="checkbox"/> CORPORATIONS <input type="checkbox"/> OTHER (SPECIFY):		2. TORTS <input type="checkbox"/> COMMUNICATIONS <input type="checkbox"/> CONSUMER PROTECTION <input type="checkbox"/> COPYRIGHT () PATENT OR () TRADEMARK <input type="checkbox"/> ELECTION <input type="checkbox"/> ENERGY <input type="checkbox"/> ENVIRONMENTAL <input type="checkbox"/> FREEDOM OF INFORMATION <input type="checkbox"/> IMMIGRATION <input type="checkbox"/> LABOR <input type="checkbox"/> OSH <input type="checkbox"/> SECURITIES <input type="checkbox"/> SOC. SECURITY <input type="checkbox"/> TAX		3. CONTRACTS <input type="checkbox"/> ADMIRALTY/MARITIME <input type="checkbox"/> ASSAULT/DEFAMATION <input type="checkbox"/> FELA <input type="checkbox"/> PRODUCT LIABILITY/WARRANTY <input type="checkbox"/> OTHER		
		4. PRISONER PETITIONS <input type="checkbox"/> CIVIL RIGHTS <input type="checkbox"/> HABEAS CORPUS (2254) <input type="checkbox"/> MANDAMUS AND OTHER <input type="checkbox"/> PAROLE <input type="checkbox"/> YACATE SENTENCE (2255)		5. OTHER <input type="checkbox"/> FORFEITURE/PENALTY <input type="checkbox"/> REAL PROPERTY <input type="checkbox"/> TREATY (SPECIFY): <input type="checkbox"/> OTHER (SPECIFY):		
6. GENERAL: <input type="checkbox"/> ARBITRATION <input type="checkbox"/> ATTY. DISQUALIFICATION		<input type="checkbox"/> CLASS ACTION <input type="checkbox"/> COUNSEL FEES <input type="checkbox"/> SHAREHOLDER DERIVATIVE <input type="checkbox"/> TRANSFER		7. WILL APPEAL RAISE A CONSTITUTIONAL ISSUE? <input type="checkbox"/> YES <input type="checkbox"/> NO WILL APPEAL RAISE A MATTER OF FIRST IMPRESSION? <input type="checkbox"/> YES <input type="checkbox"/> NO		

Form C - Civil Appeal Pre-Argument Statement Continued

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:

ISSUES PROPOSED TO BE RAISED ON APPEAL:

TO YOUR KNOWLEDGE, IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT OR ANY OTHER COURT OR ADMINISTRATIVE AGENCY WHICH:

(A) ARISES FROM SUBSTANTIALLY THE SAME CASE OR CONTROVERSY AS THIS APPEAL? YES NO

(B) INVOLVES AN ISSUE THAT IS SUBSTANTIALLY THE SAME, SIMILAR, OR RELATED TO AN ISSUE IN THIS APPEAL? YES NO

IF YES, STATE WHETHER "A" OR "B" OR BOTH, AND PROVIDE:

CASE NAME:

CITATION:

DOCKET
NUMBER:

COURT OR
AGENCY:

FOR APPELLANT:

Print

NAME OF APPELLANT

NAME OF COUNSEL OF RECORD

TELEPHONE

DATE

SIGNATURE OF COUNSEL OF RECORD

FORM C 5/78

Form D - Transcript Information: Civil Appeal

FORM D

**UNITED STATES COURT OF APPEALS
SECOND CIRCUIT**

**TRANSCRIPT INFORMATION
CIVIL APPEAL**

To be completed by counsel for appellant in civil appeal from district court within ten days after filing notice of appeal.

DISPOSITION OF COPIES: (1) to Clerk of the Court of Appeals; (2) and (3) to Court Reporter; (4) Counsel for Appellee
(5) retained by Counsel for Appellant.

