INTERNAL OPERATING PROCEDURES

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

Revised November 19, 2018

INTRODUCTORY NOTE

These internal operating procedures cover the essential and practical processes of the Eighth Circuit Court of Appeals, implementing the statutory mandates, the Federal Rules of Appellate Procedures, the Eighth Circuit's local rules, and the customs and traditions of this court. Acknowledging there is a wealth of resources available to the bar and to anyone interested in appellate practice, including guides on the internet and on the court's website, and by bar associations in the Eighth Circuit (e.g., Minnesota Continuing Legal Education's 8th Circuit Appellate Practice Manual, 8th Ed. 2018), these internal operating procedures are intended to set forth policies and procedures to assist and inform the practitioner and to ensure uniformity and the expeditious processing of appeals in the Eighth Circuit.

I. ORGANIZATION OF THE COURT

A. GEOGRAPHIC COMPOSITION AND FACILITIES

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

The clerk of court's main administrative offices are located on the 24th Floor of the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, Room 24.329, St. Louis, Missouri 63102. The clerk's office's main phone number is 314-244-2400. The clerk also has a divisional office in St. Paul, Minnesota. The address for the office is 316 N. Robert Street, Room 500, St. Paul, Minnesota 55101. The St. Paul office's phone number is 651-848-1300.

B. CIRCUIT JUDICIAL ADMINISTRATION

1. *Judicial Council*

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

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

2. *Circuit Executive*

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

3. *Judicial Conference*

The chief judge of each circuit may summon biennially, and may summon annually, the active circuit, district, and bankruptcy judges of the circuit to a Judicial Conference at a designated time and place. *See* 28 U.S.C. § 333. The conference considers the business of the courts and means of improving the administration of justice. The circuit's annual conferences alternate between conferences for judges and conferences open to the bar. Announcements for the attorney conferences, which are usually held in the summer months, are made well in advance of the conference dates. Registration for the attorney conferences is conducted by mail, email, and through the court's website.

4. *Discipline of Judicial Officers*

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

C. COURT ADMINISTRATION

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

1. *Clerk's Office*

a. General Information.

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

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

The clerk's divisional office is located at 316 N. Robert Street, Room 500, St. Paul, Minnesota 55101. The telephone number is 612-848-1300. The St. Paul office provides the

following services: docketing new appeals; answering procedural and policy questions on court operations; staffing St. Paul court sessions; coordinating emergency filings when necessary; receiving transcripts, exhibits, and district court materials from Minnesota, North Dakota, and South Dakota; and providing Eighth Circuit materials, including Circuit Rules, Internal Operating Procedures, and forms.

b. CM/ECF Information and links.

The Eighth Circuit is a CM/ECF court, and electronic filing is mandatory for attorneys and voluntary for pro se filers. Attorneys who cannot participate may seek an exemption. The exemption form is available at the "Forms" link on the court's website. Extensive information about the court's CM/ECF procedures, including a copy of 8th Cir. R. 25A which governs electronic filing, is available on the website at <www.ca8.uscourts.gov>.

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

Eighth Circuit Local Rule 25A contains a list of documents which must be filed electronically. A separate list of documents which cannot be filed electronically is also provided. In general, most case-related pleadings (Appearance Forms, Motions, Corporate Disclosure Statements, Notices Concerning the Record, Merit Briefs, Petitions for Rehearing and Rehearing En Banc, etc.) must be submitted electronically. Original proceedings, including petitions for writ of mandamus or prohibition, applications for successive habeas petitions/motions to vacate under 28 U.S.C. § 2244(b)(3), and petitions for review of final agency decisions may be submitted electronically through the Utilities tab in CM/ECF, and the filing fee paid through pay.gov. To utilize this feature, filers must have electronic access to CM/ECF. Briefs are filed in both electronic and paper format. *See* 8th Cir. R. 28A. Records on appeal in attorney-handled civil cases are filed in paper format. Please refer to the cited rules for additional filing information. The clerk's office staff can also assist filers in using the filing system.

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

Participation in the CM/ECF process is treated as consent to electronic noticing and electronic service of all documents and orders. Participants in the system receive an electronic Notice of Docket Activity when a document is filed by a party and when the court takes a public action in the case. The court also uses the system to serve pro se documents on counsel after a pleading is filed, scanned, and attached to the docket. *See* 8th Cir. R. 25B. The Notice of Docket Activity contains a link to the document, order or opinion. Participants may click on the link for their one "free look" at the document.

2. *Chambers and Staff Attorneys*

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

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

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

3. *Court Libraries*

The main library is located on the 22nd Floor of the Thomas F. Eagleton U. S. Courthouse in St. Louis, Missouri. The telephone number is 314-244-2665. The library is open from 8:00 a.m. to 5:00 p.m., Monday through Friday. The collection contains many federal materials, all West's regional reporters, basic state materials for states within the Eighth Circuit, and has access to the Internet. The library catalog is accessible at online terminals in each library. The library is also a selective depository for federal government documents. The main library's treatise and law review collections are more extensive than the branch libraries' collections. The St. Louis library receives slip opinions from all the federal circuits, and maintains all the published and unpublished slip opinions from the Eighth Circuit. Locations and telephone numbers of the branch libraries are as follows:

Des Moines, Iowa	515-284-6228
Kansas City, Missouri	816-512-5790
Cedar Rapis, Iowa	319-423-6100
Little Rock, Arkansas	501-604-5215
Minneapolis, Minnesota	612-664-5830
St. Paul, Minnesota	651-848-1320 (unstaffed)

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

D. PANELS OF THE COURT

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

1. *Argument (Hearing) Panels*

Three-judge panels, referred to as hearing panels, hear argued appeals. The members of these panels are assigned before court sessions. In addition to active circuit judges, senior judges, district judges, and visiting circuit judges also serve on the hearing panels. The active circuit judge from this circuit with the most seniority presides on the hearing panel. The chief judge always presides.

