

Hon. Diane M. Johnsen, Chief Judge
Arizona Court of Appeals, Division One
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IN THE SUPREME COURT OF ARIZONA

In the Matter of)	Arizona Supreme Court
)	No. _____
PETITION TO AMEND RULE 31.5,)	
ARIZONA RULES OF CRIMINAL)	PETITION TO AMEND
PROCEDURE)	RULE 31.5, ARIZONA RULES
)	OF CRIMINAL PROCEDURE
_____)	

Pursuant to Rule 28, Rules of the Arizona Supreme Court, Petitioner asks the Court to adopt amendments to Rule 31.5, Arizona Rules of Criminal Procedure, as proposed in the Attachment hereto. The proposal is intended to address the Arizona Supreme Court’s opinion in *Coleman v. Johnsen, et al.*, 235 Ariz. 195, 330 P.3d 952 (2014), which held that the Arizona Constitution guarantees the right to self-representation on appeal, but that “defendants must give notice of their intent to exercise that right within thirty days of the filing of the notice of appeal.” 235 Ariz. at ___ ¶ 1, 330 P.3d at 953.

The proposal first modifies the title of Rule 35.1, from “Appeals by indigents” to “Appointment of counsel for appeal; waiver of right to appellate counsel.” It also

adds paragraphs (e), (f), and (g) to Rule 31.5:

- Paragraph (e) provides for appointment of new counsel by either the trial court or the court of appeals if the defendant's counsel withdraws.
- Paragraph (f) sets forth the process for waiver of the right to counsel. It requires filing of a written notice of waiver no later than thirty days after filing of the notice of appeal. This provision contemplates that the notice of waiver may be filed in the trial court before a notice of appeal is filed, or in the court of appeals within thirty days after the notice of appeal is filed. It also provides for the appointment of advisory counsel.
- Paragraph (g) permits a defendant to file a notice of withdrawal of a waiver of the right to appellate counsel at any time, but doing so does not entitle the defendant to repeat any proceeding that has been previously held or waived.

Petitioner respectfully requests that the Court adopt the proposed amendments as reflected in the Attachment to this Petition.

DATED this ____ day of January, 2015.

Diane M. Johnsen, Chief Judge
Arizona Court of Appeals, Division One

ATTACHMENT*

ARIZONA RULES OF CRIMINAL PROCEDURE

* * *

Rule 31.5. ~~Appeals by indigents~~ Appointment of counsel for appeal; waiver of right to appellate counsel

a.-d. [No change in text.]

e. Appointment of Counsel. If a defendant's appointed counsel is permitted to withdraw, the trial court or Appellate Court shall appoint new counsel for a defendant legally entitled to such representation on appeal.

f. Waiver of Right to Counsel. A defendant may waive the right to appellate counsel by filing a written notice no later than thirty days after filing of the notice of appeal. If the notice of waiver is given before the notice of appeal is filed, it must be filed in the trial court. If the notice of waiver is given after the notice of appeal is filed, it must be filed in the Appellate Court. If the court ascertains that the defendant knowingly, intelligently, and voluntarily desires to forego the right to appellate counsel, the defendant shall be allowed to represent himself or herself on appeal. When a defendant waives the right to appellate counsel, the court may appoint advisory counsel during any stage of the appellate proceedings. Advisory counsel shall be given notice of all matters of which the defendant is notified.

g. Withdrawal of Waiver. A defendant may withdraw a waiver of the right to appellate counsel at any time by filing written notice of such withdrawal. The defendant will not be entitled to repeat any proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel.

* * *

* Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.