

ATTORNEY WITHDRAWALS¹

General: Motions to withdraw should be delivered to the client in person or mailed to the client's last known address by BOTH certified and regular mail and should be served on all parties of record in civil cases and the state in criminal cases. Whether in a transmittal letter, the motion and/or the proposed form of order, the client should be informed of all settings and pending deadlines. If another attorney is not being substituted, the client should also be advised to obtain other counsel.

Motions to withdraw should recite facts reflecting compliance with Rule 1.15(b) of the Texas Disciplinary Rules of Professional Conduct.

There may be circumstances under which the reasons listed in Rule 1.15 may not result in an order granting withdrawal.² The trial court has discretion to determine whether counsel should be allowed to withdraw from a case. Although the Disciplinary Rules may not be controlling standards governing motions to withdraw, they have been held to articulate standards relevant to the merits of such motions. Likewise, while Rule 10 of the Texas Rules of Civil Procedure may not govern criminal cases, it may provide guidance in evaluating the merits of a motion to withdraw in a criminal case.

Civil Cases: Motions to withdraw in civil cases must comply with all requirements of Tex. R. Civ. P. 10. Counsel may not withdraw within 30 days of trial without leave of court. The withdrawal motion and order must contain the client's last known email address. A motion to withdraw may be granted without hearing if: (a) The client has signed the motion or order, consenting to the withdrawal; (b) Another lawyer has made an appearance on behalf of the client; or (c) The motion is accompanied by a letter that notifies the client of the client's right to object to the withdrawal within 10 days of the date the letter was mailed, the withdrawing attorney certifies that the motion and letter were sent to the client's last known address by both certified and regular first class mail, and no objection is filed.

Criminal Cases: The Texas Code of Criminal Procedure does not delineate the procedure to be employed by an attorney seeking to withdraw in a criminal case. However, as discussed above, both Rule 10 of the Texas Code of Civil Procedure and Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct provide guidance. Compliance with these rules in criminal cases may not be mandatory but is recommended.

APPEARANCES OF RETAINED COUNSEL IN CRIMINAL CASES

Retained counsel should file a written notice of appearance reflecting service of same on the state upon being retained (no later than the next appearance. If the client has a court-appointed attorney, a copy of retained counsel's notice of appearance should also be served on the court-appointed attorney.

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¹The practices stated here are for "optional" withdrawals under Rule 1.15(b) of the Texas Disciplinary Rules of Professional Conduct. "Mandatory" withdrawals under Rule 1.15(a) may call for a different process or pleading requirements, depending on the circumstances necessitating mandatory withdrawal.

²Rule 1.15(c) provides a lawyer may be required to continue representation notwithstanding good cause for terminating the representation when ordered to do so.