

United States Court of Appeals for the Tenth Circuit

OFFICE OF THE CLERK
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Patrick J. Fisher, Jr.
Clerk of Court

Douglas E. Cressler
Chief Deputy Clerk

TO: Counsel

RE: Prosecuting Appeal

Since the appeal which you have filed will be governed by the Federal Rules of Appellate Procedure and the Tenth Circuit Rules, you should familiarize yourself with both sets of rules. Copies of the Tenth Circuit Rules, effective January 1, 2003, may be obtained from the clerk of the district court or may be ordered from the clerk of the court of appeals. The Tenth Circuit rules pamphlet contains the Federal Rules of Appellate Procedure. The Tenth Circuit Practitioners' Guide is another good resource regarding prosecuting appeals. This publication may be ordered from the clerk of the court of appeals.

Please note the following appellate procedures:

1. If this is a direct criminal appeal, defendant's retained or court-appointed trial counsel is responsible for continuing representation of the defendant until relieved by the court of appeals. Further, any attorney who files a notice of appeal on behalf of a petitioner or moving party in a post conviction proceeding or criminal appeal is deemed to have entered an appearance in this court and may not withdraw without leave of court. *See* 10th Cir. R. 46.3.1.
2. Unless the appellant has been granted leave to proceed in forma pauperis or unless a motion to so proceed is now pending, the prescribed fees (\$5.00 filing fee and \$250.00 docket fee) must be paid to the clerk of the district court. *See* Fed. R. App. P. 3(e) and 10th Cir. R. 3.3.
3. Appellant must file a docketing statement with the clerk of the court of appeals 10 days after filing the notice of appeal. *See* 10th Cir. R. 3.4. Docketing statement forms, together with instructions for completing and filing the docketing statement, are attached to this letter.
4. Unless a motion for leave to proceed in forma pauperis is pending, appellant should immediately order **necessary** transcripts from the court reporter. *See* Fed. R. App. 10(b) and 10th Cir. R. 10.1.1 and 10.1.2. Transcripts must be ordered on forms provided by the district court. Please

note that the transcript order shall not be deemed complete until satisfactory financial arrangements have been made with the court reporter. *See* 10th Cir. R. 10.1.2.

5. If appellant is represented by court-appointed counsel a designation of record must be filed with the district court clerk within 10 days of filing a notice of appeal. The designation of record form must be used to prepare the record on appeal. **NOTE: If co-defendants appeal and one appellant is represented by court-appointed counsel, the court of appeals will treat all appellants as if represented by court-appointed counsel.**

Except as noted, a designation of record is not required if appellant is represented by retained counsel, but an appendix containing record excerpts must be filed when the appellant's opening brief is filed. *See* 10th Cir. R. 30.1 through 30.3.

6. If appellant, or a co-appellant (see **NOTE** above), is represented by court-appointed counsel, appellant shall file and serve an opening brief within 40 days of the date on which the clerk of the district court transmits the record on appeal to the clerk of the court of appeals. Except as noted, if appellant is represented by retained counsel, appellant shall file and serve an opening brief, together with separate appendix, within 40 days after the date on which the clerk of the district court notifies the parties and the clerk of the court of appeals that the record is complete for purposes of appeal. *See* Fed. R. App. 31 and 10th Cir. R. 31.1.1.

Failure to complete any of the steps set forth in numbered paragraphs 2, 3, 4, 5, and 6 of this letter may result in dismissal of the appeal, or discipline of counsel, or both. *See* 10th Cir. R. 42.1 and 46.6.

If, after reading the Federal Rules of Appellate Procedure and the Tenth Circuit Rules, you still have questions regarding prosecution of the appeal, please call the clerk's office.

Very truly yours,



Patrick Fisher, Clerk of Court