



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
OCA ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

December 14, 2016

TO: Hon. Fern A. Fisher
Hon. Michael V. Coccama

FROM: John W. McConnell
Paul McDonnell

SUBJECT: Trial Court Orders for Poor Person Relief on Appeal

As you may be aware, the Governor recently signed into law a measure adding a new section 380.55 to the criminal procedure law (L. 2016, c. 459 [Exh. A]) that authorizes a trial judge in some circumstances to grant a defendant poor person relief on appeal. This law, effective immediately, is a significant addition to the discretionary authority of a trial court.

The new statute is designed to streamline the appellate process by allowing the trial court to make an indigency finding for purposes of assignment of counsel on appeal in cases where the defendant has affirmatively indicated an intent to appeal his or her conviction. Under prior law, the application could only be made to the appellate court and, in most cases, had to be made by a defendant acting *pro se* after trial counsel's assignment had ended.¹ The new law authorizes assigned counsel to make that application at the time of defendant's sentence upon a representation that the defendant continues to be eligible for assignment of counsel and that granting the application will expedite the appeal. If the court grants the application, it must file a written order.² If the court denies the application, the defendant is entitled to make another application to the appropriate appellate court. Notably, the power to appoint appellate counsel continues to reside with the appeals court.

In exercising their powers under this new provision – and to avoid *pro forma* applications and unnecessary assignments – it may be prudent for trial courts to ensure that assigned counsel has discussed with the defendant whether meritorious grounds exist for reversal or modification of the judgment on appeal, and that following such discussion the defendant has affirmatively requested that an appeal be taken on his or her behalf.

¹ The Rules of each Department of the Appellate Division setting forth procedures for applying for poor person relief on appeal (22 NYCRR §§ 606.5, 671.3, 821.2 1015.7) remain in full force and effect.

² A model order for this purpose is attached (Exh. B).

Please distribute this memorandum to all judges exercising criminal jurisdiction. Any questions regarding this matter should be referred to Paul McDonnell in Counsel's Office at (212) 428-2150. As always, thank you for your kind assistance.

cc: Hon. Lawrence K. Marks
Ronald Younkins
Administrative Judges
Maria Logus, Esq.
Maria Barrington
District Executives
NYC Chief Clerks