

How Attys Can Avoid Pitfalls When Withdrawing From A Case

By **Christopher Konneker** (May 28, 2024)

Just like no one gets married thinking they will get divorced, no attorney takes on a client believing that a motion for withdrawal will be filed.

There are numerous reasons why filing a motion for withdrawal can be the appropriate course of action, including that an attorney might find themselves in a situation where they cannot communicate well with the client.

For example, in *Arlene J. Delgado v. Donald J. Trump for President Inc.*, LaRocca Hornik Greenberg Kittredge Carlin & McPartland LLP attempted to withdraw from representing former President Donald Trump's political campaign in a pregnancy retaliation suit in the U.S. District Court for the Southern District of New York last month.



Christopher Konneker

The law firm cited an "irreparable breakdown in the attorney-client relationship" as the reason to withdraw.[1] The plaintiff objected to the firm's withdrawal, however, and the court ordered a closed-door conference to discuss the motion further.

Just as there are many reasons why an attorney files a motion to withdraw, there are several pitfalls an unsuspecting attorney may stumble upon when trying to officially be removed from a case. This article is meant to serve as a primer, or perhaps even a refresher, to make the process of withdrawing from a case as smooth as possible.

There are governing rules of procedure that detail the steps an attorney must take in order to officially withdraw from representing a client, but they differ from state to state, district to district and even court to court.

In Texas, for instance, Rule 10 of the Texas Rules of Civil Procedure provides that an attorney may withdraw "for good cause shown."[2]

Oklahoma allows an attorney to withdraw upon filing a motion stating the grounds for withdrawal, but also requires it to be done before certain deadlines: 30 days before a hearing or trial in criminal cases and 20 days before a hearing or trial in civil cases.[3]

New York appears to only require that an attorney provide notice to all parties, but it lists several mandatory grounds and permissive grounds for withdrawing from representation within its own rules of professional conduct.[4]

In reality, the court generally wants a motion for withdrawal to explain why you are asking to get off a case, without being too specific. It is not enough to simply say, "I want to withdraw for good cause."

Some common reasons include:

- The client fires the attorney;
- The client and attorney cannot communicate well; or
- The client cannot, or refuses to, pay for legal services.

These reasons, or any others, must be mentioned in your motion. Oftentimes, motions for withdrawal are denied because there is no specific cause mentioned, aside from a general statement that there is good cause.

The client can also agree to the filing of the motion for withdrawal; they may be allowed to sign off on the motion entirely if they expressly terminate the attorney-client relationship, thus doing away with the need to have a contested hearing.

The client's consent may be demonstrated by signing the motion to withdraw itself, or through a simple attached exhibit, usually an email, that indicates the client agrees to the withdrawal.

If an attorney finds themselves in a situation where a client is not responsive or is antagonistic to the point that obtaining their consent is not possible, then the attorney needs to proceed by giving notice to the client in addition to filing the motion for withdrawal.

Regarding notice to the client, you must make sure they receive a copy of the motion for withdrawal at a minimum via regular first-class mail and certified mail, with return receipt requested. As another safeguard to ensure the court is convinced the client received notice, it is also best practice to include the client as a service contact on the electronic filing service.

It would be a mistake to assume that all courts treat the process for withdrawing as counsel the same. Do not forget to check a county's local rules of practice, as well as the individual court's policies, often listed on the court's website.

Some courts allow a proof of written notice to a client, where when sending your client the motion for withdrawal, you can also send a letter explaining that if the client doesn't respond — i.e., doesn't raise an objection directly to the court — the court will be more inclined to grant the motion for withdrawal, unless it is denied for other reasons, like the withdrawal is too close to a final trial.

Motions for withdrawal of counsel have been denied because the attorney did not provide the required notice whatsoever to the client or the court. It is also best practice to include the certified mailing return receipt number in your notice letter to the client, so there is no doubt in the judge's mind that it was sent.

In counties that do not allow any kind of written notice to a client, unfortunately you need to set a hearing on the motion for withdrawal and must serve not only opposing counsel, but also the client.

Some counties may let you present a motion for withdrawal of counsel in person, but will require you to give notice to the client and the other side regarding when you intend to present the motion for withdrawal.

In the hopefully unlikely event you need to have a contested hearing on a motion for withdrawal, you must be vigilant not to disclose any attorney-client communications either in the motion itself or in person at any hearing, unless the client clearly consents.

Examples of when a contested hearing may occur for an attorney requesting withdrawal include, but are not limited to:

- The client simply does not wish for you to provide legal services;
- An opposing counsel objects to you withdrawing from the case; or
- The court itself wishes to conduct a hearing to decide whether it will grant the withdrawal.

The contents of the motion for withdrawal are fairly straightforward, even from state to state. If another attorney is to be substituted, the motion will likely need to include that attorney's contact information, a declaration that the client approves the substitution and an assurance that the withdrawal is not only being sought as a delay tactic.

However, if there is no other attorney to be substituted, the motion will need to be more detailed and will need to include other requirements, such as a statement providing that:

- A copy of the motion has been delivered to the client;
- The client has been notified in writing of the right to object;
- The client has or has not consented to the withdrawal;
- The client's last known mailing address; and
- All pending settings and deadlines.

Once again, it is imperative that an attorney seeking to withdraw ensures that they follow all applicable state, county and local rules.

The court may also impose several conditions on a withdrawing attorney, such as requiring them to deliver certain documents to the client.

Courts may also have their own policies on attorneys seeking to withdraw; one notable policy many courts have is that they may not allow an attorney to withdraw if the withdrawal is sought within 30 days of a final trial. This becomes especially problematic if the client expressly fires the attorney within that time frame and does not authorize further work.

What does an attorney do in this situation? It is helpful to remember that once you take on a client, you are the attorney of record until you are expressly released from that representation.

To ensure you do not find yourself in a situation like this, it is imperative to have your own policies in place and to make the client aware of them. For example, if a trial retainer is not paid by no later than 45 days before the final trial, a motion for withdrawal will be filed.

Ideally, many of the troubles inherent in withdrawing from representing a client can be mitigated, if not entirely avoided, by simply having open, frequent communication with them. This is not always possible, of course, so when withdrawing is necessary, you should hopefully be equipped with the information you need to withdraw from a case correctly.

Life is too short to be unhappy, and for attorneys, an already stressful job can be made less stressful by remembering to withdraw early and withdraw often.

Christopher R. Konneker is an associate at Orsinger Nelson Downing & Anderson LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] <https://www.nytimes.com/2024/04/30/us/politics/trump-lawyers-delgado.html>.

[2] Tex. R. Civ. P. 10.

[3] OK 11 District Court Rule 11.

[4] N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.1.16.