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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

IN THE MATTER OF)
COUNSEL FOR DEFENDANTS) FIRST AMENDED
IN CRIMINAL CASES ON APPEAL.) SPECIAL ORDER NO. 86

In order to provide for the continuity of counsel in criminal cases on appeal; to guard against the untimely and/or inappropriate filing in the district court of motions to appoint, substitute or withdraw as counsel for a defendant; and to ensure compliance with Local Rule 4-1 of the United States Court of Appeals for the Ninth Circuit,

IT IS HEREBY ORDERED that the following procedures shall apply in criminal cases where trial counsel **does not** wish to continue to represent a defendant who wishes to appeal.

I. REQUIREMENT TO FILE A NOTICE OF APPEAL.

Regardless of any waivers of appeal or issues, counsel in criminal cases, whether retained or appointed by the district court, shall ascertain whether the defendant wishes to appeal. Unless relieved as counsel by the Court, counsel shall timely file a notice of appeal upon the defendant's request following sentencing.

II. JURISDICTION OF THE DISTRICT COURT TO APPOINT, SUBSTITUTE, OR ALLOW WITHDRAWAL OF COUNSEL.

AT THE TIME THE NOTICE OF APPEAL IS FILED, THE DISTRICT COURT LOSES JURISDICTION TO ENTER ORDERS APPOINTING, SUBSTITUTING OR ALLOWING THE WITHDRAWAL OF COUNSEL. THEREFORE, IF THE PROCEDURES SET FORTH BELOW HAVE NOT BEEN FOLLOWED BEFORE THE NOTICE OF APPEAL IS FILED OR IF THE DISTRICT COURT HAS NOT YET DISPOSED OF A PENDING APPLICATION FOR THE APPOINTMENT OF COUNSEL, TRIAL COUNSEL WILL STILL

1 BE COUNSEL OF RECORD UNTIL GRANTED LEAVE TO WITHDRAW BY THE NINTH
2 CIRCUIT COURT OF APPEALS PURSUANT TO THAT COURT'S LOCAL RULE 4-1(c). Any
3 application for appointment of counsel or leave to withdraw directed to the court of appeals must be filed
4 with the Clerk of that court within 21 days of the filing of the notice of appeal.

5 **III. IN CASES WHERE TRIAL COUNSEL WAS RETAINED.**

6 **A. WHEN DEFENDANT IS NOT-INDIGENT FOR PURPOSES OF APPEAL.**

7 Retained trial counsel shall continue to represent the defendant until counsel is
8 relieved and replaced by substitute counsel or by the defendant *pro se*. Counsel must request to be
9 relieved as counsel for purposes of appeal at or before the time of sentencing . If counsel has not filed
10 a timely request to the district court to be relieved as counsel for purposes of appeal counsel shall file
11 a notice of appeal upon the defendant's request. Counsel shall continue to represent the defendant on
12 appeal until counsel is relieved by the court of appeals.

13 **B. WHEN DEFENDANT IS INDIGENT FOR PURPOSES OF APPEAL.**

14 1. If the defendant is financially unable to obtain representation on
15 appeal,retained trial counsel must apply for the appointment of counsel for said defendant. There shall
16 be submitted with any such application for appointment of counsel defendant's financial affidavit (Form
17 CJA 23) which is available for the Clerk of the district court. Application for appointment of counsel
18 should be made at the time of sentencing.

19 2. If an application for the appointment of counsel is made before the notice
20 appeal is filed, it shall be made to the district court. No response shall be allowed, and the district court
21 shall promptly dispose of such application.

22 3. If an application for the appointment of counsel is made after the notice
23 of appeal is filed, said application will be made to the court of appeals in compliance with that court's
24 Local Rule 4-1(c).

25 **IV. IN CASES WHERE TRIAL COUNSEL WAS APPOINTED PURSUANT TO THE**
26 **CRIMINAL JUSTICE ACT.**

27 The Criminal Justice Act provides that a person for whom counsel is appointed shall be
28 represented at every stage of the proceedings, through appeal, including ancillary matters appropriate

1 to the proceedings. Section V. C. of this district's Plan for the Administration of the Criminal Justice
2 Act of 1964, as amended, provides as follows:

3 "Appeal. In the event that a defendant enters a plea of guilty or is convicted
4 following trial, counsel appointed hereunder shall advise the defendant of the
5 right to appeal and of the right to counsel for appeal. If requested to do so by
6 the defendant in a criminal case, counsel shall file a timely Notice of Appeal.
7 The attorney shall continue to represent the client on appeal unless or
8 until relieved by the Court of Appeals."

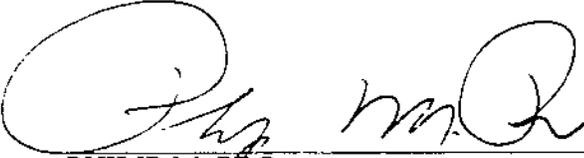
9 In the event that counsel is unable to/or should not represent the defendant on appeal,
10 counsel shall request to be relieved as counsel and for the appointment of counsel on appeal at the time
11 of sentencing.

12 **V TIMELINESS OF FILING OF THE NOTICE OF APPEAL.**

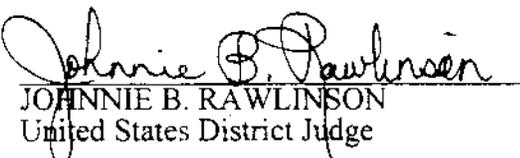
13 Nothing contained in this Special Order shall be deemed to authorize an extension of the
14 time otherwise allowed for the filing of a notice of appeal in a criminal case.

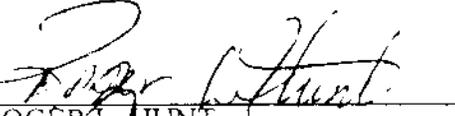
15 DATED: 7/7/00

16 
17 HOWARD D. MCKIBBEN
18 Chief United States District Judge

19 
20 PHILIP M. PRO
21 United States District Judge

22 
23 DAVID W. HAGEN
24 United States District Judge

25 
26 JOHNNIE B. RAWLINSON
27 United States District Judge

28 
ROGER L. HUNT
United States District Judge