

10th Circuit Court of Appeals
Answers to Frequently Asked Questions
Filing Motions to Withdraw or Continue in CJA Cases
Eff. 7/8/2015

Effective with appeals opened on July 8, 2015, CJA appointed counsel will be required to file *either* a motion to continue appointment or motion to withdraw 14 days after case opening. All CJA counsel, including Federal Public Defenders and current members of the 10th Circuit Appellate Panel, will be subject to this requirement. The new requirement does not apply to retained counsel.

When does my motion need to be filed?

The motion to continue or to withdraw must be filed within 14 days of case opening. Where the appellant has CJA counsel who filed the notice of appeal that will be when all other preliminary documents are due. The deadline for filing the motion is the same in all appeals, including those where the defendant filed a pro se notice of appeal and in appeals brought by the government.

If I plan to file a motion to withdraw, must I file the designation of record, transcript order form (or notice of no transcript), entry of appearance and docketing statement?

The deadline for filing preliminary documents will not change. At a minimum, counsel must still file an entry of appearance and docketing statement before, or at the same time as, the motion to withdraw. If counsel plans to file a motion to withdraw, it may be appropriate to file a motion to extend the time for filing the designation of record and transcript order form. Those motions will be viewed favorably if a compliant motion to withdraw is on file.

Will the court provide form motions?

No. At this time, there is no plan to provide form motions. Any motion to withdraw must comply with 10th Cir. R. 46.4. By way of general guidance, all motions to continue should include the following information: whether the attorney is on the 10th Circuit Appellate Panel, or was previously on the panel, the reasons why continuation is sought, and the benefit to the appeal if trial counsel remains on the case.

If I file a motion to continue, what information should be included?

As noted in the prior question, all motions to continue should include the following information: whether the attorney is on the 10th Circuit Appellate Panel, or was previously on the panel, the reasons why continuation is sought, and the benefit to the appeal if trial counsel remains on the case. These requirements will be codified in the court's local rules that take effect in January of 2016.

May I file my motion to continue ex parte?

Yes. If, in counsel's view, the motion to continue requires the inclusion of privileged information, it may be filed ex parte and under seal. To file an ex parte motion, counsel must send an email with the motion attached to clerk@ca10.uscourts.gov. The email should include the case number, case caption,

and a short explanation regarding the need to file ex parte. Counsel may also call the clerk's office main line at 303-844-3157 to coordinate the submission.

What if the notice of appeal is filed by the defendant pro se?

Consistent with 10th Cir. R. 46.3(A), trial counsel must continue to represent the defendant until relieved of that duty by the court. If a notice of appeal is filed pro se, counsel will be required to prosecute the appeal and will be subject to the motion requirement. The court will notify counsel if an appeal is opened following the filing of a pro se notice.

What if I am CJA counsel and I think there is a possibility an *Anders* brief may be filed?

The 14-day motion requirement does not alter the court's practice or procedure for filing *Anders* briefs and motions to withdraw with those briefs. *See Anders v. State of California*, 386 U.S. 738, 744 (1967). If counsel believes *Anders* may apply, a motion to continue should be filed at the initiation of the appeal (that is, at the 14-day stage), to be followed, as appropriate, with a motion to withdraw submitted at the briefing stage. Because the initial motion is one to confirm whether trial counsel will participate on appeal, and does not involve the merit of the case, *Anders* motions should not be filed at the initial 14-day stage.

What if I am CJA counsel in an appeal brought by the United States?

The same 14-day motion requirement applies in appeals brought by the government.

What if I am continuing CJA counsel in a proceeding filed originally per 28 U.S.C. §2255 or 28 U.S.C. §2254?

The same 14-day motion requirement applies if counsel was appointed in the trial court in cases filed per §2255 or §2254.

Will the court add this requirement to the 10th Circuit local rules?

Yes. A General Order adopting amendments to the court's CJA Plan issued on June 22, 2015. A copy of the Plan, which includes this new requirement, may be found on the court's website in the CJA section. The changes will also be incorporated into the court's local rules that will become effective January 1, 2016. A draft of the new local rules will be posted for public comment in late summer 2015.