

<p style="text-align:center"><b>HOW TO APPEAL YOUR CRIMINAL CASE<sup>1</sup></b> <b>TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT</b></p>
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## **FILING YOUR NOTICE OF APPEAL**

Obtain the Notice of Appeal form from the district court. File the Notice of Appeal in the district court within 10 days after the entry of the judgment or order appealed from. A Notice of Appeal filed after the decision, sentence or order is announced but before it is entered is treated as filed on the day of entry. **ONLY THE DISTRICT COURT CAN EXTEND YOUR TIME TO FILE A NOTICE OF APPEAL.**

## **PAYING YOUR DOCKET FEE**

Pay the \$100 docket fee, plus \$5.00 processing fee, to the Clerk of the district court when you file the Notice of Appeal. **If you do not pay the fee within ten days, your case may be dismissed by the Court of Appeals.** If the appellant cannot afford to pay the fee, you must file a motion for "*in forma pauperis*" status (as a poor person) in the district court, unless there was already a determination in the district court that the defendant could proceed *in forma pauperis* there, and such status has not been revoked. If *in forma pauperis* status is denied in the district court or has been revoked, a motion must be made in the Court of Appeals unless the docket fee is paid. The motion to proceed *in forma pauperis* should be on the Court's motion form (see **Motions**, below), and have a proper financial affidavit attached (Form CJA-23). If you intend to move for *in forma pauperis* status, you must do so within ten days of the filing of the notice of appeal or within that ten days notify the Court that you will make a motion for *in forma pauperis* status within 30 days of the service of notice from the district court that *in forma pauperis* status has been denied. Otherwise, your case may be dismissed after 10 days for failure to pay the fee.

## **CONTINUATION OF TRIAL COUNSEL**

In accordance with Local Rule 4(b) of the Court of Appeals, when a defendant convicted following trial wishes to appeal, trial counsel, whether retained or appointed, is responsible for representing the defendant until such attorney is relieved by the Court of Appeals. The district court has no authority to relieve counsel from representation on appeal, and such orders of the district court are null and void. Please note that counsel will be held responsible for the appeal in this Court even if the Notice of Appeal is filed *pro se*, unless and until counsel is relieved by this Court.

## **AN ATTORNEY WHO FAILS TO FILE A BRIEF IN A CRIMINAL CASE, RESULTING IN A DEFAULT, MAY BE DISCIPLINED BY THIS COURT.**

## **MOTION TO BE RELIEVED AS COUNSEL**

If trial counsel wishes to be relieved on appeal, a motion should be made in the Court of Appeals within seven days after filing the Notice of Appeal, setting forth the reasons for relief. This motion

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<sup>1</sup> These instructions are only a summary of the Court of Appeals procedures. Please refer to the Federal Rules of Appellate Procedure, as supplemented by the Local Rules of this Court, for answers to specific questions.

**must** contain one of the following:

- (1) A showing that new counsel has been retained or appointed to represent the defendant, OR
- (2) The defendant's completed application for appointment of counsel under the Criminal Justice Act or a showing that such application has already been filed in the Court of Appeals, OR
- (3) An affidavit or signed statement from the defendant showing that the defendant has been advised of the right to retain new counsel or apply for appointment of counsel and expressly stating that the defendant does not wish to be represented by counsel but elects to appeal *pro se*; OR
- (4) An affidavit or signed statement from the defendant showing that the defendant has been advised of the defendant's rights with regard to the appeal and expressly stating that the defendant elects to withdraw the appeal; OR
- (5) A showing that exceptional circumstances prevent counsel from meeting any of the requirements stated in (1)-(4) above.

Retained counsel should be aware that if the sole reason for not proceeding as counsel on the appeal is that the defendant cannot pay the legal fee, application for appointment of counsel, together with the appropriate CJA affidavit completed by the defendant, must be submitted. In all likelihood, trial counsel will be appointed CJA counsel for the purpose of the appeal.

#### **ADMISSION TO PRACTICE BEFORE THE SECOND CIRCUIT**

Counsel of record and counsel who will argue the appeal must be admitted to the bar of this court or be otherwise eligible to argue an appeal. Admission *pro hac vice* will be extended as a matter of course to a member of the bar of a district court within the circuit who has represented a criminal defendant at trial and appears for him or her on an appeal taken pursuant to the Criminal Justice Act; however, counsel is advised that a written motion to proceed *pro hac vice* is required. For forms and information on admission to practice before this Court, contact the Court's Admissions Clerk at (212) 857-8603.

