

Alabama Rules of Criminal Procedure

Rule 6. Right to counsel: appointment of counsel.

Rule 6.2. Duties of counsel; withdrawal.

(a) NOTICE OF APPEARANCE. Before or at a first appearance in any court on behalf of a defendant, an attorney, whether privately retained or appointed by the court, shall file a notice of appearance or, in lieu thereof, the court shall note of record the attorney's appearance. Any provisions limiting the period of the attorney's employment, where a contract of employment between a defendant and privately retained counsel exists, and the names of any agents authorized to consult with the defendant as provided in Rule 6.1(a) shall be included in the notice of appearance or shall be noted by the court on the record.

(b) DUTY OF CONTINUING REPRESENTATION. Counsel representing a defendant at any stage shall continue to represent that defendant in all further proceedings in the trial court, including filing of notice of appeal, unless counsel withdraws in accordance with a limited contract of employment as described in Rule 6.2(a), or for other good cause as approved by the court.

(c) WITHDRAWAL. Counsel may be permitted to withdraw for good cause shown; however, no attorney shall be permitted to withdraw after a case has been set for trial except upon written motion stating the attorney's reasons for withdrawing.

Committee Comments

The purpose of Rule 6.2 is to define minimum standards for the representation of criminal defendants.

Section (a) provides a mechanism for insuring that defendants are represented by counsel by requiring that a notice of appearance be filed either prior to or at the first appearance of counsel. To facilitate the procedure, a form for that purpose will be provided.

When a contract of employment exists between the defendant and a privately-retained attorney, the notice of appearance shall contain any provisions of the contract limiting the period of the attorney's employment, as, for example, if the attorney is employed only to represent the defendant at preliminary hearing. The purpose of the requirement is to give the court notice that the appearance by counsel is for a limited purpose. It is anticipated that this provision will encourage use of private counsel when at all possible.

If the attorney has made an appearance in district court in a felony case, the attorney need not file a new notice of appearance if the defendant is bound

over to the circuit court since it will be part of the record transmitted to the clerk of the circuit court.

Section (b) contemplates that the usual procedure will be that counsel initially retained privately or appointed by the court will continue to represent the defendant through all stages of the trial proceeding, including filing notice of appeal. The rationale is that that attorney has the advantage of familiarity with the case. Continued representation also guarantees that the defendant's right of appeal is not lost in the period between termination of trial counsel's responsibilities in the case and retention or appointment of counsel for an appeal, if any. See ABA, Standards for Criminal Justice, *Providing Defense Services* 5-5.2 (2d ed. 1986).

Counsel must move to withdraw by means of a formal written motion. Withdrawal will be permitted only upon order of the court in response to such motion. Normally, appointed counsel will not be permitted to withdraw prior to appeal. However, if the court permits withdrawal by counsel, the court must then provide new counsel or see that counsel for the defendant has been provided, unless right to counsel has been waived.

The purpose of section (c) is to maintain the integrity of the trial date, to protect the interests of the defendant, and to aid the trial court in providing continuity in legal representation. See Ala.Code 1975, § 15-12-5(d). The section as originally drafted required the written motion to state the name and address of another attorney together with a signed statement by that attorney that he was advised of the trial date and would be prepared for trial. The Advisory Committee agreed that this requirement would place too great a burden on defense lawyers and deleted that provision. However, it is expected that Disciplinary Rule 2-111 of the Code of Professional Responsibility of the Alabama State Bar (1974), which expands upon the rather minimal requirements of this rule, will be observed.