

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

212.857.8585

DENNIS JACOBS
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Notice to the Criminal Law Bar

Beginning January 15, 2009, the Court will adopt a new procedure for setting the deadlines for filing briefs in all criminal appeals.

The Court will set and “so order” as the filing dates for appellant’s and appellee’s briefs the respective dates proposed by counsel. Unless the case involves a voluminous transcript, the appellant must select a date within 120 days of receipt of the complete transcript, and the appellee must select a date within 120 days of receipt of the appellant’s brief. If counsel requests more than 120 days, the Court may reduce the time for filing the brief. **The so-ordered filing dates are firm.** A subsequent motion for extension of time to file a brief will be denied absent a most extraordinary circumstance, such as serious personal illness or death in counsel’s immediate family. Appellant’s reply brief must be filed in compliance with FRAP 31.

The automatic 30-day extension is eliminated for all purposes.

Specifically the new procedure operates as follows:

Appeals in Which No Scheduling Order Has Issued. Upon docketing an appeal, the Clerk’s Office will issue a docketing notice. Appellant retains the obligation to order the transcript in accordance with FRAP 10(b)(1) and the Plan to Expedite Criminal Appeals. In addition, appellant must now notify the Clerk’s Office if the complete transcript is not received within 30 days of the transcript order. Appellant must include in this notice documentation of the efforts made to obtain the transcript. Appellant is further required to update the Court in 14-day intervals until the complete transcript is received. During this time the Clerk’s Office will undertake to facilitate delivery of the transcript.

Within 14 days of receipt of the complete transcript, appellant must notify the Court and all counsel in writing of the date by which the brief will be filed (the “scheduling notification”). Within 14 days of receipt of appellant’s brief, or the last appellant’s brief in a multi-defendant appeal, the appellee must notify the Court and all counsel in writing of the date by which its brief will be filed. Unless the case involves a voluminous transcript, the appellant

must select a date within 120 days of receipt of the transcript, and the appellee must select a date within 120 days of receipt of the last appellant's brief.

An extension of time to submit the scheduling notification will be denied, absent a most extraordinary circumstance. In the event that a party fails to timely file the scheduling notification, the Court will set a 30-day filing date for the defaulting party's brief.

Appeals in Which a Scheduling Order Has Issued. A party seeking an extension of time to file a brief in a case in which a scheduling order has issued but the transcript has not yet been received should follow the procedure set forth supra. A party seeking an extension where a scheduling order has issued and the complete transcript has been received must include in the motion papers all prior extensions granted in the case and state a proposed date for filing the brief. If more than 120 days has already lapsed from the receipt of the complete transcript or appellant's brief, counsel is advised to propose a minimal extension. Absent a most extraordinary circumstance, the extension granted upon this motion will be the last. The elimination of the automatic 30-day extension applies to these cases.

January 14, 2009