

3-2(a)

~~2-5.~~

Proposal by Judge Newson concerning withdrawal of an appearance in criminal matters under Section 3-9. On 3-26-18, RC tabled matter to May meeting and directed counsel to research the matter further. On 5-14-18, RC referred matter to Judge Alexander, CAJ, Criminal Matters, for review and comment. (Referred to J. Alexander on 9-9-18.) Received comments from Judge Alexander on 9-12-18. **On 9-17-18 RC referred matter to CCDLA for comment.**

1-6



STATE OF CONNECTICUT
SUPERIOR COURT
JUDGE'S CHAMBERS

20 Franklin Square, New Britain, Connecticut 06051

Chambers of
Honorable Joan K. Alexander
Administrative Judge
Chief Administrative Judge - Criminal

Telephone (860) 515-5050
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September 12, 2018

Attorney Joseph Del Ciampo
Director of Legal Services
100 Washington Street
Hartford, Connecticut 06115

Dear Attorney Del Ciampo:

I have reviewed the materials that you sent me from Judge Newson regarding an attorney's ability to withdraw their appearance after a defendant fails to appear in court and is ordered re-arrested. I do not believe that a rule change is necessary. The current rules allow the attorney to file a motion to withdraw in writing to the court. If a defendant has intentionally absconded, the attorney gives notice to the last known address of the accused for the motion to withdraw their appearance. This notice should be considered legally sufficient for the trial court to take action on the motion. I believe that the current rule permits the court to decide the appropriate representation status in the criminal matter after a failure to appear where the attorney believes that he or she can no longer represent the defendant.

I will be present at the Rules Committee meeting on September 17th and would be more than willing to discuss this in greater detail, if you or the other members have any further questions.


Very truly yours,

A handwritten signature in cursive script that reads "Joan K. Alexander".

Joan K. Alexander
Chief Administrative Judge
Criminal

jka

Del Ciampo, Joseph



To: RC 2017/2018 Members
Subject: FW: Rules Committee: Consideration of Rule 3.9 Withdrawal of Appearance Where Criminal Defendant has FTA'd

Dear Judges,

At its meeting on March 26, 2018, the Rules Committee discussed briefly a suggestion from Judge Newson to consider a rule that specifically addresses the status of a criminal lawyer's appearance after a failure to appear warrant has been issued for that lawyer's client. After brief discussion, the Committee asked that I review the suggestion and report back to it on the current provisions of the Practice Book that may impact this issue.

I have reviewed the matter and discussed it with Attorneys Adam Mauriello and Katharine Casaubon of Legal Services, and I offer the following for your consideration:

- Section 3-9 of the Practice Book concerns "Withdrawal of Appearance, Duration of Appearance" and provides that except as provided in four specifically delineated circumstances, i.e., in lieu of appearances, in addition to appearances, limited scope appearances, and appearances that are deemed withdrawn 180 days after the entry of judgment in certain family actions or the final decision on the appeal of those actions, "no attorney shall withdraw his or her appearance after it has been entered upon the record of the court without the leave of the court." Section 3-9 (e).
- Section 3-9, being a general provision of the Rules for the Superior Court, is a rule of general application and applies to all subject areas, including criminal matters.
- Section 3-10 sets out the procedure for motions to withdraw an appearance.
- Section 3-6 of the Practice Book concerns "Appearances for Bail or Detention Hearing Only" and provides, in pertinent part, that "[a]n attorney . . . may enter an appearance for the defendant in a criminal case for the sole purpose of representing the defendant at a hearing for the fixing of bail."

Notwithstanding the varying practices described by Judge Newson, and except as described above, an attorney who has filed his or her appearance in a matter may not withdraw his or her appearance without leave of the court.

My answers to the questions posed below immediately follow the questions. Thank you.

Joseph J. Del Ciampo
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From: Sheridan, David

Sent: Monday, March 26, 2018 3:12 PM

To: Del Ciampo, Joseph

Subject: Fwd: Rules Committee: Consideration of Rule 3.9 Withdrawal of Appearance Where Criminal Defendant has FTA'd

Sent from my Verizon 4G LTE Droid

----- Forwarded message -----

From: "Newson, John" <John.Newson@jud.ct.gov>

Date: Mar 26, 2018 9:51 AM

Subject: Rules Committee: Consideration of Rule 3.9 Withdrawal of Appearance Where Criminal Defendant has FTA'd

To: "Robinson, Richard" <richard.robinson@connapp.jud.ct.gov>, "Alexander, Joan" <Joan.Alexander@jud.ct.gov>, "Cradle, Melanie L." <Melanie.Cradle@jud.ct.gov>, "Dubay, Kevin" <Kevin.Dubay@jud.ct.gov>, "Genuario, Robert" <Robert.Genuario@jud.ct.gov>, "Heller, Donna" <Donna.Heller@jud.ct.gov>, "Ozalis, Sheila" <Sheila.Ozalis@jud.ct.gov>, "Sheridan, David" <David.Sheridan@jud.ct.gov>, "Stevens, Barry" <Barry.Stevens@jud.ct.gov>

Cc:

Dear Rules Committee Members:

I would ask the committee to consider reviewing a rule that specifically address the status of a criminal lawyer's appearance after an FTA warrant has been issued for the client. In the GA courts, at least, I have seen varying "rules" applied to this scenario. Some lawyers consider themselves to still represent the defendant many, many months later when the FTA warrant is eventually served, while others deem themselves "out of the case," absent any motion or court order, at the time the warrant is issued. This may be based on any number of claims – I am now a "witness," this new charge is now outside of our written retainer agreement, I now have a "conflict of interest," ect. There are also varying practices by Offices of the Public Defender and sometimes even differences with Public Defenders from the same office. Some appear at arraignment indicating "I/we already represent the defendant," while others will make defendants reapply on the same files their appearance actually shows on the docket, even at times denying the initial reapplication, only to then accept reappointment after the defendant has remained incarcerated for a month or two.

I am not indicating which of these practices is right or wrong, but, at least as I have been able to find, our rules do not appear to set any clear guidelines in this situations:

1. Is an attorney "automatically" out; No.

2. Are they "out" immediately, or after the warrant has been outstanding for a specified time; See answer to Q:1 above.

3. Since the defendant likely cannot be notified, can the motion be oral, or must it be in writing; Pursuant to Section 11-1, "[e]very motion ... unless relating to procedure in the course of a trial, shall be in writing." See also procedure for motions to withdraw appearance set out in Section 3-10.

4. Is there a time period where the warrant has been pending after which, even without a motion, an appearance will be considered to have lapsed by rule? Not in the subject situation.

Again, not a major issue, but one that does come up from time to time.

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**Hon. John M. Newson**  
**Judge, Superior Court**  
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**Danielson, CT 06239**  
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