

**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO,
THE SECOND JUDICIAL DISTRICT COURT,
THE ELEVENTH JUDICIAL DISTRICT COURT,
AND THE TWELFTH JUDICIAL DISTRICT COURT**

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

**Miscellaneous Order
No. 2022-002**

**ADMINISTRATIVE ORDER FOR APPEALS IN
CRIMINAL CASES FROM THE SECOND, ELEVENTH,
AND TWELFTH JUDICIAL DISTRICT COURTS**

This matter has come before the Court of Appeals (COA) and the Second Judicial District Court, the Eleventh Judicial District Court, and the Twelfth Judicial District Court (the District Courts) based on the creation of a pilot project focused on accelerating the processing of criminal appellate cases.

1. **Scope of This Order.** This order is effective for criminal appeals filed by a defendant from a final order or judgment in the District Courts, pursuant to NMSA 1978, Section 39-3-3(A)(1) (1972), and criminal appeals filed by the State, pursuant to Section 39-3-3(B) or Article VI, Section 2 of the New Mexico Constitution, as of November 1, 2022. Appeals from orders denying relief on petitions to review conditions of release, pursuant to Section 39-3-3(A)(2), and interlocutory appeals by the defendant, pursuant to Section 39-3-3(A)(3), are excluded from this order and shall continue to comply with Rules 12-203, 12-204,

and 12-205 NMRA. We issue this order to set forth the procedures for the pilot project with the understanding that, if the COA and the Supreme Court ultimately determine that the pilot project should be made permanent and/or expanded statewide, a new order may be issued by the COA and/or new rules may be promulgated that encompass the process. This order applies until such determination has been made and such rules have been promulgated or until further order of the COA.

2. **Notice of Appeal.** Following the entry of a final order or judgment in a criminal case in the District Courts, pursuant to Section 39-3-3(A)(1) or (B)(1) or Article VI, Section 2 of the New Mexico Constitution, an aggrieved party (the appellant) who wishes to initiate an appeal shall do so by filing in the district court a notice of appeal (NOA), which is in compliance Rules 12-201 and 12-202 NMRA, within thirty (30) days of the order or judgment being entered; or, as applicable, following the entry of a decision or order in the District Courts suppressing or excluding evidence or requiring the return of seized property under Section 39-3-3(B)(2), the State may initiate an appeal by filing in the district court a NOA, which is in compliance with Rules 12-201 and 12-202, within ten (10) days of the decision or order being entered.

3. **Pro Se Defendants.**

A. When the aggrieved party is a self-represented (*pro se*) defendant who is entitled to representation by the Law Offices of the Public Defender (LOPD) but has chosen to proceed in the trial phase without such representation, that self-represented defendant is responsible for timely filing the NOA pursuant to Paragraph 2 above, even if the defendant does not intend to proceed in a self-represented capacity (*pro se*) on appeal. When the aggrieved party is a self-represented defendant who is **not** entitled to representation by LOPD, that self-represented defendant is likewise responsible for timely filing the NOA pursuant to this order, regardless of whether the defendant intends to hire counsel to continue with the appeal.

B. In addition, for self-represented (*pro se*) defendants who are entitled to representation by LOPD, at the same time they file the NOA, they shall file in the District Court a Motion for Free Process and Appointment of Counsel or for Self-Representation (Motion of Representation)—a form of which is attached hereto and can be found on the COA and District Courts websites—indicating whether the defendant wishes to be represented by LOPD or to proceed in a self-represented capacity in the appeal.

C. If the Motion of Representation indicates the self-represented defendant's desire for LOPD representation on appeal, the District Court shall enter an order on the Motion of Representation in due course. All other requirements in

the appellate rules for securing representation by LOPD on appeal, including without limitation Rule 12-303 NMRA, remain and shall be met as set forth therein.

D. If the Motion of Representation indicates the defendant’s desire to proceed in a self-represented capacity (*pro se*) on appeal, the Motion will be treated as a waiver of the right to representation pursuant to NMSA 1978, Section 31-16-6 (1968), and the District Court will hold a hearing and engage in a *Faretta* colloquy to ensure the defendant has knowingly and intelligently waived the right to counsel, as described more fully in *State v. Stallings*, 2020-NMSC-019, 476 P.3d 905. *See also State v. Lewis*, 1986-NMCA-038, ¶¶ 11-12, 104 N.M. 218, 719 P.2d 445 (stating that, when an appellant requests to act as their own counsel on appeal, the “trial court must place [certain] warnings and admonitions on the record [(i.e., engage in the so-called *Faretta* colloquy)], and the record must reflect whether [the] defendant has knowingly, intelligently and competently elected to dispense with appellate counsel”). If a defendant is permitted to proceed in a self-represented capacity on appeal, they will be responsible for complying with all aspects of this order.

4. **Limited Entries of Appearance.** Upon the filing of the NOA—or as soon thereafter as practicable if the appellant was a self-represented (*pro se*) defendant at the trial level but has secured representation by LOPD or private counsel—appellate counsel for the appellant shall file a limited entry of appearance

in the district court case for the purpose of obtaining access to the record proper. *If the appellant is proceeding in a self-represented capacity on appeal*, a limited entry of appearance by the self-represented defendant is not necessary.

