

***ANDERS* GUIDELINES**

Section I addresses the requirements for *Anders* briefs submitted in guilty plea cases.

Section II addresses the requirements for *Anders* briefs submitted in a jury or bench trial.

Section III addresses the government's response.

SECTION I

***Anders* Briefs in Guilty Plea Cases**

If you plan to file an *Anders* motion and supporting brief in a guilty plea case, please take note of the following information. In order to assure and demonstrate compliance with *Anders v. California*, 386 U.S. 738 (1967) and *United States v. Youla*, 241 F.3d 296 (3d Cir. 2001) and *United States v. Marvin*, 211 F.3d 778 (3d Cir. 2000), the *Anders* brief in support of a motion to withdraw in a guilty plea case ordinarily must contain a discussion of the below listed items. As with any brief, compliance with Federal Rule of Appellate Procedure 28 and Third Circuit Rule 28 is required. See the briefing checklist at <http://www.ca3.uscourts.gov> for a complete list of requirements. The *Anders* guidelines do not replace but rather supplement these requirements.

Compliant *Anders* briefs

- (1) examine the district court's compliance with Federal Rules of Criminal Procedure Rule 11 and 32
- (2) examine the Government's compliance with any plea agreement;
- (3) if there is no valid sentencing waiver, examine whether the district court committed any significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, failing to consider the 18 U.S.C. § 3553(a) factors, or failing to adequately explain the chosen sentence-including an explanation for any deviation from the Guidelines range; and whether the sentence is substantively reasonable.

You are strongly encouraged to complete and include in your *Anders* brief the court's *Anders* checklist to ensure compliance with *Anders* and to assist the court in conducting its examination of the record. The checklist is available at <http://www.ca3.uscourts.gov>

SECTION II

***Anders* Briefs in Jury and Bench Trial Cases**

If you plan to file an *Anders* motion and supporting brief in a jury or bench trial case, please take note of the following information. In order to assure and demonstrate compliance

with the holdings of *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Youla*, 241 F.3d 296 (3d Cir. 2001) and *United States v. Marvin*, 211 F.3d 778 (3d Cir. 2000), the *Anders* brief in support of a motion to withdraw must contain, at a minimum, a discussion of the below listed items. You are encouraged to include these items in the Table of Contents which will assist the court in conducting its examination of the record. As with any brief, compliance with Federal Rule of Appellate Procedure 28 and Third Circuit Rule 28 is required. For a complete list of requirements, see the briefing checklist at <http://www.ca3.uscourts.gov>. If there are any issues unique to the case not covered by the items listed below, those should be discussed as well. These guidelines do not replace but rather supplement these briefing requirements.

The items to be included, at a minimum, are:

- (1) sufficiency of the indictment;
- (2) any adverse pretrial rulings affecting the course of the trial (e.g., motions to suppress, motions in limine, motions to quash, speedy trial motion);
- (3) any adverse rulings during trial on objections or motions (e.g., objections regarding the admission or exclusion of evidence, objections premised on prosecutorial or judicial misconduct, mistrial motions);
- (4) any adverse rulings on post-trial motions (e.g., motion for a new trial or post-judgment verdict of acquittal);
- (5) jury selection [N/A in bench trial];
- (6) jury instructions [N/A in bench trial];
- (7) sufficiency of the evidence, which would include a recitation of the elements of the offense(s), and facts and evidence adduced at trial relevant to the offense(s) of conviction;
- (8) any errors for which there were no objections but which may rise to the level of plain error; and
- (9) calculation of the advisory guideline sentence and the reasonableness of the sentence imposed. With regard to the discussion of the sentence imposed, counsel is encouraged to attach a checklist, in addition to any discussion, which covers all the aspects of the current Federal Rule of Criminal Procedure 32 requirements, found in the *Anders* checklist for guilty plea cases, (see Section I above).

SECTION III

Government's brief in *Anders* cases.

The court expects the government to file a formal brief in *Anders* cases. The brief should contain a thorough explication of the facts and a thorough discussion of the government's position on the issues. A brief that merely states that the government agrees with the *Anders* brief is not acceptable; the court may return such briefs and direct the refiling of an acceptable brief. In guilty plea cases in which the defendant has waived appellate rights, the government must follow the procedures announced in *United States v. Goodson*, 544 F.3d 529 (3d Cir. 2008).