

# District of Columbia Court of Appeals

## Obligations of Counsel

The District of Columbia's Rules of Professional Conduct provide standards for the professional conduct of all members of the District of Columbia Bar. This document sets forth additional specific standards of performance for attorneys appointed under the Criminal Justice Act.

### Obligations to the client

1. Counsel must advise the client of his/her appointment by telephone or mail within thirty days of the appointment. An attorney appointed as first counsel on appeal should make arrangements for an in-person meeting with a client still held in the District of Columbia before the client is transferred out of the area.
2. Counsel shall promptly file an appropriate dispositive motion in appeals taken from pre-trial detentions or the juvenile equivalent.
3. Counsel should consult with the client. In almost all cases telephone and mail contact will enable counsel to obtain from the client all information required to prosecute the appeal. Travel outside the District of Columbia area [i.e., 200 miles, see DCCA Administrative Order 01-02]. for the purpose of an in-person meeting will be approved only in exceptional circumstances. Where counsel is of the opinion that exceptional circumstances exist, counsel shall first file a motion pursuant to Super. Ct. Crim. R. 38 (b) requesting that the client be retained in, or returned to the Washington, D.C. area. If the client's presence cannot be secured through such motion, then counsel may ask this court to grant advance approval for travel.
4. Counsel shall keep the client informed of the progress of the case and shall promptly send the client copies of brief and pleadings filed in his or her behalf and orders and opinions issued by the court in his/her case.
5. Counsel shall review the record and confer with the client concerning the proceeding before the trial court to determine if there are any issues relating to the effectiveness of trial counsel. Following a reasonable inquiry, counsel shall advise the client of the results and, if a meritorious claim may be pursued, counsel shall file a motion for appointment in Superior Court and prepare and file a motion pursuant to D.C. Code § 23-110. Where counsel concludes that no valid claim may be pursued, the client should be advised of the right to seek relief in the trial court *pro se*. Counsel may file a motion to stay the direct appeal pending resolution of the trial court motion but must show good cause. See *Shepard v. United States*, 533 A.2d 1278 (DC 1987), and *Doe v. United States*, 583 A.2d 670 (DC 1990). *Craig A. Williams v. United States*, 783 A.2d 598, fn 4 at 602 (2001)(en banc).

6. Upon final disposition of the appeal, counsel shall notify the client of this court's decision. Counsel should also inform the client of the available options, including but not limited to the right to file a petition to the Supreme Court of the United States for a petition for writ of *certiorari*. Counsel should investigate whether there is a non-frivolous basis for filing such a petition. If counsel determines that there are no such grounds, counsel shall immediately inform his or her client in writing of the decision not to file a petition for *certiorari*, the reasons for the decision not to pursue such relief, and the time limit for filing a petition for writ of *certiorari pro se*. Counsel should file a copy of the notification to the client with this court. Counsel's appointment will terminate upon the filing of the notification. *Qualls v. United States*, 718 A.2d 1039 (1998).

In the event that counsel identifies a sufficient issue or issues on which to base a petition for writ of *certiorari*, counsel shall, if he or she is a member of the Supreme Court bar, request a reappointment voucher from this court and file the petition within the prescribed time limit. If counsel is not a member of the bar of the Supreme Court, counsel shall file a motion for appointment of new counsel stating that a non-frivolous basis exists for filing a petition for writ of *certiorari*.

### **Obligations to the court**

1. Counsel shall, within 30 days of receiving notice of initial appointment to an appeal, review the trial court record to ensure that all necessary transcripts of the trial court proceedings have been or are being prepared. While it is trial counsel's duty to order the transcript in conjunction with the filing of a notice of appeal, counsel appointed in a criminal appeal must ensure that the necessary portions have been ordered. An attorney appointed as replacement counsel prior to the filing of appellant's brief shall also review the trial court record to confirm that all necessary transcripts have been ordered.
2. Counsel shall comply with all applicable court rules regarding the timely filing of pleadings and with such other timing requirements as may be specified by the court in a particular case.
3. Counsel is reminded of the obligations imposed under *Anders v. California*, 386 U.S. 738 (1967). Where counsel concludes that an appeal contains no non-frivolous issue, counsel shall discuss his/her conclusions with the client including considering withdrawal of the appeal. If the client wishes to dismiss the appeal, counsel shall file a motion to dismiss accompanied by a statement of appellant *pro se* in accordance with the requirements of *Johnson v. United States*, 513 A.2d 798 (D.C. 1986). If the client does not wish to dismiss the appeal, counsel may advise the court and request permission to withdraw as set forth in *Anders*. A copy of the request to withdraw shall be sent to the client but not served on the government. If the court determines that the issues are not frivolous, the court may direct counsel to file a brief.
4. Appointed counsel shall, unless the appointment is terminated earlier by order of the court, continue to represent the person throughout the proceedings, including disposition of the appeal.

and of any post-decision proceedings that appointed counsel may elect to initiate. Counsel is expected to continue in the appeal until the appeal is concluded. Motions to withdraw are disfavored absent a true conflict between counsel and the client.

If appointed counsel wishes to be relieved prior to termination of the proceedings in this court, counsel shall file a motion to withdraw. Disagreements over legal and tactical matters, *e.g.*, the issues to be raised in the brief, or the question whether collateral proceedings are warranted, generally will not justify the replacement of appointed counsel. If the client is dissatisfied with counsel's handling of the appeal and asks counsel to withdraw, and if counsel and client are unable to resolve any disagreement, then counsel should file a motion for leave to withdraw. The motion must be served on the client and on the government. The grounds for the motion may be set forth, if necessary, in an *ex parte* statement or affidavit, which should accompany the motion, and which need not be served on the government.