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

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

2. *Nonargument (Screening) Panels*

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

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

3. *Administrative Panels; Emergency Matters*

Administrative panels decide presubmission motions and other preliminary issues the clerk is not authorized to handle. The administrative panels consider and decide: (1) petitions for permission to appeal filed pursuant to FRAP 5; (2) motions for leave to proceed in forma pauperis; (3) applications for certificates of appealability under 28 U.S.C. § 2253; (4) motions for appointment of counsel; (5) motions for production of the transcript at government expense; (6) motions for bond pending appeal; (7) applications for stay pending appeal and applications for peremptory writs of mandamus and prohibition; (8) motions to dismiss for lack of jurisdiction, *see* 8th Cir. R. 47A(b); (9) applications to file a second or successive habeas petition or motion to vacate under 28 U.S.C. § 2244(b)(3); (10) procedural issues; and (11) emergency and special matters. The administrative panels consist of three judges. One judge or the clerk, however, may take certain actions. *See* 8th Cir. R. 27B(a) and (b).

All stay and writ applications should be coordinated through the clerk's office in St. Louis. Emergencies are best handled by telephoning the clerk for instructions; a call should also be made to alert the clerk's office when there are pressing deadlines for court action. Electronic filing of the relevant documents allows the clerk to distribute the materials to a panel for immediate review, and it is rarely necessary for a party to present documents to a single judge in chambers for review. Panels may be convened for emergency situations. At the court's initiative, conference telephone calls may be used for the initial presentation of an emergency stay request or writ application.

II. ATTORNEYS

A. ADMISSION TO PRACTICE

The requirements for admission to the Eighth Circuit bar are provided in FRAP 46(a) and 8th Cir. R. 46A. An attorney must be a member of the Eighth Circuit bar before appearing for oral argument unless appointed to represent a party proceeding in forma pauperis. An attorney who is not a member may file briefs, motions, and pleadings. Attorneys representing the federal government and attorneys appointed under the Criminal Justice Act are exempt from payment of the attorney admission fee.

The fee for admission is $221. The form for admission is available from the clerk's office or may be downloaded from the court's website. Checks should be made payable to the "Attorney Admission Fee Fund." The admission form and payment of the admission fee using a credit card, may also be submitted electronically, using the Utilities tab on the CM/ECF home screen. Admission to the Eighth Circuit bar may be granted in open court or by the clerk of court, but most admissions are processed by mail. Counsel will be mailed a receipt and bar certificate.

Attorneys may obtain Certificates of Good Standing by making a written request to the clerk's office and paying a $19 service fee. Payment of the fee for a certificate of good standing

may also be made electronically using a credit card using the Utilities tab on CM/ECF and paid through pay.gov. Fees are subject to change, and current fee information may be found on the court's website under "Fee Schedule."

B. ENTRY OF APPEARANCE.

The clerk's office must be informed of the names, addresses, email addresses and telephone numbers of the attorneys participating in an appeal. Counsel who represent a party on appeal must enter an appearance with the court of appeals either on a form supplied by the clerk or by letter. Appearance forms may be downloaded from the "Forms" link on the court's website.

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

D. APPOINTMENT OF COUNSEL

1. *Criminal Justice Act*

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

eVoucher, as they cannot be submitted through the CM/ECF filing system. Vouchers are due within 45 days of issuance of the mandate.

To be relieved of an appointment, an attorney must file a motion with the clerk specifying the reason for the request. Motions for leave to withdraw must be served on the client. The court discourages these requests and will authorize withdrawal only for good cause. See 8th Cir. R. 27B(b). Trial counsel requesting permission to withdraw must preserve the client's right to appeal. Unless the prospective appellant in a criminal case expresses a desire not to appeal in a written notice to the district court, trial counsel must file a timely notice of appeal, enter an appearance, and prosecute the appeal with diligence until the court grants leave to withdraw. Appointed counsel who believes an appeal is without merit must nonetheless file a brief in conformity with *Anders v. California*, 386 U.S. 738 (1967), *Penson v. Ohio*, 488 U.S. 75 (1988), and *Robinson v. Black*, 812 F.2d 1084 (8th Cir. 1987).

Counsel's obligation under the Court's Plan to Implement the Criminal Justice Act extends through the filing of a petition for writ of certiorari in the United States Supreme Court. See Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act, found on the court's website under "Rules and Publications."

