

Criminal Procedure Rule Committee
Invitation to comment on potential amendments to rules in CrimPR Part 46

Annexe 1
Draft rule amendments

PART 46
REPRESENTATIVES

Contents of this Part

Functions of representatives and supporters	rule 46.1
Notice of appointment, etc. of legal representative: general rules	rule 46.2
Application to change legal representative: <u>(legal aid): general rules</u>	rule 46.3
<u>Application by defendant to change legal representative (legal aid)</u>	<u>rule 46.4</u>
<u>Application by legal representative to withdraw (legal aid)</u>	<u>rule 46.5</u>
...	

Application to change legal representative: (legal aid): general rules

- 46.3.**—(1) This rule applies in a magistrates’ court, the Crown Court and the Court of Appeal—
- (a) in relation to a ~~party~~ defendant who has legal aid for the purposes of a case; and
 - (b) where either—
 - (i) ~~such a party that defendant~~ wants to select a legal representative (the ‘proposed new representative’) in place of the representative (the ‘current representative’) named in the legal aid representation order (and see rule 46.4), or
 - (ii) the current representative wants to withdraw from the case (and see rule 46.5).
- (2) ~~Such a party~~ The defendant or the current representative, as the case may be, must—
- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so; ~~and~~
 - (b) serve the application on—
 - (i) the court officer, ~~and~~
 - (ii) ~~the legal current~~ representative named in the legal aid representation order, if the application is made by the defendant, and
 - (iii) the defendant, if the application is made by the current representative; and
 - (c) ask for a hearing, if the applicant wants one, and explain why it is needed.
- (3) ~~The application must—~~
- (a) ~~explain what the case is about, including what offences are alleged, what stage it has reached and what is likely to be in issue at trial;~~
 - (b) ~~explain how and why the applicant chose the legal representative named in the legal aid representation order;~~
 - (c) ~~if an advocate other than that representative has been instructed for the applicant, explain whether the applicant wishes to replace that advocate;~~
 - (d) ~~explain, giving relevant facts and dates—~~
 - (i) ~~in what way, in the applicant’s opinion, there has been a breakdown in the relationship between the applicant and the current representative such that neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation, or~~
 - (ii) ~~what other compelling reason, in the applicant’s opinion, means that neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation;~~

- ~~(e) give details of any previous application by the applicant to replace the legal representative named in the legal aid representation order;~~
- ~~(f) state whether the applicant —~~
 - ~~(i) waives the legal professional privilege attaching to the applicant's communications with the current representative, to the extent required to allow that representative to respond to the matters set out in the application, or~~
 - ~~(ii) declines to waive that privilege and acknowledges that the court may draw such inferences as it thinks fit in consequence;~~
- ~~(g) explain how and why the applicant has chosen the proposed new representative;~~
- ~~(h) include or attach a statement by the proposed new representative which —~~
 - ~~(i) confirms that that representative is eligible and willing to conduct the case for the applicant,~~
 - ~~(ii) confirms that that representative can and will meet the current timetable for the case, including any hearing date or dates that have been set, if the application succeeds, and~~
 - ~~(iii) explains what, if any, dealings that representative has had with the applicant before the present case; and~~
- ~~(i) ask for a hearing, if the applicant wants one, and explain why it is needed.~~
- ~~(4) The legal representative named in the legal aid representation order must —~~
 - ~~(a) respond in writing no more than 5 business days after service of the application; and~~
 - ~~(b) serve the response on —~~
 - ~~(i) the court officer,~~
 - ~~(ii) the applicant, and~~
 - ~~(iii) the proposed new representative.~~
- ~~(5) The response must —~~
 - ~~(a) explain which, if any, of the matters set out in the application the current representative disputes;~~
 - ~~(b) explain, as appropriate, giving relevant facts and dates —~~
 - ~~(i) whether, and if so in what way, in the current representative's opinion, there has been a breakdown in the relationship with the applicant such that neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation,~~
 - ~~(ii) whether, in the current representative's opinion, there is some other compelling reason why neither the individual representing the applicant nor any colleague of his or hers any longer can provide effective representation, and if so what reason,~~
 - ~~(iii) whether the current representative considers there to be a duty to withdraw from the case in accordance with professional rules of conduct, and if so the nature of that duty, and~~
 - ~~(iv) whether the current representative no longer is able to represent the applicant through circumstances outside the representative's control, and if so the particular circumstances that render the representative unable to do so;~~
 - ~~(c) explain what, if any, dealings the current representative had had with the applicant before the present case; and~~
 - ~~(d) ask for a hearing, if the current representative wants one, and explain why it is needed.~~
- ~~(3) (6) The court may determine the application —~~
 - ~~(a) without a hearing, as a general rule; or~~
 - ~~(b) at a hearing, which must be in private unless the court otherwise directs.~~

(4) ~~(7)~~ Unless the court otherwise directs, any hearing must be in the absence of each other party and each other party's representative and advocate (if any).

(5) ~~(8)~~ If the court allows the application, as soon as practicable—

(a) the current representative must make available to ~~the~~ a new representative (if any) such documents in the current representative's possession as have been served on the ~~applicant party defendant~~; and

(b) ~~the~~ a new representative (if any) must serve notice of appointment on each other party.