**NOTE: Counsel is expected to read and comply with all provisions of the Revised Second Circuit Plan to Expedite the Processing of Criminal Appeals.**

#### **TRANSCRIPT ORDERING (F.R.A.P. 10(b))**

If the transcript of the trial minutes (or a portion thereof) is necessary for the appeal, it **MUST** be ordered at the earliest possible moment. This can be done as early as during the trial court proceedings or immediately after the date of verdict, but not later than 10 days after the filing of the Notice of Appeal. To order transcripts, complete the Transcript Information Form B, located on the bottom half of the Criminal Notice of Appeal form, which may be obtained from either the Courtroom Deputy or the District Court Appeals Clerk, and forward a copy to the court reporter.

## **PAYMENT FOR TRANSCRIPTS (F.R.A.P. 10(b) (4))**

At the time of ordering a transcript, satisfactory arrangements must be made with the reporter for payment of the cost of the transcript pursuant to F.R.A.P. 10(b) (4). Attorneys appointed under the Criminal Justice Act must complete CJA Form 23, Financial Affidavit, and have these documents signed by the trial judge. These forms, along with the green copy of Form B, should be presented to the court reporter who recorded the trial minutes. Retained attorneys at the time of ordering the transcript must establish a mutually agreeable arrangement with the court reporter for payment for the transcript, since the court reporter generally will not begin transcribing until payment terms are established. **It is important that the dates on Form B reflect the exact dates of the required transcripts.**

It shall be assumed that all necessary minutes have been placed on order once the Form B is filed. Any amendment, correction, or supplement to the initial transcript order should be submitted in writing to the court reporter with a copy forwarded to the Court of Appeals and to the Clerk of the district court. **SUBSEQUENT DELAYS FOR FAILING TO ORDER ALL NECESSARY TRANSCRIPT(S), ABSENT EXTRAORDINARY CIRCUMSTANCES, MAY RESULT IN THE COURT'S IMPOSING SANCTIONS FOR DELAY.**

## **SCHEDULING ORDER**

After you have filed the Notice of Appeal and Pre-Argument Statement Forms, the Court will issue a Scheduling Order. The Scheduling Order will tell you when to file the record on appeal (see definition below), and when to file the brief and appendix. It will also set forth when the appellee's brief is due, and the earliest date on which the case may be scheduled for argument before the Court of Appeals. This scheduling order will not necessarily conform with the times set forth in the Federal Rules of Appellate Procedure (F.R.A.P.), Rules 17 and 31.

**FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN DISMISSAL OF THE APPEAL, AND RESULT IN SANCTIONS AGAINST THE ATTORNEY.**

## **FILING THE RECORD, BRIEFS, AND APPENDIX**

### **1. THE RECORD.**

The Scheduling Order will generally provide that the record on appeal be filed no later than 20 days after filing the Notice of Appeal. (The record on appeal consists of all of the documents of the lower court or agency, including transcripts.) However, in some cases the period may be shorter. If at the time the record is due the transcript is still incomplete, a partial record must be timely filed and supplemented later when the transcript is complete. The attorney for the appellant is responsible for preparing an index to the record and filing it in the district court. The district court will forward the record to the Court of Appeals in accordance with the Court's procedures. Generally, the Court will request that only the index be filed with the Court of Appeals and the record be retained in the district court until needed, but this does not relieve the attorney of the requirement to timely prepare the record for transmittal. Receipt from the district court of a certified copy of the index will satisfy the requirement to file the record.

In *pro se* cases, the district court will prepare and forward the record.

**The Court will not ordinarily grant motions to extend time to file the record.**

2. **BRIEF AND APPENDIX.**

The Scheduling Order will generally provide for the appellant's brief and appendix to be served and filed not later than 30 days after the date on which the record on appeal is due. The appellee's brief is generally scheduled to be filed 30 days after the appellant's brief is due. If a reply brief is filed (optional), it must be served and filed within 14 days after service of the appellee's brief, but not less than 3 days before argument.

**The brief** sets forth the legal argument of the case, and must comply with several rules set forth in F.R.A.P. Attorneys should familiarize themselves fully with these rules. Pursuant to Fed. R. App. P., Rule 32, effective December 1, 1998, a principal (appellant or appellee) brief may not exceed 30 pages, and must not exceed 14,000 words (or if monospaced typeface is used, either 14,000 words or 1300 lines). The number of words or lines must be certified by the attorney or unrepresented party in a certificate of compliance which is included in the brief. A reply brief of over 15 pages is limited to half of the type-volume permitted in the principal brief. Headings, footnotes and quotations count toward word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of compliance do not count toward the type-volume limitation.

**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, must be made not less than seven days before the brief is due** (Revised Second Circuit Plan to Expedite the Processing of Criminal Appeals). Briefs must be legible. Proportionally spaced typeface must be 14-point or larger; monospaced typeface may not contain more than 10½ characters per inch. [See F.R.A.P. 32.]

