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Proposal by Judge Alexander to amend Sections 43-36 and 23-42 regarding sealing of memoranda of decisions on a motion to withdraw, filed by appointed counsel where counsel determines that an appeal is frivolous.



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STATE OF CONNECTICUT
SUPERIOR COURT
JUDGE'S CHAMBERS

20 Franklin Square, New Britain, Connecticut 06051

Chambers of
Honorable Joan K. Alexander
Chief Administrative Judge
Criminal Division

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January 17, 2019

Joseph J. Del Ciampo, Esq.
Director of Legal Services
State of Connecticut Judicial Branch
100 Washington Street/3rd Floor
Hartford, Connecticut 06106

Dear Attorney Del Ciampo:

I am requesting that the Rules Committee amend the language of Practice Book § 43-36 and Practice Book § 23-42 to include language explicitly requiring that the presiding judge's memorandum of decision on a motion for leave to withdraw from the case be filed under seal. These amendments would be consistent with existing appellate procedure, specifically Practice Book § 62-9(d)(3), which states that the trial court's decision on the motion to withdraw shall be sealed. The following amendments are requested:

Sec. 43-36. — Finding That Appeal Is Frivolous

The presiding judge shall fully examine memorandum of law of counsel and the defendant, together with any relevant portions of the record and transcript of the trial. If, after such examination, the presiding judge concludes that the defendant's appeal is wholly frivolous, such judge may grant counsel's motion to withdraw and permit the defendant to proceed as a self-represented party. The presiding judge shall file a memorandum under seal setting forth the basis for the finding that the appeal is wholly frivolous.

Joseph J. Del Ciampo, Esq.
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COMMENTARY — The change to this section includes the explicit requirement that the presiding judge's memorandum of decision on motions for leave to withdraw, filed by appointed counsel pursuant to this section, is to be filed under seal. This requirement brings the rule into conformity with the Rules of Appellate Procedure, wherein the trial court's decision on a motion for leave to withdraw, filed by appointed counsel pursuant to Section 62-9 (d) (3), is sealed, in cases in which an appeal has already been filed.

Sec. 23-42. — Judicial Action on Motion for Permission to Withdraw Appearance

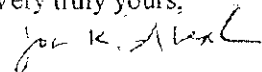
(a) The presiding judge shall fully examine the memoranda of law filed by counsel and the petitioner, together with any relevant portions of the records of prior trial court, appellate and post-conviction proceedings. If, after such examination, the presiding judge concludes that the submissions establish that the petitioner's case is wholly frivolous, such judge shall grant counsel's motion to withdraw and permit the petitioner to proceed as a self-represented party. A memorandum shall be filed under seal setting forth the basis for granting any motion under Section 23-41.

(b) If, after the examination required in subsection (a), the presiding judge does not conclude that the petitioner's case is wholly frivolous, such judge may deny the motion to withdraw, may appoint substitute counsel for further proceedings under Section 23-41, or may allow the withdrawal on other grounds and appoint new counsel to represent the petitioner.

COMMENTARY — The change to this section includes the explicit requirement that the presiding judge's memorandum of decision on motions for leave to withdraw, filed by appointed counsel pursuant to this section, is to be filed under seal. This requirement brings the rule into conformity with the Rules of Appellate Procedure, wherein the trial court's decision on a motion for leave to withdraw, filed by appointed counsel pursuant to Section 62-9 (d) (3), is sealed, in cases in which an appeal has already been filed.

Thank you for your attention in this matter and if you have any questions, please do not hesitate to contact me at 860-515-5050.

Very truly yours,



Joan K. Alexander
Chief Administrative Judge
Criminal Division

JKA:jvp

cc: Honorable Patrick L. Carroll III
Chief Court Administrator
Honorable Elizabeth A. Buzzuto
Deputy Chief Court Administrator

Current Versions of Sections 23-42 and 43-36

Sec. 23-42. -Judicial Action on Motion for Permission To Withdraw Appearance

(a) The presiding judge shall fully examine the memoranda of law filed by counsel and the petitioner, together with any relevant portions of the records of prior trial court, appellate and postconviction proceedings. If, after such examination, the presiding judge concludes that the submissions establish that the petitioner's case is wholly frivolous, such judge shall grant counsel's motion to withdraw and permit the petitioner to proceed as a self-represented party. A memorandum shall be filed setting forth the basis for granting any motion under Section 23-41.

(b) If, after the examination required in subsection (a), the presiding judge does not conclude that the petitioner's case is wholly frivolous, such judge may deny the motion to withdraw, may appoint substitute counsel for further proceedings under Section 23-41, or may allow the withdrawal on other grounds and appoint new counsel to represent the petitioner.

(P.B. 1978-1997, Sec. 529U.) (Amended June 22, 2009, to take effect Jan. 1, 2010.)

Sec. 43-36. -Finding That Appeal is Frivolous

The presiding judge shall fully examine memorandum of law of counsel and the defendant, together with any relevant portions of the record and transcript of the trial. If, after such examination, the presiding judge concludes that the defendant's appeal is wholly frivolous, such judge may grant counsel's motion to withdraw and permit the defendant to proceed as a self-represented party. The presiding judge shall file a memorandum setting forth the basis for the finding that the appeal is wholly frivolous.

(P.B. 1978-1997, Sec. 954.) (Amended June 23, 2017, to take effect Jan. 1, 2018.)