THIS SECTION TO BE COMPLETED BY COUNSEL FOR APPELLANT

CASE TITLE	DISTRICT	DOCKET NUMBER
	JUDGE	APPELLANT
	COURT REPORTER	COUNSEL FOR APPELLANT

TRANSCRIPT ORDER

Must be completed

DESCRIPTION OF PROCEEDINGS FOR WHICH
TRANSCRIPT IS REQUIRED (INCLUDE DATES)

I am ordering a transcript.

I am not ordering a transcript.

Reason:

- Daily copy is available.
 Other. Attach explanation.

METHOD OF PAYMENT FUNDS CJA VOUCHER (CJA 21)

- PREPARE TRANSCRIPT OF PRE-TRIAL PROCEEDINGS
 PREPARE TRANSCRIPT OF TRIAL
 PREPARE TRANSCRIPT OF OTHER POST-TRIAL PROCEEDINGS
 PREPARE (Other Specify)

DELIVER TRANSCRIPT TO: (NAME, ADDRESS, TELEPHONE)

Form D - Transcript Information: Civil Appeal Continued

I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of the transcript, (FRAP 10(b)). I understand that unless I have already ordered the transcript, I shall order its preparation at the time required by the Civil Appeals Management Plan, F.R.A.P. and the local rules.

COUNSEL'S SIGNATURE	DATE
---------------------	------

COURT REPORTER ACKNOWLEDGEMENT

To be completed by court reporter. Return one copy to clerk, U.S. Court of Appeals.

DATE ORDER RECEIVED	ESTIMATED COMPLETION DATE	ESTIMATED NUMBER OF PAGES
SIGNATURE OF COURT REPORTER		DATE

APPENDIX F: EIGHTH CIRCUIT PROPOSED
CRIMINAL APPEALS INSTRUCTIONAL PACKET

It is proposed that the Eighth Circuit "Criminal Appeals Instructional Packet" contain the following:

- a) A copy of the Eighth Circuit Rules (including the Plan to Expedite Criminal Appeals)
- b) A preprinted Notice of Appeal Form
- c) A C.J.A. 21 Form (included only in in forma pauperis cases)
- d) Basic Information Card summarizing filing date requirements, and circuit clerical personnel to contact for assistance in processing appeals
- e) Eighth Circuit Information Sheet to be completed by District Court Appeals Deputies at the time of filing
- f) Appellant's Instruction Sheet to guide attorneys in processing appeals.

Included in this Appendix are: (1) a photocopy of the current information sheet, and (2) proposed drafts of the Appellant's Instruction Sheet.

EIGHTH CIRCUIT CRIMINAL APPEAL INFORMATION SHEET

FORM TO BE TRANSMITTED BY ALL DISTRICT COURT CLERKS IN CRIMINAL AND POST-CRIMINAL CASES TO CLERK OF COURT OF APPEALS FOR THE EIGHTH CIRCUIT AT THE TIME OF TRANSMITTAL OF NOTICE OF APPEAL AND DOCKET ENTRIES.

1. Case Title and Docket Number(s) (USE SEPARATE SHEET FOR EACH DEFENDANT):

2. Defendant and Address: _____

3. Date of Verdict: _____ Jury _____ Nonjury _____
Crimes: _____

Length of Trial: _____ Bail Disposition: _____

4. Sentence and Date Imposed: _____

5. Date Notice of Appeal Filed: _____

6. Date Trial Transcript Ordered by Counsel or District Court: _____
Stenographer in Charge (Name, Address, and Telephone Number): _____

7. Trial Counsel (Name, Address, and Telephone Number): _____

Trial Counsel was (1) _____ appointed, (2) _____ retained.
Does Defendant's financial status warrant appointment of counsel on appeal?

Affidavit of financial status filed: _____
Is there any reason why trial counsel should not be appointed as counsel on appeal?: _____

8. Assistant United States Attorney and His PTS Number: _____

9. Additional Comments: _____

Clerk, U.S. District Court
BY:

APPELLANT'S INSTRUCTION SHEET

OVERVIEW

The Eighth Circuit Court is committed to the goal of expediting criminal appeals. It has revised its Plan to Expedite Criminal Appeals (the Plan) to accelerate and simplify appeals in all cases. These materials are intended to assist you in the task of processing your appeal. Review them carefully. For your benefit, a copy of the Rules of the Eighth Circuit (including the Plan to Expedite Criminal Appeals) have been enclosed. The materials in this booklet are intended only to supplement the Rules and the Plan; to be fully conversant with the procedures necessary to proceed with an appeal you must also read the Rules and the Plan (pp. A-1 to A-8) carefully.

