

Proposed Amendments to Texas Rules of Civil Procedure 8 and 10
(Subcommittee Draft 9/26/18)

Rule 8. Attorney in Charge

Rule 8.1. General Appearance

- (a) An attorney whose signature first appears on the initial pleadings for a party is the attorney responsible for the suit for that party, unless:
- (1) the initial pleadings designate another attorney as the attorney in charge; or
 - (2) the attorney files a notice of limited appearance under this rule.
- (b) Any change in the designation of the attorney in charge must be made by written notice to the court and all parties to the suit.
- (c) All communications from the court or other counsel with respect to a suit shall be sent to the attorney in charge.

Rule 8.2. Limited Appearance

- (a) *Notice Required.* An attorney making a limited appearance in a case on behalf of a party not otherwise represented by counsel must file with the court a notice of limited appearance, signed by the attorney and the party. The notice must be served on all parties to the suit. The notice must identify:
- (1) the attorney making the limited appearance;
 - (2) the party the attorney represents;
 - (3) the tasks for which the attorney will represent the party; and
 - (4) the service information for the attorney and the party.

- (b) *Notice Not Required.* A notice of limited appearance is not required if the tasks to be performed by the attorney do not require the attorney to appear before the court or communicate with the court or opposing parties.
- (c) *Limited Scope.* An attorney who files a notice of limited appearance is the attorney for that party for the tasks designated in the notice of limited appearance but is not the attorney for the party for tasks outside the scope of the notice.
- (d) *Duration.* A limited appearance continues until the court orders that the attorney may withdraw under Rule 10 or the case is concluded in the trial court.
- (e) *Service.* Service must be made on the attorney and the party in accordance with Rule 21a until the attorney withdraws from the case or the case is concluded. Service must be made on the party at the address listed for the party. Service directed to an attorney and not the party for tasks outside the scope of the notice of limited appearance is not effective.
- (f) *Court notices.* Where rules require the trial court to provide written notice to the parties, the trial court must provide notice to the attorney and separately provide notice to the party at the address listed for the party.
- (g) *Multiple Attorneys.* When multiple attorneys appear in the suit on behalf of a party, one attorney must make a general appearance and be designated as the attorney in charge.

Comment—2018

Consistent with Texas Disciplinary Rule of Professional Conduct 1.02(b), an attorney may limit the scope, objectives, and general methods of representation if the client consents after consultation. This rule addresses the attorney's responsibilities to the court and opposing counsel when an attorney represents a client in court for a limited purpose and no other attorney appears on behalf of the client. The rule does not otherwise define the scope or method of representation by an attorney, including preparation of court documents for a party by an attorney who is not making a court appearance, and instead leaves this to the attorney and client to address within their engagement agreement. The rule does not require an attorney to file a limited appearance unless the attorney appears in court and no other attorney appears as the attorney in charge of the suit for that party. When a party is represented by multiple attorneys in court, the party must designate one attorney to be the attorney in charge of the suit for all purposes.

Rule 10. Withdrawal and Substitution of Attorney

Rule 10.1. Withdrawal from General Appearance

- (a) *Withdrawal without substitution of counsel.* An attorney may withdraw from representing a party upon written motion for good cause shown. The motion must state:
- (1) the party's last known address and email address for purposes of service;
 - (2) that the attorney has provided the party with a copy of the motion and notified the party in writing that the party has the right to object;
 - (3) whether the party has consented to the motion; and
 - (4) all pending settings or deadlines known to counsel at the time of withdrawal, including any hearing on the motion to withdraw.
- (b) *Withdrawal with substitution of counsel.* A party may substitute counsel upon written motion. The motion must state:
- (1) the name, address, telephone number, email address, and State Bar of Texas identification number of the substitute attorney;
 - (2) that the party approves the substitution; and
 - (3) that the withdrawal is not sought for delay only.
- (c) *Motion granted.* If the motion to withdraw is granted, the withdrawing attorney shall immediately notify the party or substitute counsel in writing of any settings or deadlines of which the attorney has knowledge at the time of the withdrawal and has not already notified the party or substitute counsel.

(d) *Multiple attorneys; withdrawal of attorney in charge.* If the attorney in charge withdraws and additional attorneys have appeared on behalf of the party, the party must give notice to the court and all other parties of the designated attorney in charge.

Rule 10.2. Withdrawal from Limited Appearance

(a) *Motion required.* An attorney seeking to withdraw from a limited appearance before the case is concluded must move to withdraw from the representation. The trial court must permit the withdrawal if the motion includes:

- (1) the party's consent in writing to the withdrawal;
- (2) a statement that the other parties do not oppose the motion;
- (3) the last known mailing address of the party;
- (4) a statement of any pending settings or deadlines of which the attorney is aware at the time of withdrawal; and
- (5) the attorney's certification that all the tasks required by the notice of limited appearance have been completed, including the filing of proposed orders addressing the relief sought for any task included in the notice of limited representation.

(b) *Opposition to withdrawal.* If the motion to withdraw is opposed by any party, then the trial court must determine whether the attorney has completed the tasks included in the notice of limited representation, and if so, permit the attorney to withdraw.

(c) *Tasks not complete.* For good cause shown, the trial court may grant leave to withdraw without the attorney's certification that all tasks have been completed.

- (d) *Substitution.* If a motion to withdraw includes an appearance by another attorney to substitute for the withdrawing attorney, then the motion need only state that the substituting attorney has assumed responsibility for all uncompleted tasks within the scope of the notice of limited appearance and the party has consented to the substitution. The motion must be signed by the withdrawing and the substituting attorney.
- (e) *Order.* The court must not impose further conditions upon granting leave to withdraw.
- (f) *Service.* The withdrawing attorney must serve a copy of the court's order permitting withdrawal on all parties.