Briefs in pamphlet size will be accepted in the Second Circuit. Text and footnotes must be in 11-point or larger type, with 2-point or more leading between the lines (printers should be familiar with these standards). Sans serif type and compacted or other compressed printing is prohibited. **These briefs must be bound in volumes having pages 6½ x 9¼ inches**, containing no more than 14,000 words in compliance with Fed. R. App. P. 32. A certificate of compliance must be included.

The appellant's brief must also contain: (see FRAP 28)

- A table of contents, with page references
- A table of cases (alphabetically arranged), statutes and other authorities cited, with references to pages in the brief

- A preliminary statement of the name of the judge or agency member who rendered the decision and a citation of the reported opinion, if any (see Local Rule 28)
- A statement of subject matter and appellate jurisdiction
- A statement of the issues presented
- A statement of the case
- A summary of argument
- An argument
- A short conclusion stating the precise relief sought
- Proof of service
- Any brief over 30 pages (Reply briefs over 15 pages) must contain a Certificate of Compliance pursuant to F.R.A.P. 32, bound at the back of the brief.

The appendix should contain those matters from the record on appeal which are cited in the briefs or required by the Court to be included, such as the relevant docket entries in the proceedings below; any relevant portions of the pleadings, charge, findings, or opinion; the judgment, order, or decision appealed from; and any other parts of the record to which the parties wish to direct the particular attention of the Court. F.R.A.P. Rule 30(a) outlines all the requirements for the contents. Nothing should be contained in the appendix which is not in the record on appeal. Also, the parties need to keep in mind that the entire record is available to the Court if needed, so reproduction of only those parts of the record necessary to illustrate the legal argument should be included in the appendix. The fact that parts of the record are not included in the appendix will not prevent the parties or the Court from relying on such parts.

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#### **Brief Cover Colors**

Appellant	- Blue
Appellee	- Red
Reply	- Gray
Green	- Intervenor or Amicus Curiae
Appendix	- White

**Brief Captions.** The caption on the covers of the briefs and appendices must conform to this Court's "official caption." If this Court's official caption is erroneous, it is the obligation of counsel to bring this to the attention of the Court promptly, but in no event later than seven days prior to the due date for the appellant's brief.

#### **ANDERS BRIEFS**

If, after thorough review of the district court record, defendant-appellant's counsel determines that there are no non-frivolous issues on appeal, counsel may file what is known as an "Anders brief" (See Anders v. California, 386 U.S. 738 (1967)). Counsel should be aware that this Court has high standards for determining what is a satisfactory Anders brief (see Nell v. James, 811 F.2d 100, 104 (2d Cir. 1987)), and McCoy v. Court of Appeals, 486 U.S. 429 (1988)), and the attorney must make a "conscientious

examination" of the appellant's case, explaining fully why there are no non-frivolous issues.

The following issues are frequently encountered:

- a) where the conviction was pursuant to a guilty plea, whether the plea met all of the requirements of Fed. R. Crim. P. 11;
- b) where the conviction was pursuant to trial, whether the evidence was sufficient and all material motions and evidentiary rulings were correctly decided; and
- c) in all cases, whether counsel performed effectively and the sentence was correctly determined and imposed.

Counsel should review the record carefully to determine whether these or any other material issues are present and warrant discussion under the Anders criteria and, if so, should discuss them thoroughly in the brief.

In the event that counsel fails to fully articulate why there are no non-frivolous issues present, the Court may direct counsel to file a new brief addressing the inadequately briefed issues, or may direct the appointment of new counsel and deny payment of Criminal Justice Act fees to the original counsel. *See United States v. Burnett*, 989 F.2d 100, 105 (2d Cir. 1993).

An attorney filing an Anders brief must also file: 1) a motion to be relieved as counsel at the time the brief is filed (The Court will not accept the brief without the motion.), and 2) a Pre-Sentence Investigation Report. The motion will be determined and the pre-sentence investigation report will be reviewed by the Court at the time the case is heard.

An attorney filing an Anders brief must also submit an affidavit or affirmation to the Court stating that the client has been informed:

- (1) That a brief pursuant to Anders v. California, 386 U.S. 738 (1967), has been filed.
- (2) That the filing of an Anders brief will probably result in the dismissal of the appeal and affirmance of the conviction.
- (3) That the client may request assistance of other counsel or submit *pro se* response papers.

Also, a copy of the Anders brief, the motion to be relieved as counsel, and the court's scheduling order must be served on the client.

An Anders brief must state on the cover "Pursuant to Anders v. California". Also, a copy of the transcript of the proceedings below must be submitted with your Anders brief. It should be included in the appendix you file with your brief.

**Response of U.S. Attorney:** In lieu of an appellee's brief, the scheduling order of this Court will provide that the U.S. Attorney may file a motion for summary affirmance. The scheduling order will provide that such motion must be filed within fourteen (14) days after the Anders brief is filed. Any extension of the scheduling order for the appellant will automatically extend the time of the U.S. Attorney to file the motion for

summary affirmance to fourteen (14) days after the new date for the filing of the Anders brief, even if such provision is omitted from the new scheduling order.

