

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
219 South Dearborn Street, Room 2722
Chicago, Illinois 60604

Christopher G. Conway
Clerk of Court
312-435-5850

June 18, 2024

Notice of Proposed Circuit Rule Changes and Opportunity for Comment

Notice is hereby given that the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 2071, proposes modifications to Circuit Rules 46 and 51, and the creation of Circuit Rule 46.1. Proposed versions of each rule and current and redline versions, where applicable, are provided below. Written comments on the proposed rule changes should be sent by July 18, 2024, to:

Advisory Committee on Circuit Rules
c/o Clerk of Court
United States Court of Appeals
For the Seventh Circuit
219 South Dearborn Street, Room 2722
Chicago, IL 60604

Comments can also be made via e-mail at: USCA7_Clerk@ca7.uscourts.gov

CIRCUIT RULE 46

[CURRENT] CIRCUIT RULE 46. Attorneys

- (a) *Admission.* The lead attorney for all parties represented by counsel in this court must be admitted to practice in this court. Counsel have thirty days from docketing of the matter in this court to comply. In addition, any attorney who orally argues an appeal must be admitted to practice in this court. An applicant for admission to the bar of this court shall file with the clerk an application on the form furnished by the clerk. The oath or affirmation thereon may be taken before any officer authorized by federal or state law to administer an oath. When an appropriate application and motion have been filed and fee tendered, if a fee be required, the clerk shall present the papers to an active or senior circuit judge for action in chambers unless the applicant requests admission in open court. If admission is in open court, the applicant must appear in person and the sponsor shall make an oral motion in support of the written application. If admission is in chambers, the applicant and sponsor need not appear.
- (b) *Admission Fees.* The prescribed fee for admission is a local fee as set forth in the Seventh Circuit Attorney Admission Local Fee Order, plus a national fee prescribed by the Court of Appeals Miscellaneous Fee Schedule. Attorneys who have been appointed by the district court or this court to represent a party on appeal pursuant to the Criminal Justice Act under 18 U.S.C. § 3006A and attorneys employed by the United States or its executive and legislative agencies are exempt from the admission fees. Local admission fees are segregated and retained in a designated Attorney Admission Fund administered by the custodian in accordance with the Seventh Circuit Attorney Admission Fund Plan.
- (c) *Government Attorneys.* Attorneys for any federal, state or local government office or agency may appear before this court in connection with their official duties without being formally admitted to practice before the court.
- (d) *Striking a Name from the Roll of Attorneys.* Whenever it is shown to this court that any members of its bar have been disbarred or suspended from practice, or their names have been stricken from the roll of attorneys, in any state, or the District of Columbia, they will be forthwith suspended from practice before this court. They will thereupon be afforded the opportunity to show cause, within 30 days, why their names should not be stricken from the roll of attorneys admitted to practice before this court. Upon the attorney's response to the rule to show cause, or upon the expiration of the 30 days if no response is made, this court will enter an appropriate order.

[REDLINE] CIRCUIT RULE 46. Attorneys

(a) Admission to the Bar. Upon filing an appeal, an attorney who is not admitted to the bar of this court must apply for admission. Attorneys for any federal, ~~state or local~~ government office or agency may appear before this court in connection with their official duties without being formally admitted to practice before the court.

(1) Timing. The lead attorney for ~~all parties~~ each party represented by counsel ~~in this court~~ must ~~be admitted~~ apply for admission to practice in this court. ~~Counsel have thirty~~ by the later of:

(A) 30 days from the docketing of the matter in this court ~~to~~ comply. In addition, any; or

(B) 15 days from being retained or appointed as counsel.

An attorney who ~~orally argues an appeal~~ intends to present oral argument must ~~be admitted~~ apply for admission to practice in this court before the filing of the appellee's brief.