2. *Appointment of Counsel in Civil Cases*

The court has the power to appoint counsel in certain civil cases. See 28 U.S.C. § 1915(e)(1). The court exercises its power of appointment sparingly, primarily in civil rights actions. Proof of indigency is required, and the party seeking appointment of counsel must satisfy the court the appeal has merit and is not frivolous.

No fee is authorized for legal services of counsel appointed under this court's authority. The court does, however, authorize reimbursement from the Attorney Admission Fee Fund for reasonable out-of-pocket expenses incurred in connection with the appointment. *See* 8th Cir. R. 47H. Appointed counsel must keep an accurate record of all out-of-pocket expenses incurred and submit an itemized statement to the clerk after issuance of the mandate. The statement should be mailed to the St. Louis clerk's office for processing; it cannot be submitted through the CM/ECF system or the eVoucher application. Counsel should consult the "Civil Appointment Information" button on the court's website for instructions in preparing a claim for reimbursement.

E. DISCIPLINE OF COUNSEL

A member of the bar is subject to suspension or disbarment for improper conduct and may be disciplined for failure to comply with the Federal Rules of Appellate Procedure or Eighth Circuit Rules. *See* FRAP 46(c). Counsel should notify the clerk's office promptly of any problem in a pending appeal. The clerk works with counsel to resolve procedural or other problems that could result in disciplinary action. Failure to meet briefing deadlines or submit

timely motions for extensions of time may result in the issuance of an order directing counsel to show cause why discipline should not be imposed.

III. PRESUBMISSION APPELLATE PROCESS

A. PRELIMINARY CONSIDERATION

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

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

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

(1) Is there subject matter jurisdiction in the case?

(2) Has the district court fully resolved all issues in the case? If not, is the order appropriate for the interlocutory appeal process under 28 U.S.C. § 1292(b), or has the district court entered an order under Fed. R. Civ. P. 54(b)?

(3) Is there a pending motion listed in FRAP 4(a)(4) that would render the filing of a notice of appeal premature?

(4) Is the appeal timely?

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

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

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

Certain interlocutory or nonfinal orders are reviewable, some as a matter of right and some as a matter of judicial discretion. 28 U.S.C. § 1292. Interlocutory orders reviewable as a matter of right include orders granting, continuing, modifying, dissolving, or denying injunctions, and certain orders in receivership, bankruptcy, admiralty, and patent proceedings. *See* 28 U.S.C. §1292(a). Interlocutory orders not otherwise appealable may be reviewed at the discretion of the court of appeals if the trial court certifies the order "involves a controlling question of law as to

which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b); FRAP 5. Petitions for appeals by permission and answer to the petitions are limited to 5,200 words if computer generated or 20 pages is handwritten or typewritten. *See* FRAP 5(c).

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

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

B. LEAVE TO PROCEED IN FORMA PAUPERIS

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

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

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

C. VOLUNTARY DISMISSALS

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

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

D. PROCESSING SCHEDULE

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

E. EXPEDITED CRIMINAL APPEALS

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

F. CROSS-APPEALS AND JOINT APPEALS

1. *Cross-Appeals*

Without filing a cross-appeal, an appellee may defend a judgment on any ground the record supports, even if rejected in the lower court. Appellees must file cross-appeals to attack the judgment, either to enlarge their own rights or to lessen the rights of their adversaries. Briefing in cross-appeals is governed by FRAP 28.1.

2. *Joint Appeals*

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

Counsel who have joined on appeal must cooperate in arranging for the preparation and transmittal of the record. Joint briefs are governed by FRAP 28(i). Appellee briefs and reply briefs responding to multiple briefs are restricted under the provisions of 8th Cir. R. 32A, and counsel should review the provision of the rule if they are responding to multiple appellants' briefs or replying to multiple appellee briefs. Appeals involving the same question are usually argued together.

G. RECORD ON APPEAL

The record on appeal is governed by FRAP 10, 11, and 30; and 8th Cir. R. 10A, 11A and 30A. There is a good deal of confusion among counsel as to the meaning of the phrase, "record

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

1. *Criminal cases*

No appendix or clerk's record is required in direct criminal appeals. See Eighth Circuit Plan to Expedite Criminal Appeals, Section III(A)(1)(b). The electronic record maintained by the district court will serve as the record on appeal, together with the transcripts, exhibits, and other paper documents in the case. Orders appealed from, such as suppression orders, should also be included in the Addendum to the Appellant's Brief. *See* 8th Cir. R. 28A(g).

2. *Civil Cases*

a. Pro Se Appeals

The court will review pro se appeals on the original file of the district court. In practice, the court and its staff use PACER to access the district court's original file. As a result, counsel participating in pro se appeals do not need to prepare an appendix; counsel may include an addendum with the brief. Either side may order a transcript if the transcript is required for disposition of the issues raised on appeal. If a pro se appellant is proceeding in forma pauperis in this court, and wishes to have a transcript prepared, he or she must file a motion for preparation of a transcript at government expense. An administrative panel will then determine whether a transcript should be prepared. *See* III, H.3., supra. If the court orders the preparation of the transcript, the court reporter will send the bill for the transcription costs to the clerk's office for processing of the costs.

b. Civil Appeals Where Both Sides Are Represented by Counsel

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

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

(2) Notify the district court clerk's office of all trial and any other necessary exhibits to be forwarded to the court of appeals. Exhibits are not automatically transferred to the court of appeals. *See* 8th Cir. R. 10A.

