

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

December 31, 2024

Notice of Adoption of Modifications to Circuit Rules 46 and 51 and the Creation of Circuit Rule 46.1

On June 18, 2024, this court issued notice that it proposed modifications to Circuit Rules 46 and 51, and the creation of Circuit Rule 46.1. The court carefully considered the comments received. The court hereby provides notice of adoption of the aforementioned changes, effective immediately.

/s/ Christopher Conway, Clerk

CIRCUIT RULE 46. Attorneys

(a) *Admission to the Bar.* Upon filing an appeal, if the lead attorney for a party is not admitted to the bar of this court, then the lead attorney must apply for admission. Attorneys from 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 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: 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 with the court of appeals 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: 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 direct 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 courtappointed 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).