(6) ~~(9)~~ Paragraph ~~(10 7)~~ applies where—

(a) the court refuses ~~the~~ an application under rule 46.4 and in response—

~~(b) in response to that decision—~~

(i) the ~~applicant defendant~~ declines further representation by the current representative or asks for legal aid to be withdrawn, or

(ii) the current representative declines further to represent the ~~applicant defendant~~; and or

(c) the court allows an application under rule 46.5; and in either event

(d) ~~(e)~~ the court in consequence withdraws the ~~applicant's defendant's~~ legal aid.

(7) ~~(10)~~ The court officer must serve notice of the withdrawal of legal aid on—

(a) the ~~applicant defendant~~; and

(b) the current representative; and

(c) the prosecutor.

[Note. Under sections 16 and 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(a) and Part 2 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013(b), a court before which criminal proceedings take place may determine whether an individual qualifies for legal aid representation in accordance with the 2012 Act.

Under regulation 13 of the 2013 Regulations, in relation to any proceedings involving co-defendants a represented person must select a representative who is also instructed by a co-defendant unless there is, or there is likely to be, a conflict of interest between the two defendants.

Under regulation 14 of the 2013 Regulations, once a representative has been selected the person who is represented has no right to select another in the place of the first unless the court so decides, in the circumstances set out in the regulation.

Under regulation 9 of the 2013 Regulations, if a represented person declines to accept representation on the terms offered or requests that legal aid representation is withdrawn, or if the current representative declines to continue to represent that person, the court may withdraw legal aid.

See also regulation 11 of the 2013 Regulations, which requires that an application under regulation 14 (among others) must be made by the represented person, must be in writing and must specify the grounds.]

The Practice Direction sets out forms of application and response for use in connection with this rule.]

Application by defendant to change legal representative (legal aid)

46.4.—(1) An application by a defendant with legal aid to select a new representative in place of the current representative must—

(a) 2012 c. 10.
(b) S.I. 2013/614.

- (a) explain what the case is about, including what offences are alleged, what stage it has reached and what is likely to be in issue at trial;
 - (b) explain how and why the defendant chose the current representative;
 - (c) if an advocate other than the current representative has been instructed for the defendant, explain whether the defendant wishes to replace that advocate;
 - (d) explain, giving relevant facts and dates—
 - (i) in what way, in the defendant’s opinion, there has been a breakdown in the relationship between the defendant and the current representative such that neither that representative nor any colleague of theirs any longer can provide effective representation, or
 - (ii) what other compelling reason, in the defendant’s opinion, means that neither the current representative nor any such colleague any longer can provide effective representation;
 - (e) give details of any previous application by the defendant to replace a legal representative named in the legal aid representation order;
 - (f) state whether the defendant—
 - (i) waives the legal professional privilege attaching to the defendant’s communications with the current representative, to the extent required to allow that representative to respond to the matters set out in the application, or
 - (ii) declines to waive that privilege and acknowledges that the court may draw such inferences as it thinks fit in consequence;
 - (g) explain how and why the defendant has chosen the proposed new representative;
 - (h) include or attach a statement by the proposed new representative which—
 - (i) confirms that the proposed new representative is eligible and willing to conduct the case for the defendant,
 - (ii) confirms that the proposed new representative can and will meet the current timetable for the case, including any hearing date or dates that have been set, if the application succeeds,
 - (iii) explains what, if any, dealings the proposed new representative has had with the defendant before the present case,
 - (iv) confirms that the proposed new representative has informed the current representative of the defendant’s wish to select a new representative,
 - (v) confirms that the proposed new representative has discussed the defendant’s grounds for the proposed application with the current representative, and
 - (vi) confirms that the proposed new representative has explained to the defendant what it means to waive the legal professional privilege attaching to the defendant’s communications with the current representative and the potential consequences of not doing so; and
 - (i) ask for a hearing, if the defendant wants one, and explain why it is needed.
- (4) The current representative must—
- (a) respond in writing no more than 5 business days after service of the application; and
 - (b) serve the response on—
 - (i) the court officer,
 - (ii) the defendant, and
 - (iii) the proposed new representative.
- (5) The response must—
- (a) if applicable, explain why the current representative—

- (i) considers there to be a duty to withdraw from the case in accordance with professional rules of conduct, giving details of the nature of that duty, or
 - (ii) no longer is able to represent the defendant through circumstances outside the representative's control, giving details of the particular circumstances that render the representative unable to do so;
- (b) if paragraph (a) does not apply, state whether the current representative opposes the application;
 - (c) if the current representative opposes the application, explain which, if any, of the matters set out in the application are disputed, giving relevant facts and dates;

[Note. There are forms of application and response for use in connection with this rule issued under the Practice Direction.]

Application by legal representative to withdraw (legal aid)

46.4. An application by a current representative to withdraw from the case must—

- (a) explain what the case is about, including what offences are alleged, what stage it has reached and what is likely to be in issue at trial; and
- (b) explain why the current representative—
 - (i) considers there to be a duty to withdraw from the case in accordance with professional rules of conduct, giving details of the nature of that duty, or
 - (ii) no longer is able to represent the defendant through circumstances outside the representative's control, giving details of the particular circumstances that render the representative unable to do so.