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

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

(5) The entire district court file or administrative agency file is available to the court and is available electronically if the panel needs additional material.

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

c. The Appendix and the Addendum

Appellants represented by counsel must file three paper copies of an appendix. The appendix provides each member of the panel with a copy of record material needed for full consideration of the issues. The addendum is submitted electronically for filing with the brief and duplicates carefully selected portions of the appendix in order to provide the court with a readily accessible condensation of the relevant record. For example, if the appendix includes jury instructions, only the instruction involved in the appeal should be set forth in the addendum. If the appendix contains a long contract, only the paragraph directly related to the issue on appeal should be included in the addendum. The addendum may not exceed fifteen pages, excluding the district court or agency opinion and the magistrate judge's report and recommendation. Once the addendum has been submitted and is filed by the clerk's office, paper copies of the addendum should attached to the back of the paper briefs, although separately bound paper addenda are permitted. Counsel can find additional information about the electronic version of the addendum in 8th Cir. R. 28A(g)(5).

d. Exhibits

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

H. COURT REPORTERS

1. *Ordering the Transcript*

Appellant's counsel must order a transcript from the court reporter within fourteen days after filing the notice of appeal. The transcript should include the parts of the proceedings not already on file that appellant deems necessary. If the district court used electronic recording, the transcript should be ordered from the district court clerk. Failure to fulfill these responsibilities may result in dismissal of the case. *See* FRAP 3(a); 8th Cir. R. 3C. Within 14 days after appellant serves the transcript order, the appellee must file and serve a designation of additional parts to be transcribed. Counsel should observe the district court's procedures for transcript redaction.

2. *Duties of Court Reporters; Extensions of Time*

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

3. *Proceeding In Forma Pauperis*

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

I. MOTION PRACTICE

All motions in counseled cases, except motions to seal, must be filed electronically in CM/ECF. Each motion should include a caption, the docket number, and a brief heading description of the relief sought (e.g., Motion for Extension of Time to File Appellant's Brief).

FRAP 27(d). A separate brief supporting or responding to a motion must not be filed. Format and length are governed by FRAP 27(d). The clerk will scan and file motions for pro se parties who are not registered CM/ECF users and will serve the document on registered users with an electronic Notice of Docket Activity in accordance with 8th Cir. R. 25B. The clerk will provide the pro se filer with a paper copy of the Notice of Docket Activity showing the filing date and those served. *See* 8th Cir. R. 25B(d).

All motions are decided upon the papers filed, without oral hearing, unless otherwise ordered by the court. Oral argument is rarely granted. Since the judges rule on numerous motions each week, brevity in motion procedure is important.

To minimize the judge's involvement in routine matters and to prevent any delay in case processing, the clerk is authorized under 8th Cir. R. 27A(a) to rule on many types of procedural motions. In general the clerk may rule on motions regarding extensions of time, overlength documents, supplementation of the record on appeal, consolidations of appeals, substitution of parties, advancements or continuance of cases, appointment of counsel in cases under the Criminal Justice Act, withdrawal of counsel in civil cases and fee-paid criminal cases, entry of consent decrees in certain types of agency cases, voluntary dismissals of an appeal and unopposed taxation of costs. The rule is not meant to be an exhaustive list of every motion the clerk may grant, and, in practice, the clerk has discretion in determining what is referred to the court, either for an immediate ruling or for a later ruling in connection with the court's decision on the merits of the case. In the event a party is dissatisfied with the clerk's ruling under 8th Cir. R. 27A(a), a motion for reconsideration should be filed within fourteen days of the order. The motion will be referred to a three-judge panel for review. *See* 8th Cir. R. 27A(d). Similarly, a party dissatisfied with a judge or panel ruling may file a motion for reconsideration under 8th Cir. R. 27A(d). Suggestions in opposition filed after a ruling are not considered to be a request for reconsideration; a separate request for reconsideration must be filed. FRAP 27(b).

Motions to seal documents and submission of sealed records are governed by 8th Cir. R. 25A(h).

J. BRIEFS

1. *Time for Filing and Form*

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

Pursuant to the provisions of 8th Cir. R. 28A(a), briefs filed by attorneys and other authorized CM/ECF users must be submitted for filing using the CM/ECF system by the due date established by the court's briefing schedule and other orders. Upon receipt of the electronic version of the brief, the clerk's office will review it (and the submitted addendum) for compliance with the rules and notify counsel if any defects are noted. Counsel have five days from receipt of a defect notice to submit a revised electronic version of the brief; failure to submit a corrected version of the brief may result in the issuance of an order to show cause or an order barring the filing of the brief. Once a fully compliant electronic version is submitted, the clerk will file the brief and notify all parties to the case, either by mail or through an electronic Notice of Docket Activity, that the brief has been filed. Subsequent due dates are calculated from the date of this notice. Counsel should carefully review the provisions of 8th Cir. R. 28A(a) and (b) for further details.

