

Obligations of Counsel on the DCCA CJA Panel (last updated August 4, 2023)

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 by this court under the Criminal Justice Act to represent eligible individuals on appeal.

Obligations to the Client

1. Counsel must advise the client of their appointment by telephone or mail within thirty days of the appointment. If the client remains housed at the D.C. Jail or in the immediate area counsel is encouraged to arrange for an in-person meeting with a client before the client is transferred out of the area. If the client is located outside the area, counsel's initial introduction letter should include an email address to allow the client to contact counsel via the federal prison email system.
2. Counsel must contact trial counsel to obtain the complete trial file—including copies of all exhibits proffered at any stage of the proceedings—and thereafter review the file and speak with trial counsel to identify any trial issues that need to be investigated.
3. Counsel shall promptly file an appropriate dispositive motion in appeals taken from a denial of release including pretrial detentions or the juvenile equivalent or motions for compassionate release.
4. Counsel must consult with the client. After any initial client visit, see No. 1, *supra*, such consultation may occur by telephone, email, mail, or in person, as counsel sees fit. All travel to visit a client within the D.C. area is reimbursable (see DCCA Miscellaneous Order October 2012, defining the D.C. metro area as within 250 miles of Washington D.C.). In order to bill for travel to visit a client beyond the D.C. area, counsel shall seek prior approval by filing a motion for leave for paid travel, including an estimation of the travel and lodging expenses, if necessary. See Voucher Guidelines for Attorney Appointed by the D.C. Court of Appeals Under the District of Columbia Criminal Justice Act. Whether travel is within or outside of the D.C. area, costs associated with travel to meet the client should be included on one's voucher.
5. Counsel shall keep the client informed of the progress of the case and shall promptly send the client copies of the briefs and any pleadings filed on their behalf and orders and opinions issued by the court in their case.
6. Counsel shall review the record and confer with the client concerning the trial court proceeding 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 nonfrivolous claim is identified, counsel shall file in Superior Court either a motion to be appointed or a motion for the appointment of another counsel to pursue relief pursuant to D.C. Code § 23-110. If counsel is appointed, counsel shall promptly prepare and file the D.C. Code § 23-110 motion. If other counsel is appointed in Superior Court, counsel shall contact the appointed counsel to keep apprised of those proceedings. Where counsel fails to identify

a nonfrivolous claim, counsel should advise the client of that fact and the right to file a motion 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); *Doe v. United States*, 583 A.2d 670 (DC 1990); *Williams v. United States*, 783 A.2d 598, 602 n.4 (D.C. 2001) (en banc).

7. Upon final disposition of the appeal, counsel shall notify the client of this court's decision. Counsel should also inform the client of available options, including the right to file a petition for rehearing/rehearing en banc in this court and the right to file a petition for writ of certiorari in the Supreme Court of the United States. Counsel should investigate whether there is a basis for filing either of these petitions.

- a. If counsel identifies an issue or issues on which to base a petition for rehearing/rehearing en banc, counsel shall file the petition pursuant to the court's rules and, if counsel had previously submitted a voucher for payment and has received payment, counsel may request a supplemental voucher. If counsel identifies an issue or issues on which to base a petition for writ of certiorari, counsel shall, if a member of the Supreme Court bar, request a supplemental 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 identifying the issue or issues that merit the filing of a petition for writ of certiorari.
- b. If the client requests that counsel file a petition for rehearing or rehearing en banc counsel shall file a petition unless doing so would be frivolous. *See Taylor v. United States*, 822 F.3d 84, 89-90 (2d Cir. 2016) (citing cases). If counsel determines that there are no grounds on which to base a petition for rehearing/rehearing en banc, counsel shall promptly inform their client in writing of this determination, the reasons for it, and the time limit and requirements for filing pro se. If there is insufficient time for the client to decide whether to ask counsel to file a petition or to file a pro se petition for rehearing/rehearing en banc, counsel **shall** file a motion for an extension of time for the client to file a pro se petition and notify the client of the new deadline for filing the petition. In addition, counsel shall inform the client of any other relief available in the trial court—for example, moving for a reduction of sentence pursuant to D.C. Super. Ct. Crim. R. 35—as well as the corresponding filing deadlines to seek such relief. Lastly, if counsel determines that there are no grounds on which to base a petition for writ of certiorari to the Supreme Court of the United States, counsel shall promptly inform their client in writing of this determination, the reasons for it, and the time limit and requirements for filing pro se.
- c. Counsel shall inform the client that they have a right to their appellate file and, if they want their file, they should request it from counsel in writing. The client should also be informed that if they want their appellate file be released to another individual, they must both make a written request identifying the individual authorized to obtain the file and sign a release of documents form. Counsel shall inform the client how long they will retain the file in the absence of a request. Counsel may maintain the appellate file in electronic form and may transmit the file to the client in that form unless the client is incarcerated and requests a paper copy of the file. *See Ethics Op. 357*. Counsel may, if representation has not ceased, include those costs of providing the client with a paper copy of the file on the voucher.

- d. Counsel's appointment will not terminate until counsel files a notification that they have provided the client with all of the information required to be provided in 7b & 7c as applicable, filing any privileged information under seal with this court. *Qualls v. United States*, 718 A.2d 1039 (1998).

Obligations to the Court

1. Counsel shall, within 20 days of appointment, review the trial court record to ensure that all proffered exhibits, both at trial and at any hearings, have been filed (or lodged) with the Superior Court and 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. If, after review of the Superior Court docket, counsel determines that one or more exhibits have not been filed (or lodged) with the Superior Court, counsel shall notify the Director of the Division in which the case was prosecuted in Superior Court (either Criminal Division or the Domestic Violence Division) that exhibits are missing so that the Director can take whatever steps are necessary to transmit those exhibits to this court as part of the record on appeal.
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. If counsel wishes to withdraw prior to the termination of the proceedings in this court, counsel shall file a motion to withdraw. Motions to withdraw are disfavored absent a true conflict between counsel and the client. 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 the 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.
4. Counsel is reminded of the obligations imposed under *Anders v. California*, 386 U.S. 738 (1967). Where counsel concludes that an appeal contains no nonfrivolous issue, counsel shall discuss their assessment of the case and possible options (including withdrawing the appeal) with the client. If the client decides that they no longer want to pursue the appeal, appellant must execute a signed written statement that appellant is knowingly waiving their right to appeal, and is doing so voluntarily after being advised by counsel on the strengths and weakness of the appeal and the impact of dismissal. Counsel shall file a motion to dismiss pursuant to D.C. Court of Appeals Rule 13(b)(2), accompanied by appellant's written waiver statement. *See Johnson v. United States*, 513 A.2d 798 (D.C. 1986). The motion must be served on appellant. If the client does not wish to dismiss the appeal, counsel may advise the court and file a motion requesting permission to withdraw as set forth in *Anders*. A copy of the motion to withdraw and accompanying *Anders* brief shall be sent to the client but **not** served on the government. If the court discerns nonfrivolous issues that may be raised on appeal, the court may direct counsel to file a brief or may appoint new counsel for appellant.

5. Unless and until an appointment by this court is terminated by an order of the court, counsel shall continue to represent appellant throughout the proceedings consistent with counsel's obligations to their client discussed above.

6. If this court's decision on the merits requires further litigation in Superior Court and counsel will not conduct that litigation, counsel shall contact the trial counsel and the criminal division of the Superior Court to alert them of this court's decision and to ensure that counsel is appointed in Superior Court for appellant.