**Response of Defendant:** When the attorney has submitted an Anders brief, the defendant has an automatic right to submit a *pro se* responsive brief arguing that there are meritorious issues. This *pro se* brief should be submitted within 14 days of the filing of the Anders brief.

### 3. ORAL ARGUMENT.

**YOUR NOTICE OF APPEARANCE MUST BE FILED WHEN THE APPELLANT'S BRIEF IS DUE.** Failure to submit the form on time will be taken into consideration by the Court in deciding any motions you may make for adjournment. In the notice of appearance form, counsel must set forth dates of unavailability for oral argument. **THEREAFTER, COUNSEL MUST ADVISE THE COURT PROMPTLY OF ANY CHANGE IN AVAILABILITY.**

The Scheduling Order provides that the appeal shall be ready for argument during a specified week; this is subject to change, but will not be earlier, unless a subsequent order expediting the appeal is entered. There is no guarantee that the appeal will be heard on or near this date. The fact that this date appears in the scheduling order does not mean that the case has been set for argument on that date.

**Calendaring your case:** The attorney ordinarily will be notified of a "firm date for argument," usually four weeks, but at least two weeks in advance of the date on which the case is calendared to be heard. On occasion, the time may be shorter, especially if the appeal has been expedited on motion of the parties.

**ONCE A CASE HAS BEEN ASSIGNED A DATE FOR ORAL ARGUMENT, ADJOURNMENTS ARE RARELY GRANTED.**

Appeals are heard by a three-judge panel of the Court. The names of the judges are not made public until noon on Thursday of the week before the panel sits. With rare exceptions, Court sits every weekday, except holidays and except during July and August, when the Court sits only one or two weeks each month. The Court is also generally in recess the last week of December. Oral arguments are heard starting at 10:00 a.m. and continue until completion, some time between noon and 1:00 p.m. Arguments are limited to ten minutes or less per side, except in complex or multi-party cases. The Court hears arguments in Room 1705, at 40 Foley Square, New York City. Five or six times a year two panels sit simultaneously; the parties will be notified of the place of sitting of the second panel.

## **EXHIBITS**

Rule §11 of the Local Rules covers the filing of exhibits in the Court of Appeals, and counsel must comply with this rule. The Clerk of the district court must transmit the exhibits to the Court of Appeals after certifying them as part of the record. Tender of loose copies of exhibits will be refused.

## SEALING DOCUMENTS

On rare occasions, documents will be placed "under seal" so that they are not available for public view. Any papers which have been sealed in the district court will remain under seal in the Court of Appeals if received as part of the record. If the district court has not sealed documents, they will not be sealed in the Court of Appeals without a court order. A party wishing to file papers under seal with the Court of Appeals must make a formal motion requesting that the papers submitted be placed under seal. Informal requests to seal documents will not be entertained. All papers submitted to the Court pursuant to a sealing order must be submitted in a sealed envelope, marked **SEALED**, with a copy of the order placing the documents under seal annexed thereto.

## PRE-SENTENCE INVESTIGATION REPORTS

Should the appeal involve any sentence guidelines issues, a copy of the Pre-Sentence Investigation (PSI) Report must be submitted with the Appellant's Brief and Appendix. To preserve the confidentiality of the information contained therein, the copy of the PSI Report should be placed in a sealed envelope, with the words "Pre-Sentence Investigation Report" written on the outside of the envelope.

## MOTIONS

All requests to the Court (for example, extension of time to file the brief), must be made in the form of a **MOTION**. The Court requests that motions be accompanied by the Court's T-1080 Motion Information Form and an affidavit or attorney's affirmation (containing factual information only). The moving party must indicate on either the T-1080 form or on the face of the motion papers whether consent for the relief requested has been sought or obtained, and whether oral argument on the motion is desired. If the moving party seeks substantive relief from a lower court opinion or agency decision, a copy of the opinion or decision must be attached as a separately identified exhibit. An original plus four (total five) copies of all motions must be submitted, accompanied by proof of service on all other parties to the action. (Counsel is expected to be familiar with Local Rule 27 governing motions to this Court.)

Substantive motions requiring oral argument are heard on Tuesdays when the Court is in session. The motion and all supporting papers must be filed not later than the Monday of the preceding week (8 days in advance of the date to be heard). If the adverse party is served in person, such service must be made by the Thursday preceding the required filing date (12 days in advance of the date to be heard). If service is by mail, the motion must be mailed by the Monday preceding the required filing date (15 days in advance of the date to be heard).