Once the filing party has received notice that the brief has been filed, the party has five days to submit the paper copies of the brief (and any addendum) required by 8th Cir. R. 28A(d). The court encourages inexpensive forms of reproduction to minimize costs, but counsel should check each copy of the brief for legibility, completeness, and proper binding. Type and page size requirements are covered by FRAP 32(a) and FRAP 28.1(e). If staples are used for binding, tape should be placed over the edges. The certificates of service required by FRAP 25(d) and the certificate of compliance required by FRAP 32(g) and 28.1(e)(3) must be included in briefs or supplied in a separate document. The court's website contains additional instructions, pointers, and checklists to assist counsel in preparing briefs. Briefs can be accessed through the PACER system. Please note, the PACER $.10 per page charge applies to briefs (subject to a $3.00 cap per brief). For billing information or to establish a PACER account, see <www.pacer.gov/billing>.

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

2. *Reply and Supplemental Briefs; Supplemental Citations*

A reply brief need contain only items 2, 3, 8, 9, and 10 of FRAP 28(a), and a certificate of service. Supplemental briefs may not be filed without leave of court. The court may request supplemental briefs on specific issues after a case is argued or submitted without argument. The court may request that supplemental briefs be filed in letter format; in such instances, the brief may take the form of a letter addressed to the clerk of the court. Supplemental briefs are filed through the CM/ECF system.

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

3. *Briefs of an Amicus Curiae*

To avoid repetition or restatement of arguments, counsel for an amicus curiae should ascertain, before preparing a brief, the arguments that will be made in the brief of any party to be supported. The brief of an amicus curiae generally can be filed only with written consent of all parties or with leave of court. The United States, an agency or officer thereof, or any state may file an amicus brief without consent of the parties or leave of court. A motion for leave to file an amicus brief must be accompanied by the proposed brief, and must state the movant's interest and the reason an amicus is desirable. The cover of the amicus brief must identify the party or parties supported and whether the brief supports affirmance or reversal. All other requirements are contained in FRAP 29. Participation by an amicus curiae in oral arguments will be allowed only with the court's permission and usually only for extraordinary reasons.

4. *Contents*

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

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

4. *Function*

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

The writer should identify the key issues and concentrate on them. Except in unusually complicated cases, a brief addressing more than four or five issues is often diffuse and gives the reader the impression that no single issue is very important. The statement of facts should be complete, concise, and nonargumentative. It should be in narrative form with references to the transcript or other parts of the record. The argument should be divided into the main issues with appropriate headings and should include an analysis of the evidence and a discussion of the authorities. If no decision is controlling, the emphasis should be on reason as well as precedent. The court prefers a few good cases on point, with sufficient discussion of their facts to show their relevance, rather than an overabundance of citations. Cases worth citing usually can be summarized tersely or quoted briefly to show their precedential value. A long factual discussion is unnecessary unless a precedent is so closely on point that it must be distinguished. The writer

should ensure that all cases support the principle for which they are cited and that the citations are accurate.

K. CALENDARING

Upon the filing of the briefs, every attorney-handled case is screened for argument or nonargument submission. *See* 8th Cir. R. 34A. If the court determines that argument is not necessary in an attorney-handled case, the clerk notifies counsel and gives them seven days to object to the no-argument classification. Any objection to the classification is sent to a panel of three judges for review. If one of the judges on the panel determines that argument is required, the objection is granted, and the case is placed in the pool of cases ready for oral argument.

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

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

The clerk notifies counsel that cases have been screened for oral argument as soon as the screening process is complete, and counsel should notify the clerk of potential conflicts when they receive this notice, or as soon as the conflict arises. The court's monthly calendar is posted on the court's website, as are the locations and dates of future sessions. Requests to change the schedule after the calendar has been prepared will be referred to the panel of judges assigned the case and will be granted only for good cause. Counsel's obligation in other courts ordinarily will not be considered good cause. The clerk, in consultation with the presiding judge, may change the order of argument for a particular day.

The court reserves the right to designate the location for oral arguments to expedite its docket. Cases from Arkansas, Missouri, and Nebraska are generally heard in St. Louis, while cases from Minnesota, North Dakota and South Dakota are usually heard in St. Paul. Iowa cases can be set for either location. Counsel must examine the calendar carefully and note the city in which they are scheduled to argue to avoid appearing at the wrong site. The court's monthly calendar is posted on the court's website, as are the locations and dates of future sessions.

L. ORAL ARGUMENT

1. *Judges' Preargument Preparation*

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

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

2. *Identity of Panel*

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

3. *Preargument Check-In*

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

4. *Number of Cases Argued*

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

5. *Oral Argument.*

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

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

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

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

Digital versions of the arguments are placed on the court's website, and are generally available for listening or downloading the same day as the argument. Arguments are also available as free podcasts from the iTunes store.

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

6. *Warning Lights*

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

expired. Counsel must stop arguing immediately unless responding to a judge's question. All courtrooms are equipped with digital "countdown" timers for counsel's convenience.

7. *Reference to Supplemental Authority*

If after the briefs have been filed counsel becomes aware of supplemental authority, counsel should file a written citation of supplemental authority and serve a copy of the decision to the other parties and to the court if it is unreported. *See* FRAP 28(j). If timely filing is not feasible, counsel may file the citation on the day of argument and the clerk will see that the materials are distributed to the panel before the case is called. Counsel may refer to the authority at oral argument if it has been filed and served on opposing counsel.