5. **Record Proper, Audio Transcripts, Exhibits, and Notice of Briefing (Cases with Only Audio Recordings)**. In cases with only audio recordings, within twenty (20) days of the filing of the NOA, the District Court shall: (1) file the record proper in the district court case, (2) notify the parties that the record proper has been filed, and (3) send any audio transcripts and logs, in triplicate, as well as any documentary or electronic exhibits to the COA. If there are no stenographically recorded proceedings, upon receipt of these items from the District Court, the COA will notify the parties that the briefing time has commenced by filing a notice of briefing schedule in the District Court.

6. **Stenographic Transcripts and Notice of Briefing (Cases with Any Stenographic Transcripts)**. If there are any stenographically recorded proceedings, within twenty (20) days of the filing of the NOA, the District Court shall: (1) file the record proper in the district court case, (2) notify the parties that the record proper has been filed, and (3) send any audio transcripts and logs, in triplicate, as well as any documentary or electronic exhibits to the COA. In such cases, the parties shall also designate the stenographic transcripts that are needed to address the issue(s) raised on appeal, as well as designate any needed depositions, and file such

designation in the District Court or file a notice of nondesignation of transcript in the District Court, within fifteen (15) days of the filing of the record proper in the district court case, and otherwise pursuant to Rules 12-210, 12-211, and 12-212 NMRA. The District Court shall send the stenographic transcripts and any designated depositions to the COA in accordance with Rules 12-211(C)(4) and 12-212(A). Upon receipt, the COA will notify the parties that the briefing time has commenced by filing a notice of briefing schedule in the District Court.

7. **Access to the Record.** Counsel for the appellant *or the self-represented appellant*, as applicable, may check out the record proper, transcripts, audio files, and exhibits from the COA office in Santa Fe for the purpose of preparing the brief in chief (BIC). Cases will be identified by district court case number until the BIC is filed or the case is otherwise opened in the COA. The Record Proper, transcripts, audio files, and exhibits must be returned upon the filing of the BIC.

8. **Brief in Chief.**

A. The BIC shall be filed and served in accordance with Rules 12-210(C), 12-308, and 12-318 NMRA. This order acknowledges the current extension held by LOPD for filing briefs in chief in the COA, and permits the BIC to be filed accordingly in this pilot project.

B. In addition to what is required under the appellate rules, the BIC shall also contain the following: (1) the title and date of the judgment or order sought to

be reviewed and a statement showing that the appeal was timely filed; and (2) a reference to all related or prior appeals of which the party is aware, including an appropriate citation, if any. Upon the filing of the BIC, the COA will open a case and assign an appellate case number. Extensions of time to file the BIC are generally discouraged, but if requested, must be made to the COA.

9. **Initial Track Assignment and Additional Briefs.**

A. Once the BIC is filed, the COA will make an initial case-track assignment. Cases that the COA determines may be appropriately affirmed without the need for an answer brief (AB) from the appellee will be placed on Track 1, and the COA will issue an opinion resolving the case in the normal course of its operations. Track 1 cases are not placed on the COA's ready list.

B. Cases for which the COA determines an AB will be helpful or necessary will be placed on Track 2 or Track 3. In such cases, a Notice of Track 2 or Track 3 Assignment will be issued by the COA with a request that an AB be filed. The appellee shall have forty-five (45) days from the entry of the Notice of Track Assignment to file an AB with the COA. The AB shall be in accordance with Rules 12-210(C), 12-308, and 12-318. This order acknowledges the current extension held by LOPD for filing answer briefs in the COA, and permits the AB to be filed accordingly in this pilot project.

C. After the AB has been filed, if the appellant wishes to file a reply brief (RB), it shall be filed in the COA within twenty (20) days after service of the AB, and in accordance with Rules 12-210(C), 12-308, and 12-318.

10. **Tracks 2 and 3.** If a case has been placed on Track 2, after the AB and the RB have been filed, the COA will either issue an opinion resolving the case in the normal course of its operations or assign the case to Track 3. If the COA resolves the case on Track 2, it will not be placed on the COA's ready list. If the case has been assigned to Track 3, either initially or after full briefing has been completed, the case will be placed on the COA ready list once briefing is complete and will be subsequently resolved based on the existing briefing, in accordance with the COA's normal course of operations for ready list cases. A case that has been assigned to Track 3 may be subject to an order for supplemental briefing or oral argument, in accordance with the appellate rules.

IT IS THEREFORE ORDERED that parties appealing decisions, orders, or judgments in criminal cases in the District Courts, as set forth in this order, follow the procedures articulated in this order until the COA and the Supreme Court determine whether the pilot project should be made permanent and/or expanded statewide or until further order of the COA.

IT IS FURTHER ORDERED that the following orders are **HEREBY WITHDRAWN**: Administrative Order for Appeals in Criminal Cases Involving the

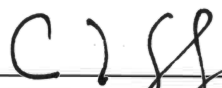
Law Offices of the Public Defender, From the Eleventh Judicial District Court, Misc. Order No. 2019-002; Administrative Order for Appeals in Criminal Cases Involving the Law Offices of the Public Defender, From the Second Judicial District Court, Misc. Order No. 2021-001; and Administrative Order for Appeals in Criminal Cases Involving the Law Offices of the Public Defender, From the Twelfth Judicial District Court, Misc. Order No. 2021-002.



**J. MILES HANISEE, Chief Judge
Court of Appeals**



**MARIE WARD, Chief Judge
Second Judicial District Court**



**CURTIS R. GURLEY, Chief Judge
Eleventh Judicial District Court**



**ANGIE K. SCHNEIDER, Chief Judge
Twelfth Judicial District Court**