

OFFICE OF THE CLERK  
**UNITED STATES COURT OF APPEALS**  
FOR THE FIRST CIRCUIT

RICHARD CUSHING DONOVAN  
CLERK

JOHN JOSEPH MOAKLEY  
UNITED STATES COURTHOUSE  
1 COURTHOUSE WAY, SUITE 2500  
BOSTON, MA 02210  
(617) 748-9057

## TEN POINTERS FOR AN APPEAL

The following pointers may not result in a winning decision on the merits of your appeal, but they will make your road to the decision a smoother one.

1. **Read and follow the rules of appellate procedure.** The Federal Rules of Appellate Procedure, together with the Local Rules, provide guidance from the size font to use to the required sections of a brief. All too often, attorneys fail to read the Local Rules. A copy of the Local Rules as well as many of the court's forms, including applications for admission, appearance forms, and the court's opinions, are available on the court's website.
2. **Pay the filing fee.**
  - A. The \$255 filing fee for a notice of appeal must be paid in the district court.
  - B. The \$250 filing fee for a petition for review or petition for writ of mandamus must be paid in the court of appeals.
  - C. Failure to pay the fee or seek in forma pauperis status within 14 days after the case is docketed in court of appeals will lead to dismissal of the appeal in accordance with Loc. R. 3.
3. **Admission as a prerequisite to practice.** You may file pleadings in the court of appeals provided that you are admitted to practice in this court or your application for admission, with the \$50 fee, is pending in the clerk's office. Loc. R. 46.
4. **File a corporate disclosure statement when one is required by Fed. R. App. P. 26.1,** upon filing any pleading in the court of appeals *and* at the beginning of a party's main brief.
5. **Order the transcripts promptly and completely.**
  - A. See Fed. R. App. P. 10(b), which requires that the transcripts be ordered within 10 days of filing the notice of appeal. Counsel have 14 days after the appeal is docketed to file the transcript order form in the court of appeals.
  - B. See also Loc. R. 10, which asks counsel to order the transcripts even before the expiration of the deadline, and which also warns that counsel who do not timely file transcript orders are subject to monetary sanctions and have to explain their tardiness in any enlargement motions.
  - C. Even successor counsel on appeal, appointed or retained well past that ten day

date, should immediately check the record to insure that all necessary transcripts have been ordered.

- D. Be specific in your transcript order, specifying the date and type of hearing. “All Trial Transcripts” will not suffice.
  - 1. You must review the district court docket to identify what hearings you wish transcribed.
  - 2. You must complete and file all necessary forms, including a CJA Form 24 voucher if you are appointed counsel or an indigent criminal defendant-appellant.
  - 3. You must maintain contact with the court reporters(s) on the case. The appellate clerk’s office does not order or track the production of transcripts for counsel.
- E. The clerk’s office will set a briefing schedule once the record on appeal, including all necessary transcripts, is complete.

## **6. Comply with the Court’s deadlines.**

- A. Briefs must be mailed by the due date. Fed. R. App. P. 25(a)(2)(B).
- B. All other pleadings must be received by the Court by the due date. Fed. R. App. P. 25(a)(2)(A). That is, if your brief is due October 1, 2002, you may mail the brief on that date, but any motion to enlarge that date must be filed in the clerk’s office, not merely mailed, by that due date.

## **7. Filing motions in accordance with Fed. R. App. P. 25 - 27.**

- A. The title of the motion must indicate on whose behalf it is filed and the purpose of the motion.
- B. Motions for extension of time must establish good cause. Fed. R. App. P. 26(b). Good cause does not mean simply “I didn’t get to the brief”, “I’m busy”, “I’m on vacation”, “I need more time” (without explanation for the need); or “the press of other business prevented me from briefing the case on time” (especially if the pressing business are newer cases than the appeal).
- C. When requesting an enlargement, request the amount of time that you need. Do not simply try to enlarge the time from month to month. Specify a date certain, not “one month after production of the transcripts”.
- D. The original and three copies of any motion are required, unless the court requires a different number by court order or local rule. Fed. R. App. P. 27(d).

- E. All pleadings must be accompanied by proof of service on all parties to the appeal certifying the date and manner of service, the names of the persons served, and the addresses at which they were served. Fed. R. App. P. 25(d).

**8. Include an addendum in the appellant's brief.**

- A. The addendum must contain the judgment or order appealed from, along with any supporting opinion or memorandum issued by the judge or magistrate judge. If the appeal is from a decision reviewing an underlying agency, bankruptcy, or state court decision, the underlying decision must also be included.
- B. The addendum may include twenty pages of other record documents. Loc. R. 28. In order to file an addendum in excess of twenty pages, counsel must file a motion to enlarge the page limit. The addendum is in addition to, not in lieu of an appendix, although documents reproduced in the addendum need not be included in the appendix.
- C. Documents that are transmitted to this court under seal, such as presentence reports, must not be included in an addendum or appendix. In addition, pursuant to a directive of the Administrative Office of the United States Courts, a statement of reasons in a criminal case is treated as a non-public document. Briefs and appendices including such materials will be rejected as noncompliant. However, these materials may be filed in a separate volume clearly marked "SEALED." See Loc. R. 11.

**9. Procedure for withdrawal as counsel in criminal cases.**

Remember that trial counsel in criminal cases remain counsel on appeal, despite the allowance of a motion to withdraw by the trial court, until given leave to withdraw by this Court. Loc. R. 12(b) and 46.6(a). The purpose of this rule is to prevent criminal defendants from falling through the cracks due to their lack of knowledge concerning how to gain in forma pauperis status, how to request appointment of successor counsel, and how to comply with this Court's notices and deadlines.

- A. Motions to withdraw in criminal cases must be accompanied by an affidavit from the defendant indicating that the defendant wishes to apply for replacement counsel under the Criminal Justice Act, has retained new counsel, elects to appear pro se, or chooses to withdraw the appeal. Loc. R. 46.6. If defendant requests court-appointed counsel but has not already been granted indigence status, counsel must assist defendant with filing a financial affidavit in compliance with Fed. R. App. P. 24.
- B. Follow Loc. R. 46.6(a)(c) to insure that you have met all requirements for filing a brief under Anders v. California, 386 U.S. 738 (1967), including a motion to withdraw informing the Court that counsel has reviewed all necessary transcripts,

has served the brief and motion on his or her client and has advised his or her client of the right to file a brief in thirty days.

- C. Motions to withdraw in criminal cases in which the judgment has been affirmed and in which defendant-appellant wishes to apply for a writ of certiorari must be filed well in advance of the deadline for filing such a petition and must conform to all the requisites of Loc. R. 46.5(c).

**10. Call the clerk's office.** When you have questions that can't be answered by reviewing the rules or checking the court's docket on PACER, our staff at the clerk's office will be happy to assist you. Please call our main number at (617) 748-9057 and ask to speak with the case manager assigned to your appeal.