IV. DECIDING THE APPEAL

A. CASE CONFERENCE AND PREPARATION OF OPINIONS AND ORDERS

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

B. PUBLICATIONS OF OPINIONS

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

C. ACCESS TO SLIP OPINIONS

The court mails a copy of the slip opinion or order to parties proceeding pro se on the day it is entered on the docket. A copy of the slip opinion is also mailed to a criminal defendant in his or her direct criminal appeal even though represented by counsel. All CM/ECF participants will receive the opinion electronically. All published and unpublished opinions will appear on the court's website at 10:00 a.m. on the day they are issued. The opinions are also transmitted electronically to the district court clerk's office where the case originated. Each of the court's libraries maintains a current edition of the court's slip opinions. Opinions are transmitted to the various legal publishers. Subscriptions to the court's slip opinions are not available, but the

public may subscribe for an RSS feed of opinions from the court's website. The court also provides a daily summary of all of its published and unpublished opinions. The summaries are available at the "Today's Opinions" link on the court's website.

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

Petitions for rehearing are not favored by the court and are granted infrequently. Petitions for rehearing en banc require a substantial expenditure of time by judges who have not participated in the case, as well as by the hearing panel, and should be reserved for cases necessary to maintain and secure the uniformity of decisions or that raise questions of exceptional importance. *See* FRAP 35. Petitions in support of rehearing filed by amicus curiae are governed by FRAP 29(b).

The issue of whether a case should be reheard en banc is separate and distinct from the issue of whether the case should be reheard by the panel. A panel may rehear a case if it questions whether its decision was correct. The court may rehear a case en banc if the case "is of such significance to the full court that it deserves the attention of the full court." *Western Pac. Ry. Corp. v. Western Pac. Ry. Co.*, 345 U.S. 247, 262-63 (1953). Requirements and procedures for seeking rehearing by a panel and rehearing en banc are contained in FRAP 35 and 40; and 8th Cir. R. 35A and 40A.

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

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

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

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

E. COSTS

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

The verified bill of costs required by FRAP 39(d) may be that of a party or counsel, or a printer's verified bill of costs evidencing payment of the bill for a specified brief. When an objection is filed the court must determine whether the costs are reasonable for the area where the clerk's office is located. *See* FRAP 39(c). The court will rule on a timely bill of costs only if the opposing party objects; absent an objection, the clerk will approve a timely-filed and properly-supported bill of costs, but in no event will the court tax more than the amount authorized in 8th Cir. R. 39A(a). If costs have not been settled before issuance of the mandate, the clerk proceeds as specified in FRAP 39(d).

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

F. ISSUANCE OF THE MANDATE

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

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

Once issued, a mandate will be recalled only to prevent injustice. *See* 8th Cir. R. 41A. A successful party on appeal cannot enforce its judgment in the district court unless the issuance of the mandate has formally revested jurisdiction in the district court.

G. PETITIONS FOR WRITS OF CERTIORARI TO THE SUPREME COURT

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

Applications for writs of certiorari must be timely. *See* 28 U.S.C. § 2101. The technical methods of seeking review are contained in the Supreme Court Rules. Petitions for a writ of certiorari must be filed directly with the Supreme Court. This court will not forward a petitions filed in this court.

APPENDIX A

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

EVENT	COMMENTS	REFERENCES
1. Filing the Notice of Appeal	Appellant files the notice of appeal with the clerk of the district court. The notice of appeal must be filed within:	FRAP 4(a)(1)
	• 30 days after the district court enters judgment in private civil cases;	FRAP 4(a)(1)(A)
	• 60 days after the district court enters judgment in civil cases in which the U.S. is a party;	FRAP 4(a)(1)(B)
	• 30 days (60 if the U. S. is a party) after the district court enters judgment when parties in bankruptcy cases appeal by agreement;	FRAP 4(a)(1), 6(a)
	• 10 days after the district court enters an interlocutory order containing the statement prescribed by 28 U.S.C. § 1292(b);	FRAP 5(a); 28 U.S.C. § 1292(b)-(d)
	• 14 days after the first notice of appeal in cross-appeals or appeals by other parties.	FRAP 4(a)(3)

EVENT	COMMENTS	REFERENCES
2. Payment of Filing Fee ($5) and Docketing Fee ($500)	Appellant pays the fees to the district court clerk when the notice of appeal is filed. For a discussion of proceeding in forma pauperis, see Eighth Circuit Internal Operating Procedures (IOP) § III(B).	FRAP 3(e)
3. Transmission of Notice of Appeal and Docket Entries; Docketing of Appeal	The district court clerk transmits an electronic notice to the court of appeals when the notice of appeal has been filed in the district court and attaches a link to the docket entries and the orders appealed. The court of appeals clerk dockets the appeal and establishes a briefing schedule when the clerk receives this notice.	FRAP 11(e), 12 8th Cir. R. 11A

EVENT	COMMENTS	REFERENCES
4. Designation of Record – Appellant	Within 10 days after docketing of the appeal, appellant must elect a method of producing the record from three alternatives:	FRAP 10, 30 8th Cir. R. 30A(b)
	– joint appendix;	FRAP 30 8th Cir. R. 30A(b)(2)
	– separate appendices; or	8th Cir. R. 30A(b)(3)
	– agreed statement.	FRAP 10(d) 8th Cir. R. 30A(b)(1)
	At the same time, appellant must also file with the appropriate clerks of court and serve on opposing parties;	FRAP 30(b)
	– election of method;	
	– designation of record, if required; and	
	– statement of issues.	

