

~~1       **Rule 23B. Motion to remand for findings necessary to determination of**~~  
~~2 **ineffective assistance of counsel claim.**~~

~~3       (a) Grounds for motion; time. A party to an appeal in a criminal case may move the~~  
~~4 court to remand the case to the trial court for entry of findings of fact, necessary for the~~  
~~5 appellate court's determination of a claim of ineffective assistance of counsel. The~~  
~~6 motion shall be available only upon a nonspeculative allegation of facts, not fully~~  
~~7 appearing in the record on appeal, which, if true, could support a determination that~~  
~~8 counsel was ineffective.~~

~~9       The motion shall be filed prior to the filing of the appellant's brief. Upon a showing of~~  
~~10 good cause, the court may permit a motion to be filed after the filing of the appellant's~~  
~~11 brief. In no event shall the court permit a motion to be filed after oral argument. Nothing~~  
~~12 in this rule shall prohibit the court from remanding the case under this rule on its own~~  
~~13 motion at any time if the claim has been raised and the motion would have been~~  
~~14 available to a party.~~

~~15       (b) Content of motion; response; reply. The content of the motion shall conform to~~  
~~16 the requirements of Rule 23. The motion shall include or be accompanied by affidavits~~  
~~17 alleging facts not fully appearing in the record on appeal that show the claimed deficient~~  
~~18 performance of the attorney. The affidavits shall also allege facts that show the claimed~~  
~~19 prejudice suffered by the appellant as a result of the claimed deficient performance. The~~  
~~20 motion shall also be accompanied by a proposed order or remand that identifies the~~  
~~21 ineffectiveness claims and specifies the factual issues relevant to each such claim to be~~  
~~22 addressed on remand.~~

~~23       A response shall be filed within 20 days after the motion is filed. The response shall~~  
~~24 include a proposed order of remand that identifies the ineffectiveness claims and~~  
~~25 specifies the factual issues relevant to each such claim to be addressed by the trial~~  
~~26 court in the event remand is granted, unless the responding party accepts that proposed~~  
~~27 by the moving party. Any reply shall be filed within 10 days after the response is served.~~

~~28       (c) Order of the court. If the requirements of parts (a) and (b) of this rule have been~~  
~~29 met, the court may order that the case be temporarily remanded to the trial court for the~~  
~~30 purpose of entry of findings of fact relevant to a claim of ineffective assistance of~~  
~~31 counsel. The order of remand shall identify the ineffectiveness claims and specify the~~

32 ~~factual issues relevant to each such claim to be addressed by the trial court. The order~~  
33 ~~shall also direct the trial court to complete the proceedings on remand within 90 days of~~  
34 ~~issuance of the order of remand, absent a finding by the trial court of good cause for a~~  
35 ~~delay of reasonable length.~~

36 ~~If it appears to the appellate court that the appellant's attorney of record on the~~  
37 ~~appeal faces a conflict of interest upon remand, the court shall direct that counsel~~  
38 ~~withdraw and that new counsel for the appellant be appointed or retained.~~

39 ~~(d) Effect on appeal. Oral argument and the deadlines for briefs shall be vacated~~  
40 ~~upon the filing of a motion to remand under this rule. Other procedural steps required by~~  
41 ~~these rules shall not be stayed by a motion for remand, unless a stay is ordered by the~~  
42 ~~court upon stipulation or motion of the parties or upon the court's motion.~~

43 ~~(e) Proceedings before the trial court. Upon remand the trial court shall promptly~~  
44 ~~conduct hearings and take evidence as necessary to enter the findings of fact~~  
45 ~~necessary to determine the claim of ineffective assistance of counsel. Any claims of~~  
46 ~~ineffectiveness not identified in the order of remand shall not be considered by the trial~~  
47 ~~court on remand, unless the trial court determines that the interests of justice or judicial~~  
48 ~~efficiency require consideration of issues not specifically identified in the order of~~  
49 ~~remand. Evidentiary hearings shall be conducted without a jury and as soon as~~  
50 ~~practicable after remand. The burden of proving a fact shall be upon the proponent of~~  
51 ~~the fact. The standard of proof shall be a preponderance of the evidence. The trial court~~  
52 ~~shall enter written findings of fact concerning the claimed deficient performance by~~  
53 ~~counsel and the claimed prejudice suffered by appellant as a result, in accordance with~~  
54 ~~the order of remand. Proceedings on remand shall be completed within 90 days of entry~~  
55 ~~of the order of remand, unless the trial court finds good cause for a delay of reasonable~~  
56 ~~length.~~

57 ~~(f) Preparation and transmittal of the record. At the conclusion of all proceedings~~  
58 ~~before the trial court, the clerk of the trial court and the court reporter shall immediately~~  
59 ~~prepare the record of the supplemental proceedings as required by these rules. If the~~  
60 ~~record of the original proceedings before the trial court has been transmitted to the~~  
61 ~~appellate court, the clerk of the trial court shall immediately transmit the record of the~~  
62 ~~supplemental proceedings upon preparation of the supplemental record. If the record of~~

63 ~~the original proceedings before the trial court has not been transmitted to the appellate~~  
64 ~~court, the clerk of the court shall transmit the record of the supplemental proceedings~~  
65 ~~upon the preparation of the entire record.~~

66 ~~(g) Appellate court determination. Upon receipt of the record from the trial court, the~~  
67 ~~clerk of the court shall notify the parties of the new schedule for briefing or oral~~  
68 ~~argument under these rules. Errors claimed to have been made during the trial court~~  
69 ~~proceedings conducted pursuant to this rule are reviewable under the same standards~~  
70 ~~as the review of errors in other appeals. The findings of fact entered pursuant to this~~  
71 ~~rule are reviewable under the same standards as the review of findings of fact in other~~  
72 ~~appeals.~~

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