

HOUSE BILL NO. 48
INTRODUCED BY NEWMAN
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DUTIES OF AN ASSIGNED COUNSEL WHO DETERMINES THAT AN APPEAL IN A CRIMINAL CASE WOULD BE FRIVOLOUS OR WHOLLY WITHOUT MERIT; AND AMENDING SECTION 46-8-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-8-103, MCA, is amended to read:

"46-8-103. Duration of appointment. (1) When counsel has been assigned, the assignment is effective until final judgment, including any proceeding upon direct appeal to the Montana supreme court, unless relieved by order of the court that assigned counsel or that has jurisdiction over the case.

(2) ~~If counsel finds the defendant's case on appeal to be wholly frivolous, counsel shall advise the court of that fact and request~~ determines that an appeal would be frivolous or wholly without merit, counsel shall file a motion with the court requesting permission to withdraw. The motion must attest that counsel has concluded that an appeal would be frivolous or wholly without merit after reviewing the entire record and researching applicable statutes, case law, and rules and that the defendant has been advised of counsel's decision and of the defendant's right to file a response. The request motion to withdraw must be accompanied by a memorandum referring to anything in the record that might arguably support the appeal discussing any issues that arguably support an appeal and discussing why those issues lack merit. The memorandum must include a summary of the procedural history of the case and any jurisdictional problems with the appeal, together with appropriate citations to the record and to the pertinent statutes, case law, and procedural rules bearing upon each issue discussed in the memorandum. Upon filing the motion and memorandum with the court, counsel's certificate of mailing must certify that copies of each filing were mailed to the local county attorney, the attorney general's office, and the defendant. The defendant is entitled to ~~receive a copy of counsel's memorandum and to file a reply response with the court.~~

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