EVENT	COMMENTS	REFERENCES
5. Ordering of Transcript – Appellant	Within 14 days after the appeal is docketed, appellant must order those portions of the transcript necessary for the appeal and arrange for payment of costs, or appellant must file a certificate if no transcript is required.	FRAP 10(b)
6. Filing of Corporate Disclosure Statement	Each nongovernmental party must file a corporate disclosure statement within 7 days of receiving the notice that the appeal has been docketed.	8th Cir. R. 26.1A
7. Designation of Record – Appellee	Appellee must file a supplemental designation of the record within 14 days after receiving appellant's designation of the record if appellant's designation is insufficient.	FRAP 30(b)(1)
8. Ordering of Transcript – Appellee	Appellee must order additional portions of the transcript if necessary and arrange for payment of costs within 14 days after appellant orders the transcript.	FRAP 10(b)(3)(B)
9. Filing of Transcript	The court reporter must file the transcript within 30 days after receiving appellant's order (and appellee's order, when applicable).	FRAP 11(b)

EVENT	COMMENTS	REFERENCES
10. Submission of Appellant's Brief	Appellant must submit an electronic version of the brief and addendum within 40 days after the clerk issues the briefing schedule. Appellant must submit ten paper copies of the brief and addendum within five days of issuance of the Notice of Docket Activity stating the brief has been filed. For a discussion on writing the brief, see IOP § III(J).	FRAP 31(a)(1)
11. Submission of Intervenor or Amicus Brief in Support of Appellant	Intervenor or amicus appellant submit an electronic version of the brief no later than seven days after appellant's brief has been filed, unless the court grants leave for later filing. Ten copies of paper briefs must be submitted within five days of issuance of the Notice of Docket Activity stating the brief has been filed.	FRAP 29(a)(6)
12. Transmission of Appendix or Agreed Statement of Record	The district court clerk transmits the agreed statement when appellant's brief is due. Appellant transmits the appendix with its brief. Appellant must ensure that trial exhibits are forwarded to court of appeals or must submit separate appendix with trial exhibits.	FRAP 10(d), 30(a) 8th Cir. R. 30A(b) 8th Cir. R. 10A

EVENT	COMMENTS	REFERENCES
13. Submission of Appellee's Brief	Appellee must submit an electronic version of the brief within 30 days after appellant's brief has been filed. Appellee must submit ten paper copies of the brief within five days of issuance of the Notice of Docket Activity stating the brief has been filed. For a discussion on writing the brief, see IOP § III(J).	FRAP 31(a)(1)
14. Submission of Intervenor or Amicus Brief in Support of Appellee	Intervenor or amicus appellee must submit an electronic version of the brief no later than seven days after appellee's brief has been filed, unless the court grants leave for later filing. Ten copies of paper briefs must be submitted within five days of issuance of the Notice of Docket Activity stating the brief has been filed.	FRAP 29(a)(6)
15. Screening	All cases are screened for argument or nonargument submission after receipt of appellee's brief. Counsel may file an objection to the classification within 7 days of receiving notice of the classification. Cases screened for submission without oral argument are assigned to a nonargument panel.	FRAP 34 8th Cir. R. 34A
16. Calendaring	The clerk places the appeal on the court's calendar. Criminal cases, habeas corpus cases, court-expedited cases, and cases given priority by statute take precedence over other cases.	8th Cir. R. 34B

EVENT	COMMENTS	REFERENCES
17. Submission of Appellant's Reply Brief	Appellant must submit an electronic version of the reply brief within 14 days after appellee's brief has been filed. Appellant must submit ten paper copies of the reply brief within five days of issuance of the Notice of Docket Activity stating the reply brief has been filed.	FRAP 31(a)(1)
18. Argument	For a discussion of oral argument, see IOP § III(L).	FRAP 34
19. Opinion/Judgment	The court strives to issue the opinion within 90 days after oral argument or submission to a nonargument panel.	FRAP 36

EVENT	COMMENTS	REFERENCES
20. Filing of Posthearing Motions	The aggrieved party or prevailing party must file posthearing motions within 14 days after the court issues the opinion. These include:	
	– petition for panel rehearing; petition for rehearing en banc;	FRAP 35, 40 8th Cir. R. 35A, 40A
	– motion for correction, modification, or clarification;	FRAP 27(a)
	– bill of costs; and	FRAP 39(d) 8th Cir. R. 30A(c), 39A
	– motion for attorneys fees.	8th Cir. R. 47C(a)
	If the United States is a party in civil case, the petition for panel rehearing and rehearing en banc must be filed within 45 days of the date of the court's judgment.	FRAP 40(a)(1)