~~(1)~~(2) Application. An applicant for admission to the bar of this court ~~shall~~must file with the clerk an application on the form ~~furnished~~provided by the clerk. The oath or affirmation ~~thereon~~ may be taken before any officer authorized by federal or state law to administer an oath. ~~When an appropriate application and motion have been filed and fee tendered, if a fee be required, the clerk shall present the papers to an active or senior circuit judge for action in chambers unless the applicant requests admission in open court. If admission is in open court, the applicant must appear in person and the sponsor shall make an oral motion in support of the written application. If admission is in chambers, the applicant and sponsor need not appear.~~

~~(2)~~(3) Admission Fees. The prescribed fee for admission is a local fee as set forth in the Seventh Circuit Attorney Admission Local Fee Order, plus a national fee prescribed by the Court of Appeals Miscellaneous Fee Schedule. ~~Attorneys who have been~~ Local admission fees are segregated and retained in a designated Attorney Admission Fund administered by the custodian in accordance with the Seventh Circuit Attorney Admission Fund Plan. Attorneys appointed by the district court or this court to represent a party on appeal pursuant to the Criminal Justice Act under 18 U.S.C. § 3006A and attorneys employed by the United States or its executive and legislative agencies are exempt from the admission fees. ~~Local admission fees are segregated and retained in a designated Attorney Admission Fund administered by the custodian in accordance with the Seventh Circuit Attorney Admission Fund Plan.~~

~~(c) Government Attorneys.~~ Attorneys for any federal, state or local government office

~~or agency may appear before this court in connection with their official duties without being formally admitted to practice before the court.~~

~~(3)~~(4) Procedures. When the application and motion have been filed and any applicable fee tendered, the clerk will present the papers to a judge for action in chambers unless the applicant requests admission in open court. For admission in chambers, the applicant and sponsor need not appear. For admission in open court, the applicant must appear in person and the sponsor must make an oral motion in support of the written application.

~~(d)~~(b) Striking a Name from the Roll of Attorneys. Suspension or Disbarment.

Whenever it is shown to this court that ~~any members~~a member of its bar ~~have~~has been disbarred or suspended from practice, ~~or their names have been stricken from the roll of attorneys,~~ in any state, or the District of Columbia, ~~they~~that attorney will be ~~forthwith~~suspended from practice before this court. ~~They~~The attorney will ~~thereupon~~be afforded ~~the~~an opportunity to show cause, within 30 days, why ~~their names~~the attorney should not be stricken from the roll of attorneys admitted to practice before this court. ~~Upon the attorney's response to the rule to show cause, or upon the expiration of the 30 days if no response is made, this court will enter an appropriate order.~~

[PROPOSED] CIRCUIT RULE 46. Attorneys

(a) *Admission to the Bar.* Upon filing an appeal, an attorney who is not admitted to the bar of this court must apply for admission. Attorneys for any federal government office or agency may appear before this court in connection with their official duties without being formally admitted to practice before the court.

(1) *Timing.* The lead attorney for each party represented by counsel must apply for admission to practice in this court by the later of:

- (A) 30 days from the docketing of the matter in this court; or
- (B) 15 days from being retained or appointed as counsel.

An attorney who intends to present oral argument must apply for admission to practice in this court before the filing of the appellee's brief.

(2) *Application.* An applicant for admission to the bar of this court must file with the clerk an application on the form provided by the clerk. The oath or affirmation may be taken before any officer authorized by federal or state law to administer an oath.

(3) *Fees.* The prescribed fee for admission is a local fee as set forth in the Seventh Circuit Attorney Admission Local Fee Order, plus a national fee prescribed by the Court of Appeals Miscellaneous Fee Schedule. Local admission fees are segregated and retained in a designated Attorney Admission Fund administered by the custodian in accordance with the

Seventh Circuit Attorney Admission Fund Plan. Attorneys appointed by the district court or this court to represent a party on appeal pursuant to the Criminal Justice Act under 18 U.S.C. § 3006A and attorneys employed by the United States or its executive and legislative agencies are exempt from the admission fees.