NOTE: Pay particular attention to the following sections which apply to your particular circumstances in this case. Some procedures vary depending on the status of the appeal, e.g., in forma pauperis or retained counsel. Other procedures vary depending on the amount of trial testimony, e.g., 3 days or less or more than 3 days.

DUTIES OF TRIAL COUNSEL

Representation on Appeal

The defendant must be advised of his or her right to appeal. If the defendant desires to appeal, whether retained or appointed, you must represent him or her until relieved by the Court of Appeals.

Withdrawal as Counsel

If you must file a motion for leave to withdraw as counsel, file the motion simultaneously with filing the notice of appeal. A motion to withdraw must state the reason for the request. The Clerk of the District Court will then forward the motion with the notice of appeal to this Court. Until this Court grants your motion to withdraw, you must perform all duties imposed by the Plan within the prescribed time limits. Your duties do not terminate upon filing the motion to withdraw. (See Eighth Circuit Rules, pp. A-1 and A-2).

Leave to Proceed on Appeal in Forma Pauperis

Retained at Trial. If retained at trial, and if the defendant is unable to pay the costs of an appeal, you must prepare and file a motion for leave to proceed in forma pauperis. The motion should be filed with the district court prior to the filing of the notice of appeal. If leave is granted by the

district court, you will automatically be appointed as counsel on appeal by this Court. (See Eighth Circuit Rules, pp. A-5).

Appointed at Trial. No motion is necessary to proceed in forma pauperis on appeal if the defendant was granted in forma pauperis for the district court trial.

NOTICE OF APPEAL

Notice of Appeal Form

The Court has devised a special Notice of Appeal/Transcript Order Form which has been included in this packet. If the defendant desires to appeal, appropriate portions of this form should be completed in their entirety before it is filed with the Clerk of the District Court. The sentencing proceeding presents the best opportunity for completion of this form, since both the court reporter and the U.S. attorney are present at that time.

The Clerk of the District Court may not refuse to file an incomplete Notice of Appeal/Transcript Order Form, since the filing of the notice of appeal is a jurisdictional requirement. However, please note Section IV(C)(1)(d) of the Plan to Expedite Criminal Appeals, which provides for dismissal of the appeal and discipline of the attorney for failure to comply with the Plan, this Court's rules, or the Federal Rules of Appellate Procedure.

Timely Filing of the Notice of Appeal

While you are allowed 10 days from the date of sentencing to file a notice of appeal, you are encouraged to complete the form and file it with the Clerk of the District Court on the day of sentencing or as soon thereafter as possible.

TRANSCRIPT

Ordering the Transcript

Three-Day or Less Trials. The Clerk of the District Court is required to order the transcript of the trial (except voir dire and opening and closing arguments.) If you determine that additional transcripts are necessary, you must inform the Clerk of the District Court simultaneously with the filing of the notice of appeal as provided in Section IV(A)(1) of the plan.

More than Three-Day Trials. Using the transcript order form, you must order the transcript from the court reporter within 10 days of filing the notice of appeal. This Court strongly emphasizes that you and the U.S. attorney must confer prior to completing the Notice of Appeal/Transcript Order Form and attempt to agree on ordering less than the full transcript.

Payment of Transcript Costs

Retained Counsel. Please note that you must make satisfactory arrangements with the court reporter for payment of the transcript costs prior to filing of the notice of appeal; consequently, you should contact the court reporter about the payment of costs prior to the sentencing proceeding.

Appointed Counsel. You must complete the enclosed C.J.A. Form 21 authorization and voucher for expert or other services. This form authorizes payment of the transcript costs by the government under the Criminal Justice Act and must be signed by the trial judge. Present this completed form, signed by the judge, to the Clerk of the District Court simultaneously with filing the notice of appeal.

