

Rule 9. Release in a Criminal Case

(a) Release Before Judgment of Conviction.

- (1) The district court must state in writing, or orally on the record, the reasons for an order regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with the court of appeals a copy of the district court's order and the court's statement of reasons as soon as practicable after filing the notice of appeal. An appellant who questions the factual basis for the district court's order must file a transcript of the release proceedings or an explanation of why a transcript was not obtained.
- (2) After reasonable notice to the appellee, the court of appeals must promptly determine the appeal on the basis of the papers, affidavits, and parts of the record that the parties present or the court requires. Unless the court so orders, briefs need not be filed.
- (3) The court of appeals or one of its judges may order the defendant's release pending the disposition of the appeal.

(b) Release After Judgment of Conviction. A party entitled to do so may obtain review of a district-court order regarding release after a judgment of conviction by filing a notice of appeal from that order in the district court, or by filing a motion in the court of appeals if the party has already filed a notice of appeal from the judgment of conviction. Both the order and the review are subject to Rule 9(a). The papers filed by the party seeking review must include a copy of the judgment of conviction.

(c) Criteria for Release. The court must make its decision regarding release in accordance with the applicable provisions of 18 U.S.C. §§ 3142, 3143, and 3145(c).

Local Rule 9(a). Release Prior to Judgment of Conviction.

A criminal defendant may be released in accordance with the conditions set by the district court prior to judgment of conviction. If the district court refuses to release the prisoner, or sets conditions for release that cannot be met, the order is appealable as a matter of right and will be given prompt consideration by the Court of Appeals. Counsel should submit memoranda in support of their position on appeal and, in cases involving corporate defendants, Disclosure of Corporate Affiliations statements required by FRAP 26.1 and Local Rule 26.1. The appeal is usually decided without oral argument upon the materials presented by the parties. A motion for release pending determination of the appeal may be filed and will be assigned as provided in Local Rule 27(e).

Local Rule 9(b). Release After Conviction and Notice of Appeal.

After the district court has ruled on a motion for bail or reduction of bail pending appeal, the appellant may renew the motion for release, or for a modification of the conditions of release, before the Court of Appeals without noting an additional appeal. A copy of the district court statement of reasons should accompany the motion. The motion will be submitted to a three-judge panel for decision.

Local Rule 9(c). Recalcitrant Witnesses.

When an appeal arises from the incarceration of a witness who refuses to testify or produce evidence in any court or grand jury proceeding, the Court of Appeals is required by statute, 28 U.S.C. § 1826, to decide the appeal within 30 days of the filing of the notice of appeal. Therefore, counsel should immediately contact the Clerk's Office regarding all such witness contempt matters so that the appeal may be expedited for resolution within the statutory guidelines.

Former I.O.P.-9.1 redesignated Local Rule 9(a) December 1, 1995; amended February 1, 2001, and December 1, 2009.

Former I.O.P.-9.2 redesignated Local Rule 9(b) December 1, 1995.

Former I.O.P.-9.3 redesignated Local Rule 9(c) December 1, 1995.