- (4) *Procedures.* When the application and motion have been filed and any applicable fee tendered, the clerk will present the papers to a judge for action in chambers unless the applicant requests admission in open court. For admission in chambers, the applicant and sponsor need not appear. For admission in open court, the applicant must appear in person and the sponsor must make an oral motion in support of the written application.
- (b) *Suspension or Disbarment.* Whenever it is shown to this court that a member of its bar has been disbarred or suspended from practice in any state or the District of Columbia, that attorney will be suspended from practice before this court. The attorney will be afforded an opportunity to show cause, within 30 days, why the attorney should not be stricken from the roll of attorneys admitted to practice before this court.

CIRCUIT RULE 46.1

[PROPOSED] CIRCUIT RULE 46.1: Duties, Withdrawal, and Appointment of Trial Counsel in Criminal Cases

- (a) *Duties of Trial Counsel in Criminal Cases.* Trial counsel in a criminal case, whether retained or appointed by the district court, must continue to represent the defendant desiring to appeal unless specifically relieved of that obligation by this court.
- (b) *Determination of Eligibility for Representation Under the Criminal Justice Act.* If the district court found the defendant to be eligible for appointed counsel under the Criminal Justice Act, the court of appeals may appoint an appellate attorney without further proof of the defendant's eligibility for appointed counsel. Otherwise, if the defendant appears to qualify for Criminal Justice Act representation on appeal, trial counsel must:
- (1) assist the defendant with filing in the district court a motion to proceed as one who is financially unable to obtain an adequate defense in a criminal case;
 - (2) file an affidavit with the motion that contains substantially the same information as Form 4 of the Appendix to the Federal Rules of Appellate Procedure; and
 - (3) if the district court denies the motion, file a similar motion in this court.
- (c) *Procedure for Withdrawal or Appointment in Criminal Cases.* Unless retained by the defendant to provide appellate representation, trial counsel must file a motion to withdraw or a motion for appointment within 14 days of the notice of appeal.
- (1) *Motion to Withdraw.* A motion to withdraw filed by trial counsel within 14 days of the notice of appeal will be freely granted. The motion does not need to provide a reason for withdrawal, but must indicate whether:
 - (A) new counsel has been retained, as established by a statement signed by the defendant or the appearance of other counsel on behalf of the defendant;
 - (B) the defendant has been granted leave to proceed on appeal without the prepayment of fees or has been found eligible for representation under the Criminal Justice Act; and
 - (C) the defendant desires the appointment of counsel.
 - (2) *Motion for Appointment.* The court of appeals will make all appellate appointments under the Criminal Justice Act, and may appoint trial counsel to continue with the representation of the defendant on appeal. A motion for the appointment of trial counsel must state whether the attorney is a member of the Seventh Circuit Criminal Justice Act appellate panel.

CIRCUIT RULE 51

[CURRENT] CIRCUIT RULE 51. Summary Disposition of Certain Appeals by Convicted Persons; Waive of Appeal