THE RECORD

General Comments

This Court, in its Local Rule 11, has provided that in criminal cases, it will suspend the requirement of the printed briefs and appendices, and hear the case on the original record and typewritten briefs. Under Rule 11, the district court must send its original designated record to the Court of Appeals, as well as two copies of that record.

Three-Day or Less Trials

Designation of Record. Under the Plan to Expedite Criminal Appeals this Court has specified the portions of the district court's record which are automatically forwarded to this Court. If you determine that additional portions of the record are necessary, you must request that they be included as provided in Section IV(A)(2) of the Plan.

Statement of Issues. You must, within 10 days of the filing of the notice of appeal, file with the Clerk of the District Court, and serve on the appellee a statement of the issues on appeal. (See enclosed sample.)

More than Three-Day Trials

Designation of Record. You are required to file, with the Clerk of the District Court, and serve on the appellee, within 10 days of the filing of the notice of appeal, a designation of the record. The Clerk will then proceed to make two copies of each document which you designate. The easiest way to prepare your designation is to refer to the district court docket entries and list the necessary documents in the order in which they are contained in the district court's record.

The Court requires at least the following:

1. Notice of Appeal
2. Docket entries
3. Indictment or information
4. Any district court memorandum opinions
5. The judgment and sentence
6. The transcript if prepared.

Designate only those portions of the district court's record necessary for a determination of the appeal. (A sample designation of the record is enclosed.)

Statement of Issues. Note also that with the designation of the record you must file a statement of the issues on appeal. (A sample statement of issues is enclosed.)

APPELLANT'S BRIEF DUE DATE

The appellant's brief is due 28 days after the date the transcript is filed in the district court, or the date the case is docketed in this Court, whichever is later. However, the Eighth Circuit Appeals Expediter may impose a shorter time period.

Reply briefs are due 7 days after the date the appellee's brief is filed in the circuit court.

ASSISTANCE IN PROCESSING APPEAL

To assist you in processing your appeal, the following circuit court personnel have been assigned to assist you with questions in the areas listed below:

<u>DUTY</u>	<u>NAME</u>
Opinions	
Mandates	
Receipt of briefs	
Docketing	
Formatting briefs	
Calendaring	
NLRB and other agency cases	
Appointment of counsel, voucher, and oral argument	
Chief Deputy	
Clerk of the Circuit Court	

Any of the above individuals can be reached by calling 314-425-5600 or FTS 279-5600.

The Office of Appeals Expediter has been established to aid the Court and the attorneys in all matters pertaining to (1) briefing schedules, (2) motions for extensions of time, (3) transcript preparations, and (4) designation of record.

If you have any questions about these topics, do not hesitate to call the expediter at 314-425-5888.

EXAMPLE ONLY.....DESIGNATION OF RECORD AND STATEMENT OF ISSUES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 75-160 CR (4)
)	
vs.)	
)	
WADE H. JONES,)	
)	
Defendant.)	

DEFENDANT'S DESIGNATION OF RECORD AND
STATEMENT OF ISSUES

Comes now, the defendant and designates the following to
be included in the record appeal:

<u>Document</u>	<u>Date Filed</u>
1. Indictment	5/29/78
2. Motion for Bill of Particulars	7/1/78
3. Order denying motion of defendant for Bill of Particulars	7/1/78
4. Motion for judgment of acquittal at close of each count of the indictment	9/3/78
5. Motion for judgment of acquittal at close of each count of the indictment	9/3/78
6. Verdict	9/4/78
7. Judgment, Sentence and Commitment	9/14/78
8. Transcript of trial testimony ordered from court reporter	9/16/78
9. All exhibits	...

