



## **How to Withdraw From a Superior Court Civil Case**

*(First Published December 2016, in Los Angeles County Bar Association Update)*

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There comes a time in virtually every litigator's career when it will be necessary to make a motion to be relieved as counsel (what we sometimes colloquially call a motion to withdraw). Withdrawing in a professional, courteous, and ethical manner is important to you and to the profession at large. This article discusses how to withdraw from a Superior Court civil action. Withdrawal procedures in federal court and in criminal cases are not covered here.

### **1. Act promptly.**

Attorneys and clients are best served if the attorney acts promptly to address a deteriorating relationship. The more time that passes between the emergence of problems in the relationship and a decision to withdraw, the more difficult the challenges will be in withdrawal.

### **2. Act respectfully but firmly.**

Address your client respectfully, but firmly, about the problem. Be straightforward and specific. Explain the problem and how it affects your ability to represent the client. Explain the consequences if the situation is not addressed.

Do not write angry letters or respond to ad hominem attacks. Remain focused on the issues causing the breakdown and do not waiver in your resolve once a decision to withdraw has been made. Set reasonable deadlines and stick to them. Build in time for your client to find new counsel. Ask the client to sign a substitution of attorney form to voluntarily relieve you. Explain that if a substitution is not forthcoming by a set deadline, you will move to withdraw.

Explain the advantages of a voluntary substitution. One chief advantage is that the client can avoid public disclosure of the reasons for change in counsel.

### **3. Document your position.**

Document your actions. Proper documentation consists of evidence that you gave the client reasonable notice and an opportunity to cure the problem (where feasible), and that you warned your client to seek replacement counsel.

### **4. Protect client confidentiality.**

An attorney has a duty to protect the confidentiality of client information and to avoid actions that could be embarrassing or harmful to the client.[1] This means avoiding disclosure of unnecessary information about the dispute and avoiding disclosure of nonessential information.



While the court may hold an in camera hearing to examine the adequacy of the grounds given for a withdrawal request, disclosure of attorney-client privileged information should be avoided.[2]

### **5 Avoid foreseeable prejudice.**

Rule 3-700 of the Rules of Professional Conduct states that a lawyer may not withdraw until the lawyer has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client. Avoiding foreseeable prejudice involves several elements: 1) giving the client reasonable notice and time to locate replacement counsel; 2) advising the client of all upcoming deadlines and court hearing dates; 3) refunding unearned legal fees; and 4) releasing the client file.[3]

### **6. Follow the Rules of Court and use mandatory court forms.**

The California Rules of Court contain detailed rules which must be followed when moving to withdraw.[4] A withdrawal motion brought pursuant to Code of Civil Procedure Section 284(2) must be made on the Notice of Motion and Motion to Be Relieved as Counsel – Civil (form MC-051).

The motion also must be accompanied by a declaration on form MC-052, Declaration in Support of Attorney's Motion to Be Relieved as Counsel – Civil. Rule 3.1362 (c) states: "The declaration must state in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under C.C.P. § 284(2) was brought instead of filing a consent under C.C.P. §284(1)." Some attorneys think paragraph 2 of form MC-052, entitled "Reasons for Motion" is an invitation for the attorney to detail the reasons for withdrawal. That is not what is being asked. The form simply requires the attorney to explain why a voluntary substitution of attorney was not filed. The typical answer is that the client did not voluntarily consent to counsel's request to be relieved.

Rule 3.1362(e) requires the attorney to file a proposed order on form MC-053 – Order Granting Attorney's Motion to Be Relieved as Counsel – Civil. The order must specify all hearing dates scheduled in the action, including the trial date. No memorandum of points and authorities is required to be filed or served with a motion to be relieved, and none should be filed.[5]

### **7. Say and disclose as little as possible.**

The California Rules of Court and mandatory court forms have made it remarkably simple for an attorney to file a motion to withdraw without having to reveal client confidences or air any attorney-client disputes.

Paragraph 7 of the attorney declaration (Form MC-052) contains a place for the attorney to describe other matters that the court should consider. Here, the attorney should use care to avoid saying more than necessary. Resist the urge to air the dispute in public. Often, a short explanation suffices, such as, "The relationship of trust and confidence essential to the attorney-client relationship has ceased to exist" or "irreconcilable differences have arisen between client and attorney making it unreasonably difficult to carry out the employment effectively."



Counsel should avoid specifying in the moving papers the specific subdivisions of Rule 3-700 upon which the attorney's motion rests. A number of grounds available for withdrawal could telegraph potentially useful information to opposing counsel which could prove embarrassing or harmful to the client.[6] If the court makes inquiry, request an in camera hearing.

### **8. Serve the motion on your client.**

Rule 3.1362(d) requires that you serve the withdrawal motion by personal service or by mail. If the motion is served by mail, the attorney declaration must state facts showing either that the service address is the current residence or business address of the client, or is the last known residence or business address and the attorney has been unable to locate a more current address after making reasonable efforts to do so within the 30 days before filing the motion.

### **9. Serve the order granting withdrawal.**

Counsel is typically not relieved as counsel until the client is served with a copy of the order and a proof of service is filed with the court.[7] 10. Make the client file available.

A withdrawing attorney has a duty to release the client file to the client.[8] When preparing the motion to withdraw, the attorney should also prepare the client file for release. Make and keep a copy of the file for the attorney's records. You can only charge the client for making the copy if your fee agreement authorizes that copy charge and, in any case, you cannot withhold the file pending payment.[9]

Motions to withdraw usually will be granted when the attorney-client relationship has deteriorated. "The law can afford to take a relatively permissive attitude towards withdrawals *qua withdrawals*. If attorney and client cannot agree, how can they litigate together? There is no need to unequally yoke a union when one of the parties clearly wants out." [10]

[1] *See, e.g.*, Bus. & Prof. Code §6068(e); Rule 3-100(A), Cal. Rules of Prof'l Conduct; Cal. R. Ct. R. 3.1362(c).

[2] *See, e.g.*, *Aceves v. Super. Ct.*, 51 Cal. App. 4<sup>th</sup> 584, 596 (1996); *Manfredi & Levine v. Super. Ct.*, 66 Cal. App. 4<sup>th</sup> 1128, 1136 (1998).

[3] *See, e.g.*, *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269.

[4] *See* Cal. R. Ct. R. 3.1362.

[5] *See* Cal. R. Ct. R. 3.1362(b).

[6] *See, e.g.*, Cal. Rules of Prof'l Conduct R. 3-700(C)(1)(a)-(c).

[7] *See* Cal. R. Ct. R. 3.1362(e).

[8] *See* Cal. Rules of Prof'l Conduct R. 3-700(D).

[9] Nor is non-payment of fees for services rendered a basis for withholding the client file. Attorneys working on contingency fee matters must also recognize that they waive any quantum meruit claim for fees if the withdraw is without "justifiable cause." *See Hensel v. Cohen*, 55 Cal.



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App. 3<sup>rd</sup> 563 (1984); Estate of Falco, 188 Cal. App. 3<sup>rd</sup> 1004, 1014 (1987); Rus, Miliband & Smith, *supra*, 113 Cal. App. 4th 656, 672 (2003).

[10] *See* Rus, Miliband & Smith, *supra*, 113 Cal. App. 4<sup>th</sup> at 673 (emphasis in original).