- (a) *Duties of Criminal Trial Counsel.* Trial counsel in a criminal case, whether retained or appointed by the district court, is responsible for the continued representation of the client desiring to appeal unless specifically relieved by the court of appeals upon a motion to withdraw. Such relief shall be freely granted. If trial counsel was appointed by the district court and a notice of appeal has been filed, trial counsel will be appointed as appellate counsel without further proof of the client's eligibility for appointed counsel. If the client was not found to be eligible for Criminal Justice Act representation in the district court but appears to qualify on appeal, trial counsel must immediately assist the client in filing in the district court a motion to proceed as one who is financially unable to obtain an adequate defense in a criminal case. This motion must be accompanied by an affidavit containing substantially the same information as contained in Form 4 of the Appendix to the Federal Rules of Appellate Procedure. If the motion is granted, the court of appeals will appoint trial counsel as appellate counsel unless the district court informs the court of appeals that new counsel should be appointed. If the motion is denied by the district court, trial counsel may file a similar motion in the court of appeals. Counsel may have additional duties under Part V of the Circuit's Plan implementing the Criminal Justice Act of 1964.
- (b) *Withdrawal of Court-Appointed Counsel in a Criminal Case.* When representing a convicted person in a proceeding to review the conviction, court-appointed counsel who files a brief characterizing an appeal as frivolous and moves to withdraw (*see Anders v. California*, 386 U.S. 738 (1967); *United States v. Edwards*, 777 F.2d 364 (7th Cir. 1985)) shall file with the brief a proof of service which also indicates the current address of the client. Except as provided in paragraph (g) of this rule, the clerk shall then send to the client by certified mail, return receipt requested, a copy of the brief and motion, with a notice in substantially the form set out in Appendix I to these rules. The same procedures shall be followed by court-appointed counsel and the clerk when a motion to dismiss the appeal has been filed by the appellee and the appellant's counsel believes that any argument that could be made in opposition to the motion would be frivolous.
- (c) *Time for Filing Motion to Withdraw in a Criminal Case.* Any motion to withdraw for good cause (other than the frivolousness of an appeal) must be filed in the court of appeals within 14 days of the notice of appeal. The court of appeals will make all appellate appointments.
- (d) *Notice of Motion to Dismiss Pro Se Appeal.* When a convicted person appears *pro se* in a proceeding to review the conviction, and the government moves to

dismiss the appeal for a reason other than failure to file a brief on time, the clerk shall, unless paragraph (e) of this rule applies, send to the convicted person by certified mail, return receipt requested, a copy of the motion with a notice in substantially the form set out in Appendix II to these rules.

- (e) *Dismissal if No Response.* If no response to a notice under paragraph (a) or (b) of this rule is received within 30 days after the mailing, the appeal may be dismissed.
- (f) *Voluntary Waiver of Appeal.* Notwithstanding the preceding paragraphs, if the convicted person consents to dismissal of the appeal after consultation with appellate counsel, the appeal may be dismissed upon the filing of a motion accompanied by an executed acknowledgment and consent in substantially the form set out in Appendix III to these rules. See Rule 42(b), Fed. R. App. P.
- (g) *Incompetent Appellant.* If, in a case in which paragraph (a) or (b) of this rule would otherwise be applicable, the convicted person has been found incompetent or there is reason to believe that person is incompetent, the motion shall so state and the matter shall be referred directly to the court by the clerk for such action as law and justice may require.

[REDLINE] CIRCUIT RULE 51: Summary Disposition of Certain Appeals by Defendants; Waiver of Appeal

- (a) *Notice of Motion to Dismiss Pro Se Appeal.* When a defendant appears pro se in a criminal appeal and the government moves to dismiss the appeal for a reason other than failure to file a brief on time, the clerk will send to the defendant by certified mail, return receipt requested, a copy of the motion with a notice in substantially the form set out in Appendix I to the Circuit Rules.¹
- (b) *Withdrawal of Counsel in a Criminal Case If No Non-Frivolous Grounds for Appeal.* Court-appointed counsel in a criminal ~~Case. When representing a convicted person in a proceeding to review the conviction, court-appointed counsel~~ appeal who files a brief characterizing ~~an~~the appeal as frivolous and moves to withdraw (see *Anders v. California*, 386 U.S. 738 (1967); *United States v. Edwards*, 777 F.2d 364 (7th Cir. 1985)) ~~shall~~must file with the brief a proof of service ~~which also indicates that includes~~ the current address of the ~~client. Except as provided in paragraph of this rule,~~defendant. The clerk ~~shall then~~will send to the ~~client~~defendant by certified mail, return receipt requested, a copy of the brief and motion, with a notice in substantially the form set out in Appendix ~~III~~ to ~~thesethe~~ Circuit Rules. The same ~~procedures shall~~procedure will be followed by court-

¹ Circuit Rule 51(a) has been moved into the new Circuit Rule 46.1(a) and (b).

appointed counsel and the clerk when a motion to dismiss the appeal has been filed by the appellee and the ~~appellant's~~defendant's counsel believes that any argument that could be made in opposition to the motion would be frivolous.

