

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED)
AMENDMENT TO CR 71—WITHDRAWAL BY)
ATTORNEY)
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ORDER

NO. 25700-A-1291

The Superior Court Judges' Association, having recommended the suggested amendment to CR 71—Withdrawal by Attorney, and the Court having approved the suggested amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendment as attached hereto is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2021.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2021. Comments may be sent to the following

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ORDER

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addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov.

Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 1st day of April, 2020.

For the Court


CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment to the SUPERIOR COURT CIVIL RULES (CR)

CR 71: Withdrawal by Attorney

Submitted by the Superior Court Judges' Association

- A. **Name of Proponent:** Superior Court Judges' Association
- B. **Spokesperson:** Judge Kitty-Ann van Doorninck, President
Superior Court Judges' Association

- C. **Purpose:**
A withdrawal by an attorney close to trial can leave former clients unrepresented during the most critical phase of a case. Those suddenly unrepresented litigants are often unfamiliar with applicable rules and deadlines let alone how to prepare for trial. As a result, in addition to potentially prejudicing the rights of the former client, those last-minute withdrawals can create havoc with trial schedules and case management.

In many cases, the court is unaware that the attorney representing the litigant has withdrawn until a week or less before trial. The suggested amendments require that if a notice of intent to withdraw is filed 90 days or less before the trial date, a courtesy copy must be delivered to the assigned judge or, if no assigned judge, the presiding judge of the department. That notice would allow the court an opportunity to determine how to deal with the situation, which might include conducting a case conference with the parties, making arrangements to ensure the party is prepared to proceed without representation, or denying the withdrawal in certain situations.

This proposed amendment also requires the withdrawing attorney provide additional information to the former client. That attorney must confirm in the notice that the client has been (i) provided a copy of the current case schedule, (ii) informed in writing about how to obtain his/her client files by the withdrawal's effective date, and (iii) if a family law case, notified in writing of how the client can locate local family law rules.

In addition to the suggested amendments to CR 71, please see enclosed a draft pattern withdrawal form. When conferencing on Rule amendments, it was suggested that a pattern form for CR 71, which does not now exist, would be

helpful when implementing an amended CR 71. This draft is offered as an example of a pattern form that could be submitted to the Pattern Form Committee if proposed Rule changes are adopted. It is not proposed as an amendment to CR 71 itself.

D. **Hearing**: A hearing is not requested.

E. **Expedited Consideration**: Expedited consideration is not requested.

CR 71
WITHDRAWAL BY ATTORNEY

(a) **Withdrawal by Attorney.** Service on an attorney who has appeared for a party in a civil proceeding shall be valid to the extent permitted by statute and rule 5(b) only until the attorney has withdrawn in the manner provided in sections (b), (c), and (d). Nothing in this rule defines the circumstances under which a withdrawal might be denied by the court.

(b) **Withdrawal by Order.** A court appointed attorney may not withdraw without an order of the court. The client of the withdrawing attorney must be given notice of the motion to withdraw and the date and place the motion will be heard.

(c) **Withdrawal by Notice.** Except as provided in sections (b) and (d), an attorney may withdraw by notice in the manner provided in this section.

(1) *Notice of Intent To Withdraw Filed More Than 90 Days Before Trial Date.* The attorney shall file and serve a Notice of Intent ~~t~~To Withdraw on all other parties in the proceeding. The notice shall specify a date when the attorney intends to withdraw, which date shall be at least 10 days after the service of the Notice of Intent ~~t~~To Withdraw on all other parties (including an additional three (3) days if notice is served by mail). The notice shall include a statement that the withdrawal shall be effective without order of court unless an objection to the withdrawal is served upon the withdrawing attorney before ~~prior to~~ the effective date set forth in the notice. ~~If notice is given before trial, t~~The notice shall include the date set for trial and, if available, attach a current case schedule. The notice shall include the names and last known addresses of the persons represented by the withdrawing attorney, unless disclosure of the address would violate the Rules of Professional Conduct, in which case the address may be omitted. If the address is omitted, the notice must contain a statement that after the attorney withdraws, and so long as the address of the withdrawing attorney's client remains undisclosed and no new attorney is substituted, the client may be served by leaving papers with the clerk of the court pursuant to rule 5(b)(1).

(2) *Notice of Intent to Withdraw Filed 90 Days or Less Before Trial Date.* If an attorney's notice of withdrawal is filed 90 days or less before the trial date, a copy of the notice shall be provided to the assigned judge, if there is one or, if not, the department Chief Judge or Presiding Judge as applicable, at the time of filing. If the notice does not contain a substitution of counsel as provided in subsection (d), the withdrawing attorney shall confirm in the notice that the client has been:

- (i) provided a copy of the current case schedule,
- (ii) informed in writing about how to obtain his/her client files by the withdrawal's effective date, and
- (iii) if a family law case, notified in writing of how the client can locate local family law rules. In other respects, the notice shall comply with subsection (1) above.

(23) *Service on Client.* Before ~~Prior to~~ service on other parties, the Notice of Intent ~~t~~To Withdraw shall be served on the persons represented by the withdrawing attorney or sent to them by certified mail, postage prepaid, to their last known mailing addresses. Proof of service or mailing shall be filed, except that the address of the withdrawing attorney's client may be omitted under circumstances defined by subsection (c)(1) of this rule.

(34) *Withdrawal Without Objection.* The withdrawal shall be effective, without order of court and without the service and filing of any additional papers, on the date designated in the Notice of Intent ~~t~~To Withdraw, unless a written objection to the withdrawal is served by a party on the withdrawing attorney prior to the date specified as the day of withdrawal in the Notice of Intent ~~t~~To Withdraw, or the court notifies the parties of further proceedings to address withdrawal.

(45) *Effect of Objection.* If a timely written objection is served, withdrawal may be obtained only by order of the court.

(d) Withdrawal and Substitution. Except as provided in section (b), an attorney may withdraw if a new attorney is substituted by filing and serving a Notice of Withdrawal and Substitution. The notice shall include a statement of the date on which the withdrawal and substitution are effective and shall include the name, address, Washington State Bar Association membership number, and signature of the withdrawing attorney and the substituted attorney. If an attorney changes firms or offices, but another attorney in the previous firm or office will become counsel of record, a Notice of Withdrawal and Substitution shall nevertheless be filed.