COUNT I

Now comes the defendant and submits the following statement of issues to be raised on appeal:

- (1) Whether the Court erred in denying defendant's motion for a Bill of Particulars.
- (2) Whether the Court erred in denying defendant's motion for a directed verdict on Count I based on the following:
 - a) That the uncontradicted evidence indicated that defendant did not file the 1969 Federal income tax return on which the indictment was based.
 - b) That the amounts paid to persons described in the testimony of the Internal Revenue Agent as employees by defendant exceeded the amounts from the same corporations which the indictment claimed to have been omitted from gross income.
- (3) Whether the Court erred in admitting into evidence checks which did not bear the endorsement or signature of defendant.
- (4) Whether the Court erred in admitting into evidence partial and incomplete documents, namely, photocopies of only the front of checks.
- (5) Whether the Court erred in admitting into evidence a check of a corporation without the introduction of the books and records of the corporation describing the nature and purpose of the check.

COUNT II

- (1) Whether errors of the Court in items 3, 4, and 5 of Count I above did so prejudice the jury that the defendant was unable to receive a fair and impartial trial on the issue in Count II of the indictment.
- (2) Whether the Court erred in denying the defendant's motion for a directed verdict on Count II on the basis that the testimony of the Revenue Officer of the Internal Revenue Service was patently false, and its admission by the Court was an abuse of discretion and was the only basis for the charge in

Count II, and its admission affected the verdict rendered by the jury.

John Doe
Attorney for Appellant
100 Hometown Lane
Nowhether, MO 66666

Copy of the foregoing Designation of Record and Statement of Issues was delivered to the Office of the United States Attorney this 29th day of October, 1978.

John Doe, Attorney for Appellant

APPENDIX G: EIGHTH CIRCUIT PROPOSED
CIVIL APPEALS INSTRUCTIONAL PACKET

It is proposed that the Eighth Circuit "Civil Appeals Instructional Packet" contain the following:

- a) A copy of the Eighth Circuit Rules;
- b) Basic Information Card summarizing filing date requirements, and circuit clerical personnel to contact for assistance in processing appeals;
- c) Eighth Circuit Civil Appeals Information Sheet to be completed by District Court Appeals Deputies at the time of filing;
- f) Appellant's Instruction Sheet to guide attorneys in processing appeals.

A draft of the proposed Appellant's Instruction Sheet is included in this appendix.

APPELLANT'S INSTRUCTION SHEET

OVERVIEW

The Eighth Circuit Court is committed to the goal of expediting civil appeals. It has revised its Plan to Expedite Civil Appeals (the Plan) to accelerate and simplify appeals in all cases. These materials are intended to assist you in the task of processing your appeal. Review them carefully. For your benefit, a copy of the Rules of the Eighth Circuit (including the Plan to Expedite Civil Appeals) have been enclosed. The materials in this booklet are intended only to supplement the Rules and the Plan; to be fully conversant with the procedures necessary to proceed with an appeal you must also read the Rules and the Plan carefully.

NOTICE OF APPEAL

Notice of Appeal Form

The Court has devised a special Notice of Appeal/Transcript Order Form which has been included in this packet. If your client desires to appeal, appropriate portions of this form should be completed in their entirety before it is filed with the Clerk of the District Court. The Clerk of the District Court may not refuse to file an incomplete Notice of Appeal/Transcript Order Form, since the filing of the notice of appeal is a jurisdictional requirement.

Timely Filing of the Notice of Appeal

While you are allowed 30 days from the date of judgment or order to file a notice of appeal, you are encouraged to complete the form and file it with the Clerk of the District Court as soon thereafter as possible.

TRANSCRIPT

Ordering the Transcript

Using the Transcript Order Form, you must order the transcript from the court reporter within 10 days of filing the notice of appeal. This Court strongly emphasizes that you and the opposing attorney must confer prior to completing the Notice of Appeal/Transcript Order Form and attempt to agree on ordering less than the full transcript (see F.R.A.P. 11, Aug. 1, 1979).

Court Reporter Required to Acknowledge

The court reporter is required to forward a copy of your signed Transcript Order Form with an acknowledgement and prospec-

tive transcript completion date. You are requested to remind court reporters of this obligation at the time of order.

Payment of Transcript Costs: Retained Counsel

Please note that you must make satisfactory arrangements with the court reporter for payment of the transcript costs. You should contact the court reporter about the payment of costs.

