

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**
2 **AND THE SECOND JUDICIAL DISTRICT COURT**

3 **IN THE MATTER OF THE PILOT**
4 **PROJECT FOR CRIMINAL APPEALS,**

5 **Miscellaneous Order**
6 **No. 2021-001**

ADMINISTRATIVE ORDER FOR APPEALS IN CRIMINAL CASES
 INVOLVING THE LAW OFFICES OF THE PUBLIC DEFENDER,
 FROM THE SECOND JUDICIAL DISTRICT COURT

7 This matter has come before the Court of Appeals (COA) and the Second
8 Judicial District Court, based on the creation of a pilot project focused on
9 accelerating the processing of criminal appellate cases that meet two requirements:
10 (1) the defendant is represented by the Law Offices of the Public Defender and (2)
11 there are no stenographically recorded proceedings. This order is effective for those
12 final orders and judgments filed in a criminal case in the Second Judicial District
13 Court on or after August 1, 2021. We issue this order to set forth the procedures for
14 the pilot project with the understanding that, if the COA and Supreme Court
15 ultimately determine that the pilot project should be made permanent and expanded
16 statewide, new rules will be promulgated that encompass the process. This order
17 applies until such determination has been made and such rules have been
18 promulgated or until further order of the Court.

1 **Notice of Appeal and Record Proper.** Following the entry of a final order
2 or judgment in a criminal case in which the defendant is represented by the Law
3 Offices of the Public Defender and there are no stenographically recorded
4 proceedings, an aggrieved party may initiate an appeal by filing a notice of appeal
5 in the District Court within thirty (30) days of the order or judgment being entered.
6 The notice of appeal shall be entitled "Notice of Appeal – Pilot Project." The party
7 filing the appeal has the responsibility of determining whether the case is eligible for
8 the pilot project.

9 Upon the filing of the notice of appeal, appellate counsel for the appellant
10 shall file a limited entry of appearance in the district court case, for the purpose of
11 obtaining access to the record proper. Within twenty (20) days of the filing of the
12 notice of appeal, the district court shall: (1) file the record proper in the district court
13 case and (2) send all audio transcripts and logs, in triplicate, as well as documentary
14 exhibits to the COA. Counsel for the appellant may check out the audio files and
15 exhibits from the COA office in Santa Fe for the purpose of preparing the brief in
16 chief (BIC). Cases will be identified by district court case number until the BIC is
17 filed or the case is otherwise opened in the COA. Audio transcripts, logs, and
18 exhibits must be returned upon the filing of the BIC.

19 **Brief-in-Chief.** Within ninety (90) days from the filing of the notice of appeal,
20 counsel for the appellant shall file the BIC in the COA. The COA will then open a

1 case, assign an appellate case number, file a notice with the district court that the
2 BIC has been filed, and will cause the record proper to be docketed in the COA.
3 Extensions of time to file the BIC are strongly discouraged and will not be granted
4 if they are based on press of business. The BIC shall comply with Rule 12-318
5 NMRA and shall also contain the following: (1) the title and date of the judgment or
6 order sought to be reviewed and a statement showing that the appeal was timely
7 filed; (2) a reference to all related or prior appeals of which the party is aware,
8 including an appropriate citation, if any; and (3) a copy of the order appointing
9 appellate counsel, where applicable. The COA will make an initial case-track
10 assignment based on the information contained in the BIC.

11 **Answer Brief.** Cases that the COA determines may be appropriately affirmed
12 without the need for an answer brief (AB) from the appellee will be placed on Track

13 1. Cases that require an AB will be placed on Track 2 or Track 3.

14 If the COA determines that an AB is necessary, a Notice of [Track 2 or Track
15 3] Assignment will be issued by the Court. The Notice of Track Assignment will
16 contain a request that an AB be filed. The appellee shall have forty-five (45) days
17 from the entry of the Notice of Track Assignment to file an AB with the COA, in
18 accordance with Rules 12-308 and 12-318.

19 **Reply Brief.** If the appellant wishes to file a reply brief (RB), it shall be filed
20 with the COA within fifteen (15) days of the filing of the AB, and in accordance

1 with Rules 12-308 and 12-318. If the appellant decides not to file an RB, the
2 appellant shall file a Notice of No Reply Brief upon making the determination not
3 to file, but in any event, no later than fifteen (15) days after the filing of the AB.


4 **COA Tracks.** If a case has been placed on Track 1, the COA will issue an
5 opinion resolving the case in the normal course of its operations. If a case has been
6 placed on Track 2, after the AB has been filed and an RB or Notice of No Reply
7 Brief has been filed, the COA will either issue an opinion resolving the case in the
8 normal course of its operations or assign the case to Track 3. If the case has been
9 assigned to Track 3, either initially or after full briefing has been completed, the case
10 will be placed on the COA Ready List once briefing is complete and eventually
11 submitted to a panel in accordance with the COA's normal course of operations.
12 Once the case is assigned to a panel of judges, the COA may order supplemental
13 briefing or oral argument, in accordance with the Rules of Appellate Procedure.
14 Otherwise, the COA will proceed with the issuance of an opinion on the existing
15 briefing and in the normal course of its operations.

16 **District Court Follow-Up.** To ensure the timely processing of appeals,
17 beginning 105 days after the first notice of appeal has been filed pursuant to this
18 order, every fifteen (15) days, the Second Judicial District Court shall forward to the
19 COA a list of all criminal cases in which a notice of appeal has been filed, but a


1 notice of filing of the BIC has not been filed by the COA with the district court,
2 within ninety (90) days after the filing of such notice of appeal.

3 **IT IS THEREFORE ORDERED** that parties appealing final orders or
4 judgments in criminal cases involving the Law Offices of the Public Defender, in
5 the Second Judicial District Court, entered on or after August 1, 2021, follow the
6 procedures articulated in this order until the Court of Appeals and Supreme Court
7 determine whether the pilot project should be made permanent and expanded
8 statewide or until further order of this Court ceasing the program.

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J. MILES HANISEE, Chief Judge
Court of Appeals



STAN WHITAKER, Chief Judge
Second Judicial District Court