EVENT	COMMENTS	REFERENCES
21. Responses to Motions	Unless the court requests, the opposing party is not permitted to file a response to a petition for rehearing	FRAP 40(a)
	Objection to a bill of costs must be filed within 14 days after service of the bill of costs.	FRAP 39(d)
	A response to a motion for correction, modification, or clarification, or to a motion for attorneys fees, must be filed within 7 days.	FRAP 27(a) 8th Cir. R. 47C
22. Issuance of Mandate	The court of appeals clerk issues the mandate 21 days after entry of judgment, unless the court orders otherwise or unless a timely petition for rehearing is filed. If a timely petition for rehearing is filed, the mandate issues 7 days after denial of the petition.	FRAP 41

APPENDIX B

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

EVENT	COMMENTS	REFERENCES
1. Filing the Notice of Appeal	After the district court enters judgment, appellant must file the notice of appeal with the district court clerk within: – 14 days when defendant appeals; or – 30 days when the United States appeals based on statutory authorization.	FRAP 4(b)
2. Payment of Filing Fee ($5) and Docketing Fee ($500)	Appellant pays the fees to the district court clerk when the notice of appeal is filed. For a discussion of proceeding in forma pauperis, see Eighth Circuit Plan to Expedite Criminal Appeals (Plan) § III(A)(2).	FRAP 3(e), 24
3. Transmission of Notice of Appeal, Docket Entries, and Order of Judgment; Docketing of Appeal	Within two working days after the notice of appeal is filed, the district court clerk transmits to the court of appeals clerk a notice that a notice of appeal has been filed, with a link to the district court docket entries and the orders appealed. The court of appeals clerk dockets the appeal and establishes a briefing schedule when the clerk receives this notice.	FRAP 11(e), 12 8th Cir. R. 11A Plan §§ III(C), IV(A)

EVENT	COMMENTS	REFERENCES
4. Ordering the Transcript	The district court clerk orders the transcript from the court reporter within 2 working days after the notice of appeal is filed.	Plan § III(A)(1)(a)
	Appellant must arrange for payment for the transcript when the notice of appeal is filed.	Plan § III(A)(1)(a)
	Appellants proceeding in forma pauperis must file a completed CJA Form 24, authorizing government payment for the transcript, with the district court clerk within 7 days of filing the notice of appeal.	Plan § III(A)(2)
5. Filing of Transcript	In cases not tried or tried in 3 days or less, the court reporter must complete and file the transcript with the district court clerk within 21 days after the notice of appeal is filed. In all other cases, the court reporter must complete and file the transcript within 40 days.	Plan § III(D)

EVENT	COMMENTS	REFERENCES
6. Submission of Appellant's Brief and Addendum	Appellant must submit an electronic version of the brief and addendum within 14 days after the deadline for filing the transcript in the district court (or 35 days after clerk issues the briefing schedule). Appellant must submit ten paper copies of the brief and addendum within five days of issuance of the Notice of Docket Activity stating the brief has been filed. For a discussion on writing the brief, see Eighth Circuit Internal Operating Procedures (IOP) § III(J).	Plan § III(B)
7. Screening and Calendaring	The case is screened for argument or nonargument submission when appellant files its brief. Appellant may object to a nonargument classification within 7 days of receiving notice. Cases screened for submission without oral argument are assigned to a panel. Criminal cases are given priority on the argument calendar.	8th Cir. R. 34A Plan § IV(A)
8. Submission of Appellee's Brief	Appellee must submit an electronic version of the brief and addendum within 21 days after issuance of the Notice of Docket Activity stating that appellant's brief has been filed. Ten paper copies of the brief and addendum must be submitted within five days of issuance of the Notice of Docket Activity stating the brief has been filed. For a discussion on writing the brief, see IOP § III(J).	Plan § III(B)

EVENT	COMMENTS	REFERENCES
9. Submission of Appellant's Reply Brief	Appellant must submit an electronic version of the reply brief within 7 days after issuance of the Notice of Docket Activity stating that appellee's brief has been filed. Ten paper copies of the reply brief must be submitted within five days of issuance of the Notice of Docket Activity stating the brief has been filed.	Plan § III(B)
10. Argument	For a discussion on oral argument, see IOP § III(L).	8th Cir. R. 34A, 34B IOP § I(D)(2) Plan § IV(A)
11. Opinion/Judgment	The court strives to issue an opinion within 90 days after oral argument or submission to a nonargument panel.	Plan § I
12. Filing of Posthearing Motions	The aggrieved party or prevailing party must file posthearing motions within 14 days after the court issues the opinion and judgment. These include:	
	– petition for panel rehearing; petition for rehearing en banc;	FRAP 35, 40 8th Cir. R. 35A, 40A
	– motion for correction, modification, or clarification.	FRAP 27(a)

EVENT	COMMENTS	REFERENCES
13. Responses to Motions	Unless the court requests, the opposing party is not permitted to file a response to a petition for rehearing.	FRAP 40(a)
	A response to a motion for correction, modification, or clarification must be filed within 10 days.	FRAP 27(a)
14. Motion to Withdraw	Counsel appointed to represent defendants are obligated to file, at the request of the defendant, a posthearing motion and a petition for writ of certiorari in the United States Supreme Court, or must file a motion to withdraw from the appointment.	Amendment to Part V of the Plan to Implement the Criminal Justice Act of 1964