

Sample Motion to Withdraw as Attorney of Record

PROCEDURES: Before moving to withdraw from an appointed case, it is very important that counsel NOT TrueFile the motion directly with the court. Please do the following steps:

1. Contact Panel Manager Liz Smutz and the staff attorney assigned to your case(s) to discuss the contents of your motion. *This is a very important step.* The motion to withdraw is a publicly filed document and counsel's reasons for withdrawing may be very personal. Liz can help guide you on the amount of information that is needed for the motion to withdraw.
2. When instructed, send a PDF-searchable-format motion to withdraw to CCAP, using "/s/[counsel's typed name]" on the signature line, and an executed proof of service. (*Important note: the motion and proof of service should be ONE document, not two separate documents.*)
3. Serve your client, opposing counsel, and counsel for any other parties by postal mail or via email. Do not use TrueFiling. [When CCAP receives the motion, it will be forwarded to the court together with a recommendation for substitute counsel for processing together. (See Important Ethics Caution below.)]
4. Retain one original "wet" signature hardcopy of the motion in your file.

It is unnecessary to provide any additional paper copies to either CCAP or the court.

It is also not necessary to send supporting documentation with your motion. The courts generally will act on a motion to withdraw with generic details regarding health and other private situations. You may consider whether to offer sealed materials upon the court's request.

STATE GOOD CAUSE: Motions to withdraw are discretionary and only granted for good cause.

The court does not consider "press of business" as a valid ground for appointed counsel to withdraw from a case. The courts generally will act on a motion to withdraw with generic details regarding health or other private situations.

ETHICS CAUTION: You are not relieved of your appointment, nor are your obligations to the client and case due dates, until the court rules upon your motion. (See Rules Prof. Conduct, rule 3-700(A)(2).) Retain the transcripts until you receive the ruling, unless CCAP tells you otherwise. Upon the court's granting of the motion, it will direct you where to send the client's file and/or record.

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Attorney caption
Attorney for Appellant [name]

COURT OF APPEAL OF THE STATE OF CALIFORNIA

XXXXX APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff and Respondent,

v.

[Name of Appellant],

Defendant and Appellant.

X Crim. XXXXX

(XXX Count Superior Court
No. XXX)

MOTION TO WITHDRAW
AS ATTORNEY OF
RECORD

_____ /

TO THE HONORABLE PRESIDING JUSTICE XXX, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, XXX APPELLATE DISTRICT:

I, [ATTORNEY NAME], am appointed to represent appellant in this appeal. I respectfully request this court issue an order permitting my withdrawal from representing appellant and for appointment of another attorney to represent appellant in this appeal.

This request is made on the ground that [SUMMARIZE REASON: e.g., “due to my declining health my ethical obligation is to withdraw as attorney of record in order to serve the appellant’s best interests.” If the court would like further details before acting on this request, I will be happy to provide it to the court under seal.] This court has authority to substitute new counsel. (Code Civ. Proc. §284, subd.(2); *Echlin v. Superior Court* (1939) 13 Cal.2d 368, 374.) An attorney may withdraw from a case unless there is a compelling reason for continued representation. (*Hepple v.*

Kluge (1951) 104 Cal.Ap.2d 461, 462.) The court does have the discretion to deny an attorney's request to withdraw if the withdrawal would work an injustice. (*People v. McCracken* (1952) 39 Cal.2d 336.)

[Describe your reasons for asking to withdraw. For example: On [DATE] I was advised by my doctor to reduce my workload because of severe health complications. Counsel can provide the court further details under seal if needed. Because of my medical problems I believe I have an ethical obligation to withdraw as attorney of record in order to serve appellant's best interests. Withdrawal from representation of appellant will not prejudice appellant's appeal but will be in appellant's best interests.]

[Describe the status of the case: "I was appointed on [DATE]. Since that date I have [describe any motions]. [The augmentation was filed on [date]. The opening brief, which is due on [DATE], has not been filed. [On [date], I was granted a second extension of time to file said brief. At the time of my last request for an extension of time I had fully expected to be able to file the opening brief in the time requested. However, because of unexpected ill health I have been unable to do so.]

I am prepared to provide the newly appointed attorney with any notes and work product on this case to assist the attorney in expediting appellant's appeal.

Because this is a court appointed case, I have notified appellant of my request to withdraw from further representation, but have not attempted to obtain appellant's

written consent to withdraw as the attorney on appeal.

There is no compelling reason to require the undersigned to continue to represent appellant and to do so would not be in appellant's best interest. Granting my request will not work an injustice, but will be in the best interest of the appellant. This is not a situation where the appellant would be prejudiced by the withdrawal of present counsel and the appointment of a new attorney.

I therefore respectfully request that this court grant the request of appellant's counsel to be permitted to withdraw from further representation of the appellant and that new counsel be appointed to represent the appellant in further proceedings.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____

Respectfully submitted,

[name of attorney]
Attorney for appellant