

Motions (orally or in writing) for Substitution (or Withdrawal) of Attorney

I. Felony Cases

A. Scheduling of Hearings *Prior* to the First Call Date in Presiding Court (whether based on an actual conflict or other grounds)

1. All motions shall be set for an appearance in JC#3 if:
 - a. the defendant is out of custody; *or*
 - b. the defendant is in custody *and*
 1. a signed waiver of the defendant's right to be tried within 60 days of the date of arrest (ORS.136.290) has been filed; *or*
 2. the motion is scheduled for hearing within 21 days of the date of arrest.
 - c. All substitution appointments in JC#3 shall be first assigned to primary felony contractors, then to conflict contractors and lastly from the qualified list of private bar attorneys.
2. All other motions for substitution in cases, except those cases scheduled to appear on the drug call docket or assigned to a specified judge for trial, shall be set for an appearance in Chief Criminal Court.
3. Motions for substitution of attorney on cases docketed in Drug Court (unit A and B cases)
 - a. Conflicts (both actual and otherwise) shall be set on the CPC/Drug Court judges docket daily at 3 p.m. or at an alternate time designated by the current CPC judge.
 - b. If the motion for substitution is granted, the CPC/Drug Call judge shall exercise discretion in resetting, if necessary, new call and trial dates.

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4. Cases assigned to a specific judge for trial
 - a. Prior to motions being heard or jury selection commencing on the day of trial, motions for substitution of counsel shall be set for an appearance in Chief Criminal Court.
 - b. During the pendency of trial, including any post trial proceedings,
 1. the trial judge shall hear motions for substitution of counsel based on other than actual conflicts.
 2. the Chief Criminal judge shall hear motions based on actual conflicts.
- B. If the judge, pursuant to ORS 136.295, makes a 'good cause' finding, based upon the defendant having requested new counsel, to extend the time during which the defendant may be held in custody beyond 60 days from the date of arrest, the judge shall document such finding in writing for the court file, as well as orally on the record.
- C. Attorneys shall provide the court with available information regarding other individual attorneys or firms which either currently or previously represented any of the alleged victims or witnesses, co-defendants or other potential adverse parties, to avoid creating a subsequent actual conflict.
- D. Delivery and Transfer of File Materials to Substituted Counsel
 - a. A copy of attorney's file materials (exclusive of log notes and confidential entries) shall be transferred with the consent of the defendant to the new attorney by providing the file copy to the CPC/Drug Court judge at the time of the motion, or shall be delivered by 9 a.m. of the day following the granting of the motion to:
 1. the clerk of the Chief Criminal Court if the motion was granted by the Chief Criminal judge
 2. the Indigent Defense office if the motion was granted by other than the Chief Criminal judge; (i.e., in JC#3 or CPC/Drug Call judge or trial judge).

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- b. Indigent Defense office shall locate substituted counsel taken from the qualified list within 24 hours of the motion being granted.
 - c. Substituted counsel shall contact the defendant within 24 hours of verbally accepting the appointment assigned through the Indigent Defense office.
- E. The parties shall advise the judge, whenever possible, of the availability of the witnesses at the time of the motion for substitution to assist the court in determining trial readiness.
- F. New call and trial dates, if necessary, shall be scheduled either at the time of the motion, at a subsequent scheduling conference with the Chief Criminal judge, CPC/Drug Call judge or at Presiding Court call.

II. Misdemeanor Cases

- A. All motions for substitution of attorney which are set prior to the day of trial shall be scheduled in the CPC court.
 - 1. The attorney designated to receive the appointment, if the motion for substitution is granted, shall be present at the motion as arranged by the Indigent Defense office.
 - 2. If the motion for substitution is granted, the attorney being relieved of representation shall deliver the 'substitution packet' (a copy of attorney's file materials exclusive of log notes and confidential entries) to the substituted counsel present in court or, if not present, to the Indigent Defense office.
 - 3. If the judge, pursuant to ORS 136.295, makes a 'good cause' finding, based upon the defendant having requested new counsel, to extend the time during which the defendant may be held in custody beyond 60 days from the date of arrest, the judge shall document such finding in writing for the court file, as well as orally on the record.
 - 4. Attorneys shall provide the court with available information regarding other individual attorneys or firms who either currently or previously represented any of the alleged victims or witnesses, co-defendants or other potential adverse parties, to avoid creating a subsequent actual conflict.

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- B. Prior to pretrial matters being heard by the trial judge on the day of trial, motions for substitution of attorney shall be referred to CPC for immediate hearing.
- C. During the pendency of trial, including any post trial proceedings, motions other than those based on actual conflicts shall be heard by the trial judge; actual conflicts shall be heard by the CPC judge.
- D. In any case, where a motion for substitution of attorney has been granted, the CPC judge shall set the next pretrial date within 30 days and the corresponding trial date to follow in regular course.

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