Any papers in response from the adverse party must be served and filed within ten days of service, but not later than noon on the Thursday of the week prior to the Tuesday for which the motion is noticed (5 days in advance of the date to be heard). If at all possible, responsive papers should be filed earlier than the Thursday noon deadline so as to allow adequate time for review by the Court. The original and at least four copies (total, five) must be submitted for filing.

Procedural motions (for example, an extension of time to file a brief, or permission to file an oversized brief), will not be placed on a motions calendar and need not be noticed for a particular date. Because responsive papers are normally not filed in opposition to procedural motions, the Court does not wait for such papers. If you choose to respond, therefore, you should respond promptly. By standing order of the Court, certain procedural motions are determined by the Clerk or a staff attorney or staff counsel or deputy clerk acting under the Clerk's authority. Other procedural motions are referred to the weekly applications judge. Any Clerk's order may be appealed to a judge.

Once a case is assigned a date for oral argument, all motions, including procedural motions, will be referred to the panel that will hear the appeal. To maintain the anonymity of the panel, however, any motions decided by the panel will be signed by the Clerk or a deputy clerk.

## **PROOF OF SERVICE**

Papers filed in the Court of Appeals must be served on (delivered to) the other parties in the case. All such papers presented for filing in the Court of Appeals (briefs, motions, etc.), must contain an acknowledgment of service by the person(s) served, or proof of service in the form of a statement of the date and manner of service and the names of the person(s) served. This statement must be certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. Service may be made by mail.

## **PETITION FOR REHEARING**

After a final order or judgment of the Court of Appeals, parties who wish to apply for a rehearing must file a petition for panel rehearing and/or en banc rehearing within 14 days after the decision is filed. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue 7 days after the entry of the order denying the petition, unless the time is shortened or enlarged by order.

## **ISSUANCE OF MANDATE**

The mandate terminates the Court of Appeals' jurisdiction over a case and transfers jurisdiction back to the district court. The mandate will issue 21 days after the entry of the judgment, or seven (7) days after the denial of the petition for rehearing, or sooner if so ordered by the Court.

Appeals which are terminated on motions are ordinarily mandated forthwith. The physical mandate is a copy of the order or judgment which terminates the case, with the words "Issued as Mandate" thereon. (There is no separate document.) Copies of the mandate can be obtained only from the district court.

## **PETITION FOR WRIT OF CERTIORARI TO THE U.S. SUPREME COURT**

A party seeking review of a Court of Appeals order by the U.S. Supreme Court has 90 days from the date of the entry of judgment, or if a petition for rehearing was timely filed,

from the denial of the petition for rehearing, to file a petition for writ of certiorari with the U.S. Supreme Court. A stay of the mandate, pending application to the Supreme Court for a writ of certiorari, may be granted if a motion is made to the Court of Appeals with reasonable notice to all the parties.

The U.S. Supreme Court grants only about 120 writs of certiorari per year from the entire country, an average of between seven (7) and 14 from this Court.

## APPEALS CLERKS IN THE DISTRICT COURTS

An Appeals Clerk has been appointed in each District Court Clerk's office to assist anyone who may have questions in connections with the filing of papers to perfect an appeal. These clerks can be contacted at the following numbers/locations:

Connecticut	Bridgeport, CT	203-579-5863
	Hartford, CT	203-240-3206
	New Haven, CT	203-773-2140
Northern District	Albany, NY	518-257-1802
	Binghamton, NY	607-773-2893
	Utica, NY	315-793-8152
	Syracuse, NY	315-234-8502
Eastern District	Brooklyn, NY	718-260-2310
	Central Islip, NY	631-712-6030
Southern District	New York, NY	212-805-0636
	White Plains, NY	914-390-4002
Western District	Buffalo, NY	716-551-4211
	Rochester, NY	716-263-6263
Vermont	Burlington, VT	802-951-6394

If you have any questions regarding appellate procedure in the Second Circuit, please contact this office or the Appeals Clerk in the appropriate District Court. If you have a case before this Ct, you should speak with your Case Manager. Set forth below are the primary telephone numbers for Second Circuit Appeals Management Teams.