~~(e) *Time for Filing Motion to Withdraw in a Criminal Case.* Any motion to withdraw for good cause (other than the frivolousness of an appeal) must be filed in the court of appeals within 14 days of the notice of appeal. The court of appeals will make all appellate appointments.~~

~~(d) *Notice of Motion to Dismiss Pro Se Appeal.* When a convicted person appears *pro se* in a proceeding to review the conviction, and the government moves to dismiss the appeal for a reason other than failure to file a brief on time, the clerk shall, unless paragraph (e) of this rule applies, send to the convicted person by certified mail, return receipt requested, a copy of the motion with a notice in substantially the form set out in to these rules.~~

~~(e)(c) *Dismissal if No Response.* If no response to a notice under paragraph (a) or (b) of this rule is received within 30 days after the mailing, the appeal may be dismissed.~~

~~(d) *Incompetent Appellant.* If, in a case in which paragraph (a) or (b) of this rule would otherwise be applicable, the defendant has been found incompetent or there is reason to believe that person is incompetent, the motion must so state and the matter will be referred directly to the court by the clerk for such action as law and justice may require.~~

~~(e) *Voluntary Waiver of Appeal.* Notwithstanding the preceding paragraphs, if the convicted person-defendant consents to dismissal of the appeal after consultation with appellate counsel, the appeal may be dismissed upon the filing of a motion accompanied by an executed acknowledgment and consent in substantially the form set out in Appendix III to these rules. See the Circuit Rules. See Fed. R. App. P. 42(b).~~

~~(g) *Incompetent Appellant.* If, in a case in which paragraph (a) or (b) of this rule would otherwise be applicable, the convicted person has been found incompetent or there is reason to believe that person is incompetent, the motion shall so state and the matter shall be referred directly to the court by the clerk for such action as law and justice may require.~~

[PROPOSED] CIRCUIT RULE 51: Summary Disposition of Certain Appeals by Defendants; Waiver of Appeal

(a) *Notice of Motion to Dismiss Pro Se Appeal.* When a defendant appears *pro se* in a criminal appeal and the government moves to dismiss the appeal for a reason other than failure to file a brief on time, the clerk will send to the defendant by certified mail, return receipt requested, a copy of the motion with a notice in substantially the form set out in Appendix I to the Circuit Rules.

(b) *Withdrawal of Counsel in a Criminal Case If No Non-Frivolous Grounds for Appeal.*

Court-appointed counsel in a criminal appeal who files a brief characterizing the appeal as frivolous and moves to withdraw (*see Anders v. California*, 386 U.S. 738 (1967); *United States v. Edwards*, 777 F.2d 364 (7th Cir. 1985)) must file with the brief a proof of service that includes the current address of the defendant. The clerk will send to the defendant by certified mail, return receipt requested, a copy of the brief and motion, with a notice in substantially the form set out in Appendix II to the Circuit Rules. The same procedure will be followed by court-appointed counsel and the clerk when a motion to dismiss the appeal has been filed by the appellee and the defendant's counsel believes that any argument that could be made in opposition to the motion would be frivolous.

(c) *Dismissal if No Response.* If no response to a notice under paragraph (a) or (b) of this rule is received within 30 days after the mailing, the appeal may be dismissed.

(d) *Incompetent Appellant.* If, in a case in which paragraph (a) or (b) of this rule would otherwise be applicable, the defendant has been found incompetent or there is reason to believe that person is incompetent, the motion must so state and the matter will be referred directly to the court by the clerk for such action as law and justice may require.

(e) *Voluntary Waiver of Appeal.* Notwithstanding the preceding paragraphs, if the defendant consents to dismissal of the appeal after consultation with counsel, the appeal may be dismissed upon the filing of a motion accompanied by an executed acknowledgment and consent in substantially the form set out in Appendix III to the Circuit Rules. See Fed. R. App. P. 42(b).