THE RECORD

General Comments

This Court, by its Local Rule 11, has provided that in all cases the appellant may elect to proceed without a joint appendix and in its place allow portions of the record to come forward to the circuit by means of a designated record. Under Local Rule 11, the district court will prepare three sets of those pleadings designated by counsel as the designated record on appeal. Counsel should keep in mind that the objective of the designated record system is to (1) reduce the volume of material that must be read by circuit judges, and (2) insure that those pleadings so designated relate directly and materially to the issues on appeal. By this election counsel are no longer required to submit printed briefs, substituting typewritten, photocopied briefs. No delays for printing are allowed if counsel elects printed briefs.

The district appeals deputy clerk is required to mail a photocopy of the Index or Table of Contents of the designated record to all counsel. This index is to be used by counsel to make page references to the designated record while preparing briefs. All transcripts and exhibits designated to the court of appeals are unreproduced. Page references in briefs relating to transcripts should use the transcript page number. Exhibits are referenced by exhibit number only.

Designation of Record

Within 10 days of the filing of the notice of appeal, the appellant is required to file a designation of the record with the Clerk of the District Court, and to serve notice of the designation on the appellee with an endorsed copy to the circuit clerk. Appellee must respond to the appellant's designation of record. This may be in the form of a counter designation or a letter endorsing the designation of the appellant previously filed. The Clerk will then proceed to make two copies of each document which you designate. To prepare your designation is to refer to the district court docket entries and list the necessary documents in the order in which they are contained in the district court's record.

Designate only those portions of the district court's

record necessary for a determination of the appeal. (Refer to the sample designation of the record and statement of issues.)

APPELLANT'S BRIEF DUE DATES

The appellant's brief is due 40 days following the date the case is docketed in the Circuit Court. The Eighth Circuit Appeals Expediter may negotiate a shorter time period.

Appellant's reply briefs are due 14 days following the date of service of appellee's brief.

APPELLEE'S BRIEF DUE DATES

The appellee's brief is due 30 days following the service of the date of the appellant's brief. Extensions of time granted to the appellant do not affect the above 30-day requirement.

The Circuit Appeals Expediter may negotiate a time period shorter than 30 days.

ASSISTANCE IN PROCESSING APPEAL

To assist you in processing your appeal, the following circuit court personnel have been assigned to assist you with questions in the areas listed below:

<u>DUTY</u>	<u>NAME</u>
Opinions	
Mandates	
Receipt of briefs	
Docketing	
Formatting briefs	
Calendaring	
NLRB and other agency cases	
Appointment of counsel, voucher, and oral argument	
Chief Deputy	
Clerk of the Circuit Court	

Any of the above individuals can be reached by calling 314-425-5600 or FTS 279-5600.

The Office of Appeals Expediter has been established to aid the Court and the attorneys in all matters pertaining to (1) briefing schedules, (2) motions for extensions of time, (3) transcript preparations, and (4) designation of record.

If you have any questions about these topics, do not hesitate to call the expediter at 314-425-5888.

THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the research, development, and training arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620-629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States is chairman of the Center's Board, which also includes the Director of the Administrative Office of the United States Courts and six judges elected by the Judicial Conference.

The Center's **Continuing Education and Training Division** conducts seminars, workshops, and short courses for all third-branch personnel. These programs range from orientation seminars for judges to on-site management training for supporting personnel.

The **Research Division** undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, usually at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal court system.

The **Innovations and Systems Development Division** designs and helps the courts implement new technologies, generally under the mantle of Courtran II—a multipurpose, computerized court and case management system developed by the division.

The **Inter-Judicial Affairs and Information Services Division** maintains liaison with state and foreign judges and judicial organizations. The Center's library, which specializes in judicial administration, is located within this division.

The Center's main facility is the historic Dolley Madison House, located on Lafayette Square in Washington, D.C.

Copies of Center publications can be obtained from the Center's Information Services office, 1520 H Street, N.W., Washington, D.C. 20005; the telephone number is 202/633-6365.