Intake	212-857-8500
Agency Appeals	212-857-8544
Civil Appeals	212-857-8576
Criminal Appeals	212-857-8515
Prisoner Appeals	212-857-8551
<i>Pro Se</i> Appeals	212-857-8550
Prisoner Civil Rights	212-857-8544

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

**IMPORTANT NOTICE TO TRIAL ATTORNEYS  
OF CRIMINAL DEFENDANTS**

**READ THIS:**

- ◆ THE COURT OF APPEALS IS CONTINUING YOU AS ATTORNEY ON APPEAL PURSUANT TO LOCAL RULE 4(b).
- ◆ PLEASE KNOW THAT YOU MAY BE SUBJECT TO DISCIPLINE, INCLUDING FINES, SUSPENSION OR DISBARMENT, IF YOU IGNORE THE RULES OF THE COURT OF APPEALS. WE ARE CONFIDENT THAT THIS WILL NOT OCCUR, BUT OUT OF AN ABUNDANCE OF CAUTION ARE PROVIDING YOU WITH THIS ADVANCE WARNING.
- ◆ THE COURT OF APPEALS WILL CONTINUE YOU AS THE ATTORNEY ON APPEAL EVEN IF THE DEFENDANT FILES AN APPEAL *PRO SE*.
- ◆ THE DISTRICT COURT HAS NO AUTHORITY TO RELIEVE YOU ON APPEAL AND SUCH ORDERS OF THE DISTRICT COURT ARE INEFFECTIVE.
- ◆ IF YOU WISH TO BE RELIEVED ON APPEAL YOU MUST MAKE A MOTION TO THE COURT OF APPEALS.

ATTORNEYS IN CRIMINAL CASES WHO DO NOT COMPLY WITH THE RULES OF THE COURT OF APPEALS, ESPECIALLY WITH REGARD TO THE TIMELY FILING OF BRIEFS, MAY BE SUBJECT TO DISCIPLINE, INCLUDING FINES, SUSPENSION OR DISBARMENT.

- ◆ **DO NOT PERMIT YOUR APPEAL TO LAPSE BECAUSE YOUR CLIENT HAS DECIDED NOT TO PURSUE IT. YOU WILL BE CONSIDERED TO HAVE ABANDONED THE APPEAL AND BE SUBJECT TO DISCIPLINE. CAREFULLY NOTE THE RULES WITH REGARD TO WITHDRAWAL OF SUCH AN APPEAL.**

**PLEASE NOTE:** If you are retained counsel and are not continuing the appeal because your client cannot afford the fee, you may move to be appointed pursuant to CJA in the Court of Appeals and the Court will pay you, providing the defendant qualifies. You need not be on the Court's CJA panel to be appointed if you represented the defendant below.

## A NOTE TO DEFENDANTS IN CRIMINAL CASES

### CONTINUATION OF COUNSEL ON APPEAL:

Please note that if you had trial counsel in the district court, this Court will continue your attorney as the attorney on the appeal. Only if the attorney makes a motion to be relieved in this Court and it is granted is it possible to have different counsel or to proceed *pro se*. This is true EVEN IF YOU FILED THE NOTICE OF APPEAL *PRO SE*.

### COMMUNICATION WITH THE COURT:

As long as you are represented by counsel, all communications which you send to the Court will be forwarded to your attorney without response from the Court. It is your attorney's obligation to represent you before the Court. It is up to your attorney whether to file motions which you request, or to include arguments in the brief. Your attorney is knowledgeable of the law and knows which arguments are meaningful to the Court and which would be considered frivolous. Please note that an attorney may not include arguments considered frivolous in the brief, even if you request it, because attorneys have an obligation to the Court and they can be disciplined by the Court for advancing legally frivolous arguments.

If your attorney files an ANDERS brief (a brief which says the attorney has searched the record and can find no non-frivolous issues), you will be given an automatic right to respond to the brief within 14 days.

If your attorney does not file an ANDERS brief, but you believe there are important issues which have not been included in the brief, you may request your attorney to make a motion for permission for you to file a supplemental *pro se* brief. **ONLY YOUR ATTORNEY CAN MAKE THIS MOTION**. It is up to your attorney to decide; since it is possible than an attorney may believe that the arguments you want to make might harm or undermine the legitimate arguments in the main brief, the attorney may refuse to make such a motion.

**NOTE:** COUNSEL ARE REQUESTED TO MAKE THIS INFORMATION KNOWN TO THEIR CLIENTS AT THE BEGINNING OF THE APPEAL.

**NOTICE TO COURT APPOINTED COUNSEL OF  
PUBLIC DISCLOSURE OF ATTORNEY FEE INFORMATION**

**NEW RULES APPLICABLE TO CASES COMMENCED ON OR AFTER JANUARY 25, 1998**

The Criminal Justice Act (CJA), 18 U.S.C. §3006A, now requires that the amounts paid to court appointed attorneys be made publicly available upon the court's approval of the payments. The court may disclose an unredacted copy of a payment voucher submitted by defense counsel, or it may release a redacted copy of a voucher, indicating only the amounts approved for payment according to categories of services listed in the statute. (The text of the new statutory provision, 18 U.S.C. §3006A (d) (4), is set forth on the back of this notice.) The extent of disclosure depends on whether the case is pending and on whether the court determines that certain interests (enumerated in subpart (d)(4)(D) of the CJA and listed below in part B.1) require the redaction of detailed information on the voucher. Upon court approval of a voucher claim, payment information will be released as follows:

- A. BEFORE OR DURING THE TRIAL:** After redacting any detailed information provided to justify the expenses, the court will make available to the public only the amounts approved for payment, divided into the categories set forth in subpart (d) (4) (B) (ii) of the CJA. Upon the completion of trial, unredacted copies of the vouchers may be released, depending on whether an appeal has been noted and whether the court determines that one or more of the interests listed in part B.1 require the redaction of information.
- B. AFTER THE TRIAL IS COMPLETED:** The court shall release either redacted or unredacted vouchers as follows.
- 1. If trial court proceedings have been completed and appellate review is not being pursued or has concluded at the time payment is approved:** The court will make an unredacted copy of the payment voucher available to the public unless it determines that one or more of the interests listed below justify limiting disclosure to the amounts approved for payment in the manner described in part A. The interests that may require limiting disclosure include:
    - (1) the protection of any person's Fifth Amendment right against self-incrimination;
    - (2) the protection of the defendant's Sixth Amendment right to effective assistance of counsel;
    - (3) the defendant's attorney-client privilege;
    - (4) the work product privilege of the defendant's counsel;
    - (5) the safety of any person; and
    - (6) any other interest that justice may require.
  - 2. If appellate review is being pursued at the time payment is approved:** The court will release only the amounts approved for payment in the manner described in part A unless it finds that none of the interests listed above in part B.1 will be compromised.

**If counsel believes that any of the interests listed above in part B.1 justify limiting disclosure to the amounts approved for payment, counsel should submit to the court a written request, identifying the interests at risk and the arguments in support of providing protection, AT OR BEFORE THE TIME A CLAIM FOR PAYMENT IS MADE. Failure to do so could result in the public release of unredacted copies of your vouchers without further notice.**

**This constitutes notice as required under 18 U.S.C. §3006A (d) (4) (E). You will NOT receive additional notice before any payment information is made available to the public.**

**PUBLIC NOTICE**  
**Criminal Justice Act (CJA), 18 U.S.C. §3006A**

DISCLOSURE OF FEES.

“(A) IN GENERAL. Subject to subparagraphs (B) through (E), the amounts paid under this subsection for services in any case shall be made available to the public by the court upon the court’s approval of the payment.

“(B) PRE-TRIAL OR TRIAL IN PROGRESS. If a trial is in pre-trial status or still in progress and after considering the defendant’s interests as set forth in subparagraph (D), the court shall

“(i) redact any detailed information on the payment voucher provided by defense counsel to justify the expenses to the court; and

“(ii) make public only the amounts approved for payment to defense counsel by dividing those amounts into the following categories:

“(I) Arraignment and or plea.

“(II) Bail and detention hearings.

“(III) Motions.

“(IV) Hearings.

“(V) Interviews and conferences.

“(VI) Obtaining and reviewing records

“(VII) Legal research and brief writing.

“(VIII) Travel time.

“(IX) Investigative work.

“(X) Experts.

“(XI) Trial and appeals.

“(XII) Other.

“(C) TRIAL COMPLETED

“(I) IN GENERAL. If a request for payment is not submitted until after the completion of the trial and subject to consideration of the defendant’s interests as set forth in subparagraph (D), the court shall make available to the public an unredacted copy of the expense voucher.

“(ii) PROTECTION OF THE RIGHTS OF THE DEFENDANT. If the court determines that defendant’s interests as set forth in subparagraph (D) require a limited disclosure, the court shall disclose amounts as provided in subparagraph (B).

“(D) CONSIDERATIONS. The interests referred to in subparagraphs (B) and © are

“(i) to protect any person’s 5th amendment right against self-incrimination;

“(ii) to protect the defendant’s 8th amendment rights to effective assistance of counsel;

“(iii) the defendant’s attorney-client privilege;

“(iv) the work product privilege of the defendant’s counsel;

“(v) the safety of any person; and

“(vi) any other interest that justice may require.

“(E) NOTICE. The court shall provide reasonable notice of disclosure to the counsel of the defendant prior to the approval of the payments in order to allow the counsel to request redaction based on the considerations set forth in subparagraph (D). Upon completion of the trial, the court shall release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court. If there is an appeal, the court shall not release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court until such time as the appeals process is completed, unless the court determines that none of the defendant’s interests set forth in subparagraph (D) will be compromised.

“(F) EFFECTIVE DATE. The amendment made by paragraph (4) shall become effective 60 days after enactment of this Act, and will apply only to cases filed on or after the effective date, and shall be in effect for no longer than twenty-four months after the effective date.”

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

**NOTICE OF APPEARANCE INFORMATION AND FORM**

The form on the reverse side containing appearance, time request, availability, and related case information must be completed by all parties and returned to this office when appellant's brief is due.

