



Practice Tip (11.05.19)

NOTICE OF WITHDRAWAL – RULE 105

Summary

Volunteer housing attorneys often provide limited representation for tenants in housing court, including appearing in court on behalf of a tenant for an initial appearance or other hearing. Although the attorney's representation in these situations is limited to a one-time appearance, the attorney should file a notice of withdrawal with the court at the conclusion of the representation. This Practice Tip also discusses notice of withdrawal in situations where the attorney has lost contact with the client and filing a notice of withdrawal in eviction expungement cases.

Analysis

Rule 105 of the General Rules of Practice for the District Courts addresses the process of withdrawing as counsel in a civil action. As amended, effective July 1, 2019, it states as follows:

After a lawyer has appeared for a party in any action, withdrawal will be effective only if written notice of withdrawal is served on all parties who have appeared, or their lawyers if represented by counsel, and is filed with the court administrator if any other document in the action has been filed. The notice of withdrawal shall include the address, email address, if known, and phone number where the party can be served or notified of matters relating to the action.

Withdrawal of counsel does not create any right to continuance of any scheduled trial or hearing.

Because, by definition, an eviction action Complaint must be filed in Housing Court to commence the eviction action, if an attorney makes a formal appearance in court on behalf of the tenant defendant, the provisions of Rule 105 are applicable and determine the process of withdrawal by the attorney upon the conclusion of the attorney and client relationship. Two issues have arisen.

Issue One: If the attorney has lost contact with the client, how does the attorney complete the Notice of Withdrawal?

There are two components to the answer. The short answer is that the attorney can use the client's last-known address, telephone number, and email address, stating so on the Notice. The longer answer deals with possible ethics problems.

To protect against a subsequent ethics complaint by a former client regarding withdrawal, the attorney should make concerted efforts to locate the client before serving and filing the Notice of Withdrawal and document those efforts in the attorney's client file. Those efforts should include: letters to the client by regular mail and certified mail, return receipt requested, seeking

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the client's present contact information, and several telephone contacts and email requests seeking that information.

Issue Two: If the attorney has secured an expungement order on the client's behalf, how can the attorney file a Notice of Withdrawal if the case record has been expunged?

In Hennepin County, the court administrator will accept Notices of Withdrawal for two weeks following the date of entry of the expungement order. In Ramsey County, the expungement order is effectively immediately, and the court administrator takes the position that a Notice of Withdrawal cannot be filed.