

# PRO SE AS ONLY OPTION WHEN YOUR ATTORNEY WITHDRAWS FROM YOUR CUSTODY CASE

I am always approached by individuals who are forced to be pro se because their attorney withdrew from the custody case. Attorneys usually withdraw for failure to pay, but also withdraw for other reasons that have nothing to do with money. A client that makes it impossible to represent them, who constantly refuses to cooperate, who habitually ignores court orders, etc. are all reasons attorneys can withdraw. No matter the reason, there are some things pro se litigants should keep in mind when they find themselves in this predicament.

## Ethical Rules for Attorney Withdrawal

Most states have adopted some form of the American Bar Association's Model Rules for the ethical practice of law. This means that every one of the fifty (50) states has its own set of rules that dictate how an attorney should behave professionally. One issue that is covered in all the states' rules is the method attorneys must employ when they want to withdraw from representation. The ABA Model Rule (1.16(b)) states:

a lawyer can withdraw from an engagement without cause only if it will not result in a material adverse effect on the client's interest.

This means that the lawyer must show "cause" for their withdrawal. In other words, they must have a "compelling reason" to be let out of your custody case.

Although states might differ on the language they use, there is a consensus on what constitutes a "compelling reason." It is NOT simply disagreeing on some issues in your custody case, although there are times when this is sufficient grounds. Compelling reasons are usually ones where the client is continuously involved or engaged in criminal activity. Other instances are where they fail to pay their fees or where a conflict of interest is present. These are just a few, the list of instances where withdrawal would be justified is long.

## Mandatory withdrawal vs. Permissive Withdrawal

There is a difference between when an attorney can withdraw and when they must withdraw.

The instances where an attorney must withdraw are not as extensive as when they can. That is because the litigant's right to have continued representation is paramount to an attorney's desire to leave the case whenever they want.

Circumstances, when an attorney can withdraw, outnumber when they must because of the interests of the client. Lawyers are held to a standard that requires them to consider the legal harm in almost any situation.

Do not be fooled though, attorneys are very skilled at creating a scenario where must takes precedence, or a justified can more likely prevail.

# Method for Withdrawal

In all cases, attorneys must follow a specific procedure when they seek to withdraw. No matter what, when, or where there are procedural requirements in place for attorneys who opt to end their representation.

Most states have a formal requirement where the attorney must file a motion in court seeking the court's permission. The specifics, however, with respect to the format, timing, in person or in writing argument may vary among the states.

Litigants have the option to object or oppose the attorney's withdrawal, except where the client is the one requesting the withdrawal. If they can prove that there is undue prejudice or harm to their case that will result from the withdrawal, then they have a chance.

In Family Court, the standard of proof is "preponderance of evidence" which means that a party must provide evidence of at least a 50% value to support its argument. But when it comes to an attorney seeking withdrawal, this standard is automatically shifted to less than 50%.

## Client's Course of Action Upon Withdrawal

What are your options if this is your current predicament? Should you object, or should you consent, or something else? These are the questions you need to ask yourself. But more importantly, should you or could you do anything to prevent this from happening in the first place.

Your options are let the attorney go; try to compromise or settle your issues or flat out dispute their trying to withdraw. If you let them go then you are forced to either hire another lawyer or represent yourself. When you do this, you are more likely to have less headache dealing with the court. The court would much rather you concede than have you fight to keep an attorney that does not believe they can or should continue. If, however, you choose to try to settle your differences, the attorney will have the discretion to choose if they will continue and to set the conditions for doing so. And last, if you choose to fight the withdrawal, chances are you are going to create more problems for yourself, with the lawyer and the court.

## Tips to Avoid Attorney Withdrawals

You can try your hardest to prevent the attorney's withdrawal, which is always an option. This starts with having a clear understanding of your financial means before hiring them. You should not rush to hire an attorney when you have no reliable means to pay them to manage the entire case. I see people get desperate and hire a lawyer just because they think they should. This is a setup for disastrous consequences.

Another way to avoid involuntary withdrawal is to have an express understanding of what your responsibilities are as a client. From the moment you sign the Retainer Agreement, you should be aware of all that is expected from you. At the same time, your attorney should explain to you in detail everything you can expect from them.

And last, you should always keep the lines of communication open. I know that most litigants' major complaint about their attorney is their lack of communication. However, this does not release you of the obligation to facilitate discussions about your concerns, your questions, etc. with them.