**FAILURE TO SUBMIT THIS FORM ON TIME WILL BE CONSIDERED  
BY THE COURT IN DECIDING ANY MOTIONS FOR ADJOURNMENT  
BASED ON UNAVAILABILITY.**

Each counsel of record or individual appearing *pro se* must complete this form. If an attorney other than counsel of record will argue the appeal, counsel of record must provide that attorney's name and date of admission to the bar of this Court in the space provided and indicate the dates, if any, when that attorney will be unavailable to argue the appeal.

Counsel of record and counsel who will argue the appeal must be admitted to the bar of this Court or be otherwise eligible to argue an appeal. The Court encourages and prefers written pro hac vice motions, filed as early as possible. Admission pro hac vice will be extended as a matter of course to a member of the bar of a district court within the circuit who has represented a criminal defendant at trial and continues representation on an appeal taken pursuant to the Criminal Justice Act. See Local Rule 46. However, counsel are encouraged to apply for general admission to this Court as soon as they meet the qualifications.

For information concerning admissions and admission applications, contact the Clerk's office at 212-857-8603.

**NOTICE OF APPEARANCE**

Appearance for (provide name of party): \_\_\_\_\_

Status of Party:

- Appellant/Petitioner
- Appellee/Respondent
- Cross-Appellant/Cross-Petitioner
- Other (Specify): \_\_\_\_\_
- Cross-Appellee/Cross Respondent
- Intervenor
- Amicus Curiae

An attorney will argue this appeal.

- Name of attorney who will argue appeal, if other than counsel of record: \_\_\_\_\_
- Date of arguing attorney's admission to this Court (month, day, year): \_\_\_\_\_
- Other Federal/State Bar admissions: (month, day, year): \_\_\_\_\_

I am a *pro se* litigant who is not an attorney.

I am an incarcerated *pro se* litigant.

TIME REQUEST

- Oral argument is not desired.
- Oral argument is desired. Party requests \_\_\_\_\_ minutes or multi-co-parties request a total of \_\_\_\_\_ minutes to be apportioned as follows:

If more than 20 minutes per side is requested, set forth reasons:

AVAILABILITY OF COUNSEL/PRO SE LITIGANT

I understand that the person who will argue the appeal must be ready at any time during or after the week of argument which appears on the scheduling order.

- I know of no dates which would be inconvenient.
- I request that the argument of this appeal not be calendared for the following dates, which are inconvenient. I have included religious holidays.

COUNSEL OR *PRO SE* LITIGANT MUST ADVISE THE COURT IN WRITING OF ANY CHANGE IN AVAILABILITY. FAILURE TO DO SO MAY BE CONSIDERED BY THE COURT IN DECIDING MOTIONS FOR ADJOURNMENT BASED ON UNAVAILABILITY.

RELATED CASES

- This case has not been before this Court previously.
- This case has been before this Court previously. The short title, docket number and citation are: \_\_\_\_\_
- Matters related to this appeal or involving the same issue have been or presently are before this Court. The short titles, docket numbers and citations are: \_\_\_\_\_

Signature of counsel of record or *pro se* litigant:

Signature of counsel who will argue the appeal, if different:

Type or Print Name  
 Name of Firm:  
 Address:  
 Telephone: ( ) - Date:

Type or Print Name  
 Name of Firm:  
 Address:  
 Telephone: ( ) - Date:

MOTION INFORMATION STATEMENT

Caption [use short title] \_\_\_\_\_

Docket Number(s): \_\_\_\_\_

Motion for: \_\_\_\_\_

Set forth below precise, complete statement of relief sought:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MOVING PARTY: \_\_\_\_\_

- Plaintiff  Defendant  
 Appellant/Petitioner  Appellee/Respondent

OPPOSING PARTY: \_\_\_\_\_

MOVING ATTORNEY: \_\_\_\_\_

[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY [Name]: \_\_\_\_\_

[name of attorney, with firm, address, phone number and e-mail]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Court-Judge/Agency appealed from: \_\_\_\_\_

Please check appropriate boxes:

Has **consent** of opposing counsel:  
A. been sought?  Yes  No  
B. been obtained?  Yes  No

Is **oral argument** requested?  Yes  No  
(requests for oral argument will not necessarily be granted)

Has **argument** date of appeal been **set**?  Yes  No  
If yes, enter date \_\_\_\_\_

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made **below**?  Yes  No  
Has this relief been previously sought in this Court?  Yes  No

Requested return date and explanation of emergency:  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Moving Attorney:

\_\_\_\_\_ Date: \_\_\_\_\_

Has **service** been effected?  Yes  No  
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED** **DENIED**.

FOR THE COURT:  
ROSEANN B. MacKECHNIE, Clerk of Court

Date: \_\_\_\_\_

By: \_\_\_\_\_