

[CAPTION]

MOTION TO WITHDRAW AS COUNSEL

Undersigned counsel respectfully requests this Court to grant this Motion to Withdraw as Counsel. In support of the Motion, undersigned counsel states the following:

1. The Defendant is charged with [insert offense(s)].
2. Undersigned counsel is scheduled to appear in Court on behalf of the Defendant on [insert date].
3. Undersigned counsel should be permitted to withdraw from the representation of the Defendant for the following reasons: (select appropriate reasons).
 - a. He/she has a conflict of interest in continued representation of the Defendant;
 - b. Other counsel has been retained or assigned to defend the case, substitution of new counsel would not cause any delay in the proceedings, and the Defendant consents to or requests substitution of the new counsel;
 - c. The attorney-client relationship has deteriorated to a point such that counsel cannot render effective assistance to the Defendant;
 - d. The Defendant insists upon representing himself/herself and he/she understands that the withdrawal of counsel will not be permitted to delay the proceedings;
 - e. There is a manifest necessity requiring that counsel withdraw from the case' and/or
 - f. The codefendant's presentation of his/her defense is clearly inconsistent with and in opposition to the best interests of the Defendant's defense, and thus, there is a strong conflict of interests for the defense counsel if he/she must represent both clients. Holloway v. Arkansas, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978).
4. The best interests of the Defendant will be served by the withdrawal of defense counsel.
5. This Court has the discretion and power to permit defense counsel to withdraw pursuant to I.C. 35-36-8-2.

WHEREFORE, undersigned attorney for the Defendant respectfully requests that this Court grant his/her Motion to Withdraw as Counsel, and for all other relief just and proper in the premises.

(Signature of Attorney)

REFERENCES

CASEBANK Y.14

I.C. 35-36-8-2 (withdrawal by counsel; grounds; time limit; restriction; counsel has a right to withdraw for any reason at any time up to thirty (30) days before the omnibus date)

Indiana Rules of Professional Conduct, Rule 1.16 (declining or terminating representation).

NOTE

Always check the local rules of the court in which you are practicing. Local Rules may have additional requirements for withdrawal.

CASE LAW

Conn v. State, 535 N.E.2d 1176 (Ind. 1989) (defense counsel was properly allowed to withdraw in light of presence of co-counsel already in state of readiness, before trial; counsel in support of request to withdraw said that he was a party in a dissolution action set for hearing in different court on same trial date, which was a satisfactory reason).

Boesel v. State, 596 N.E.2d 261 (Ind.Ct.App. 1992) (trial court abused its discretion when it granted defense counsel's motion to withdraw following voir dire and after jury was impaneled).

Slocumb v. State, 568 N.E.2d 1068 (Ind.Ct.App. 1991) (no abuse of discretion in denying counsel's motion to withdraw after the client failed to appear for trial and failed to produce subpoenaed document), *sum. aff'd*, 573 N.E.2d 427 (Ind. 1991).

Strong v. State, 633 N.E.2d 296 (Ind.Ct.App. 1994) (although counsel discovered the day before trial that he represented the confidential informant in another case, the trial court did not err in denying counsel's motion to withdraw because there was no prejudice due to the conflict because counsel had not learned any relevant information from the confidential informant; however, this is a position in which counsel should not have been placed).

Wright v. State, 663 N.E.2d 210 (Ind.Ct.App. 1996) (the Court recognized public defender's concern that she may be placed in untenable position of arguing her own ineffectiveness on appeal, but noted that by agreeing to proceed pro se and explicitly warning public defender not to interfere in his trial, the Defendant waived any ineffective assistance of counsel claim for appeal; thus, trial court did not err in refusing to allow trial public defender to withdraw as appellate counsel).

Latta v. State, 743 N.E.2d 1121 (Ind. 2001) (counsel's joint representation of both the Defendant and Co-defendant is not per se violation of constitutional guarantee of effective assistance of counsel; under some circumstances the Defendant may properly waive right to conflict-free representation; however, courts should inquire in detail as to the Defendants' understanding of potential areas of conflict).

Bronaugh v. State, 942 N.E.2d 826 (Ind.Ct. App. 2011) (trial court may refuse a motion to withdraw if it determines that there will be a resultant delay in the administration of justice).