

5-10

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.

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.)